

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 7864 OF 2017

Shri Ashok Y. Badave ... Petitioner
Vs.
State of Maharashtra and Ors. ... Respondents

Mr. R. C. Barge, for the Petitioner.
Mr. C. D. Mali, AGP for the Respondent Nos. 1, 5 to 7 & 22.
Mr. P. P. Deokar, for Respondent No. 3.

CORAM : S. S. SHINDE, J.

DATE : MARCH 26, 2019

P. C. :

1. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for respondent No. 3 and the learned AGP appearing for respondent Nos. 1, 5 to 7 and 22.

2. Learned counsel for petitioner invites attention of this Court to the order passed by the appellate authority which is impugned in this petition and submits that, it was absolutely unwarranted to remit the matter back to the Additional Collector, Satara for re-hearing of the application filed by the petitioner. Learned counsel invites attention of this Court to the para 6.6 of the impugned judgment and submits that there are no any reasons

assigned by the appellate authority to remit the matter back to the Additional Collector, Satara, except to find out extent of an area of encroachment, if any, by the respondent No.3.

3. Learned counsel appearing for respondent No.3 relying upon the findings and the reasons assigned in para 6.6 of the impugned judgment submits that the appellate authority felt it appropriate to remit the matter back to the Additional Collector for re-consideration. It is submitted that no prejudice would be caused to the petitioner by the impugned order, and petitioner will get an opportunity to contest the proceedings before the Additional Collector at Satara. Therefore, he prays that petition may be rejected.

4. Upon hearing the learned counsel appearing for the parties and upon perusal of the reasons pointed out in para 6.6 of the impugned judgment, this Court is of the opinion that it was not necessary for the appellate authority to remit the matter back for re-hearing. It was within the appellate authority's jurisdiction to call for the record and consider the rival contentions on facts as well as law. Therefore, this Court is of the opinion that the appropriate course for the appellate authority was to summon and call for the record, hear the parties and pass the appropriate orders on merits instead of

sending the matter back to the Additional Collector, Satara. In that view of the matter and without entering upon the contentions raised on merits by either of the parties, the ends of justice would be met by passing the following order.

ORDER

a) The impugned order dated 26th April, 2017 is quashed and set aside.

b) Gram Panchayat Appeal No. 45 of 2016 is restored to its original file.

(c) The Additional Commissioner, Pune Division, Pune is hereby directed to hear the appeal afresh on its own merits as expeditiously as possible and decide the same within 12 weeks from today.

(d) The contentions raised on merits by the parties are kept open for adjudication of the appellate authority. The writ petition stands disposed of on above terms.

(e) Parties to act on an authenticated copy of this order.

Sd/-
(S. S. SHINDE, J.)