

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3911/2016

Jay Shamkimata Matysa Vyavasay Sahakari Sanstha Maryadit, Belkhed

..Vs..

The State of Maharashtra and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri C. Sharma, Advocate for the petitioner.
Ms. Mrunal Naik, A.G.P. for respondent Nos.1 to 5.
Shri P.R. Agrawal, Advocate for the respondent No.6.

CORAM : Z.A. HAQ, J.

DATE : 6.2.2018.

The Assistant Commissioner, Fisheries (Technical), Buldhana cum President of District Tank Allotment Committee, Buldhana had submitted its report (copy of which is placed on record at page No.71 of the paper book) to the effect that registration granted to the petitioner society on 21st August, 2014 was valid. This report further stated that the allotment of Dhopargaon tank by the District Tank Allotment Committee on 6th June, 2015 in favour of the respondent No.6 society was illegal. This report is challenged by the respondent No.6 society before the Commissioner, Fisheries and Joint Registrar, Co-operative Societies (Fisheries) by filing a complaint. The Commissioner Fisheries has passed an interim order on 29th June, 2016 granting stay to the effect and operation of the report submitted by the Assistant Commissioner, Fisheries (Technical).

The petitioner in this petition contends that

the report submitted by the Assistant Commissioner, Fisheries (Technical) is unsustainable as the Assistant Commissioner, Fisheries (Technical) has no jurisdiction in the matter. Relying on the order issued by the Co-operative and Textile Department, Government of Maharashtra on 20th February, 1991 it is submitted that the jurisdiction to deal with the matter is with the Assistant Registrar, Co-operative Societies (Dairy). The learned A.G.P. and the learned Advocate appearing for the respondent No.6 are not disputing this submission made by the learned Advocate for the petitioner.

As the report submitted by the Assistant Commissioner, Fisheries (Technical) is issued by an Authority which had no jurisdiction, it cannot sustain the scrutiny of law and it has to be quashed. Consequently, the complaint made by the respondent No.6 before the Commissioner, Fisheries and the interim order passed by the Commissioner, Fisheries on 29th June, 2016 do not survive.

Hence, the following order:

The report submitted by the Assistant Commissioner, Fisheries (Technical), Buldhana cum President of District Tank Allotment Committee, Buldhana (at page No.71 of paper book) is quashed.

The order passed by the Commissioner of Fisheries on 29th June, 2016 and the complaint made by the respondent No.6 in the matter do not survive. The complaint filed by the respondent No.6 against the report submitted by the Assistant Commissioner, Fisheries

(Technical) is dismissed.

The matter is remitted to Assistant Registrar of Co-operative Societies (Dairy), Buldhana for considering it afresh.

The Assistant Registrar of Co-operative Societies (Dairy), Buldhana shall hear the concerned parties and take decision till 26th March, 2018.

The petitioner and the respondent No.6 shall appear before the Assistant Registrar, Co-operative Societies (Dairy), Buldhana on 12th March, 2018 and abide by further orders / instructions in the matter.

The writ petition is **disposed** in the above terms.

In the circumstances, the parties to bear their own costs.

This Court has passed an order on 22nd November, 2017 directing that the petitioner be provisionally permitted to participate in the process of auction of Dhopargaon tank. It is submitted that the process of auction is not yet finalized because of the pendency of this writ petition. The final decision in the matter shall be taken after the decision of Assistant Registrar of Co-operative Societies (Dairy), Buldhana.

JUDGE