

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

905 **WRIT PETITION NO.8402 OF 2019**

DNYANESHWAR BAURAO DHAWALE AND OTHERS
VERSUS
THE ADDITIONAL COMMISSIONER AURANGABAD AND OTHERS

...
Advocate for Petitioners : Mr. Tapse Ashok R.
AGP for Respondents No.1 to 4:Mr. S.P. Tiwari
Advocate for Respondent No.5 :Mr. K.B. Jadhav
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CORAM : **RAVINDRA V. GHUGE, J.**

Date: August 14th, 2019
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PER COURT :-

1 I have heard the learned advocates for the respective sides and the learned AGP on behalf of respondents No.1 to 4.

2 Issue is as regards clearing a vahivat, which allegedly is obstructed by respondent No.5. The petitioners had approached the Mamlatdar Court for removal of the obstacles in the path mentioned in their application. The petitioners did not mention that the application was being filed under section 5(2) of the Mamlatdar Courts Act, 1906. The Tahsildar passed an order on 6.12.2013, concluding on the basis of the Panchanama and the spot inspection that, respondent No.5 had created an obstruction. Apparently, the said order has been passed under section 5(2), though it has not been specifically mentioned by the Tahsildar. It is expected that, the Tahsildar is to mention in the order as to which provision is being invoked while passing

such order.

3 Respondent No.5 approached the Sub Divisional Officer, Ambad, Dist. Jalna under section 247 of Maharashtra Land Revenue Code, 1966. Admittedly, the said application which is termed as an 'ROR" appeal was not maintainable and a revision under section 23(2) of the 1906 Act should have been filed. Further litigation reached up to the Additional Divisional Commissioner, Aurangabad and it is unfortunate that, none of the revenue authorities have cared to find out as to which was the Act under which the first application was filed.

4 In view of the above, this petition is allowed purely on account of the legal infirmity occurring in the proceedings. The orders dated 20.7.2017 passed by the S.D.O. and dated 31.1.2019 passed by the Additional Divisional Commissioner are quashed and set aside. The appeal No.84/2016 and revision No.352/2017 are disposed off.

5 The 5th respondent Baburao Bhimaji would be at liberty to file a revision under section 23(2) before the revisional authority i.e. Deputy Collector/ S.D.O., Ambad, Dist. Jalna under the Mamlatdar Courts Act, 1906, on 30.8.2019 at 12 noon. The petitioner shall *suo motu* appear before the said authority on the said date and time and notices are not required to be issued.

6 The revisional authority shall note that it shall decide the matter purely on the merits of the dispute raised and would not go into the other formalities of earlier notices being not issued or earlier application not being properly drafted etc. It shall endeavor to deliver a reasoned order on 30.9.2019 at 12 noon. All the parties are obliged to remain present on the said date and time to note the pronouncement of the order. The revisional court shall keep the copies of the order ready so as to be supplied to the litigating sides, forth with.

(RAVINDRA V. GHUGE, J)

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