

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.11077 OF 2015

Sanaullah Habibullah Khan	]	
Partner of M/s. S.H. Steel Traders	]	Petitioner
Vs.		
State of Maharashtra and others.	]	Respondents

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Mr. Anil Sakhare, Senior Advocate i/b Sanjeev R. Singh a/w Mr. Ritesh A. Singh, Jyoti S. Agrawal and Tejasvi V. Singh, for Petitioners.

Mr. C.D. Mali, A.G.P, for Respondents No.1 to 5.

Mr. R.D. Soni with S.N. Gawade i/b Shree & Co., for Respondents No.6 to 9.

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CORAM : R.G. KETKAR, J.

DATE : 7TH DECEMBER, 2018.

P.C.

Heard Mr. Sakhare, learned Senior Counsel for the petitioner, Mr. Mali, learned A.G.P, for respondents No.1 to 5, Mr. Soni, learned Counsel for respondents No.6 to 9 at length.

2. Leave to amend so as to substitute the petitioner Sanaullah Habibullah Khan by brining on record M/s. S.H. Steel Traders, a registered partnership Firm through it's partners is granted. Amendment shall be carried out forthwith.

3. This Petition takes exception to the orders;

[1] dated 25th May, 2015 passed by the Hon'ble Minister for Revenue, Maharashtra State in Appeal No.2614/F.No.168/J-3 filed by respondents No.6 to 9 herein against the order dated 1st December, 2014 passed by the Additional Commissioner, Konkan Division, Mumbai.

[2] dated 4th September, 2014 passed by the Deputy Collector (Appeals) Mumbai Suburban District in Appeal No.C/RTS/A-28 of 2014 thereby setting aside the order dated 12th February, 2014 passed by the Sub Divisional Officer, Eastern Suburbs Mumbai Suburban District as also the order dated 25th March, 2013 passed by Tahasildar in Case No. Tah.Kurla/ROR/SR/21/2012 sanctioning mutation entry No.1989.

4. Rule. Mr. Mali, learned A.G.P waives service on behalf of respondents No.1 to 5 and Ms. Gawade waives service on behalf of respondents No.6 to 9. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of learned Counsel for the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

5. In support of this Petition, Mr. Sakhare invited my attention to the notice dated 26th February, 2015 issued by Additional Secretary, Revenue and Forest Department to the petitioner and respondents No.6 to 9 among others intimating date of hearing 4th March, 2015 on at 11.15 a.m. He also invited my attention to paragraph 5 of the impugned order. Paragraph 5 of the impugned order recorded that at the time of hearing of the appeal, copy of the appeal memo was given to the petitioner herein. The petitioner was given 8 days time to submit written arguments. Respondents No.6 to 9 herein were given 8 days time to file additional written arguments and the case was closed for orders. He submitted that section 257 of the Maharashtra Land Revenue Code, 1966 (for short 'Code') and in particular proviso to sub-section (3) thereof lays down that the State Government or such officer shall not vary or reverse any order affecting any question or right between private persons without having given

to the parties interested notice to appear and to be heard in support of such order. He submitted that proviso requires opportunity of hearing to the parties interested. In the present case, opportunity of hearing was not given to the petitioner herein. He, therefore, submitted that as the impugned order is passed without hearing the parties, the same is liable to be set aside.

6. On the other hand, Mr. Soni supported the impugned order. He submitted that Mutation Entry No.1989 was certified on 19th October, 2012. Present Petition was instituted on 13th October, 2015. Till date, the mutation entry is neither set aside nor effect of mutation entry is stayed. He submitted that by communication dated 3rd August, 2012, application made by Sanaullah Habibullah Khan for entering his name in respect of Survey No. 44, Hissa No.2, Mauje Mohili was rejected and the said order was not challenged. Mr. Soni is not in a position to controvert the submission of Mr. Sakhare that opportunity of hearing was not given to the petitioner and show that the Hon'ble Minister heard the parties before passing the impugned order. Even otherwise, after perusal of paragraph 5 of the impugned order, I am satisfied that the impugned order was passed without hearing the parties.

7. Proviso to section 257 (3) of the Code reads thus;

257.Power of State Government and of certain Revenue and Survey Officers to call for and examine records and proceedings of subordinate officers;

(1)...

(2)...

(3)...

“Provided that, the State Government or such officer shall not vary or reverse any order affecting any question or right between private persons without having given to the parties interested notice to appear and to be heard in support of such order:

Provided further that, an Assistant or Deputy Collector shall not himself pass such order in any matter in which a formal inquiry has been held, but shall submit the record with his opinion to the Collector, who shall pass such order thereon as he may deem fit.

(emphasis supplied)

As the impugned order is passed without hearing the parties, the same is liable to be set aside. Hence, the impugned order passed by the Hon'ble Minister is set aside. Appeal is restored to the file of the Hon'ble Minister. The Hon'ble Minister will give advance notice of hearing to the parties and will pass reasoned order after affording opportunity of hearing to the parties. The parties agree that they will appear before the Hon'ble Minister on 18th December, 2018 and for that purpose, no fresh notice be issued to them. The Hon'ble Minister will fix a suitable date and thereafter is requested to dispose of the appeal within three months from fixing the suitable date of hearing. All contentions of the parties on merits are expressly kept open. Rule is made absolute with no order as to costs. Order accordingly.

[R.G. KETKAR, J.]