

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13414 OF 2018

Damodar Nana Bandgar ... Petitioner
Vs.
Vasant Ramu Aadlinge through POA Mangesh
Popat Aadlinge and others ... Respondents

Mr. V. S. Talkute for Petitioner.
Mr. P. B. Kulkarni for Respondent No.1.
Mr. A. A. Patil for Respondent-State.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 7, 2018

P.C. :

Not on Board. At the request of Mr. Talkute, taken up for admission.

2. Heard Mr. Talkute, learned Counsel for the petitioner, Mr. Kulkarni, learned Counsel for the respondent No.1 and Mr. Patil, learned AGP for respondent-State.

3. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the order dated 12.11.2018 passed by the Sub-Divisional Officer, Mangalwedha Division, Mangalwedha. By that order, Sub-Divisional Officer allowed the Revision Application filed by the respondent No.1-Vasant Aadlinge under Section 23(2)(a) of the Mamlatdar's Courts Act, 1906 (for short 'Act') and set aside the order dated 04.09.2018 passed by Tahsildar, Mangalwedha and remitted the case to Tahsildar Sangola for deciding the same on merits, within one month.

4. In support of this Petition, Mr. Talkute submitted that petitioner made application dated 28.05.2018 before Sub-Divisional Officer (for

short 'S.D.O.') for transferring the proceedings from the file of Tahsildar, Sangola to Tahsildar, Mangalwedha on the ground of bias. By order dated 02.06.2018, S.D.O. transferred the proceedings from Tahsildar, Sangola to Tahsildar, Mangalwedha. In pursuance thereof, the proceedings were conducted before Tahsildar, Mangalwedha. By order dated 04.09.2018, Tahsildar, Mangalwedha rejected the application filed by the respondent No.1 herein. Against that order, respondent No.1 instituted revision application before S.D.O., Mangalwedha. By the impugned order, S.D.O. has set aside the order dated 04.09.2018 passed by Tahsildar, Mangalwedha and remitted the case to Tahsildar, Sangola for deciding it afresh on merits, within one month from the date of the order.

5. Mr. Talkute submitted that the impugned order was passed only on the premise that S.D.O. had no authority to transfer the proceedings from Tahsildar, Sangola to Tahsildar, Mangalwedha. He submitted that respondent No.1 never raised objection before Tahsildar, Mangalwedha and also did not challenge the order of transfer passed by S.D.O., Mangalwedha. S.D.O., Mangalwedha suo motu held that S.D.O., Mangalwedha had no authority to transfer the proceedings from Tahsildar, Sangola to Tahsildar, Mangalwedha. As the entire exercise was undertaken and matter was also proceeded before Tahsildar, Mangalwedha without any objection, S.D.O. was not justified in passing the impugned order. In any case, he submitted that if Court is not inclined to interfere with the impugned order, Tahsildar, Sangola may be directed to stay his hands for the period of two weeks from today so as to enable the petitioners to file application before the Collector, Solapur for transferring the proceedings from Tahsildar, Sangola to Tahsildar, Mangalwedha.

6. On the other hand, Mr. Kulkarni supported the impugned order.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, petitioner made application on 28.05.2018 before S.D.O., Mangalwedha for transferring the proceedings from Tahsildar, Sangola to Tahsildar, Mangalwedha. By order dated 02.07.2018, S.D.O. transferred the proceedings from Tahsildar, Sangola to Tahsildar, Mangalwedha. A perusal of that order does not indicate that S.D.O., Mangalwedha heard respondent No.1 before passing the order. That apart, it is conceded that S.D.O., Mangalwedha Division, Mangalwedha had no authority to transfer the proceedings from Tahsildar, Sangola to Tahsildar, Mangalwedha. In view thereof, the proceedings conducted before Tahsildar, Mangalwedha were without jurisdiction. S.D.O., Mangalwedha rightly interfered with that order and remitted the matter to Tahsildar, Sangola for deciding the case afresh. In view thereof, I do not find that any case is made out for interfering with the impugned order. The petitioner is at liberty to file application before Tahsildar, Sangola for staying his hands for a period of 2 weeks so as to enable him to approach, Collector, Solapur for transferring the proceedings from Tahsildar, Sangola to Tahsildar, Mangalwedha. If such application is made, Collector, Solapur will pass orders in accordance with law. Subject to this, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab