

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

Writ Petition No.1860 of 2018
(Rauf Khan Razzaq Khan Pathan and ors. .vs. District Collector (Buldhana)
and ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders.
and Registrar's order

Mr. R.V. Gahilot, Advocate for Petitioners.
Mr. S.B. Bissa, AGP for Respondent Nos. 1 to 3 and 6 & 7.
Mr. P.B. Patil, Advocate for Respondent Nos. 4 and 5.

CORAM : Manish Pitale, J.
DATED : May 2, 2019.

By this writ petition, the petitioners have challenged order dated 28.02.2018 passed by the respondent no.1 Collector, Buldhana, whereby a revision application filed by the petitioner under Section 23 of the Mamlatdars' Courts Act, 1906, (for short "Act, 1906") has been rejected on the short ground that it is not maintainable. The contention of the petitioners is that the respondent no.1 erred in doing so and failed in giving any findings on merits in the revision application, on a complete misreading of the provisions of the aforesaid Act, 1906.

2. This is the second round of litigation between the parties in respect of the claim of the petitioners to have a right of way through the fields owned by respondent nos. 4 and 5. In the first round, it was found that the grievance of the petitioners ought not to have been made subject matter of proceedings under the

Maharashtra Land Revenue Code, 1966 and that the nature of grievance was such that it ought to have been raised under the provisions of the aforesaid Act, 1906. This led to second round of litigation, wherein the petitioners raised the aforesaid claim of right of way through the fields of respondent nos. 4 and 5. It was their contention that they had been using the said way for years together and respondent nos. 4 and 5 were not justified in obstructing the same. The proceeding initiated by the petitioners under Section 5 of the Act, 1906 was rejected by the Naib Tahsildar by order dated 08.08.2013, leading to a challenge raised by the petitioners before the Sub Divisional Officer. Although the petitioners styled their challenge before the Sub Divisional Officer as an appeal, it appears that the said authority treated it to be a revision application and by order dated 30.06.2014, rejected the same. The petitioners then filed a further revision application before the respondent no.7 - Additional Collector, who by order dated 26.02.2016, remanded the matter to the Sub Divisional Officer with a direction to undertake a spot inspection and then to decide the matter on merits.

3. Thereafter, by order dated 18.01.2017 the Sub Divisional Officer again held against the petitioners on the ground that in the earlier round itself he had taken a spot inspection. In this backdrop, the petitioners filed an application under the provisions of the Act, 1906, wherein the impugned order has been passed by the respondent no.1- Collector.

4. As noted above, the respondent no.1 has rejected the revision application of the petitioners only on the ground that such a revision application would not be maintainable against an order passed by the Sub Divisional Officer, upon remand. There is no discussion on the merits of the contentions raised by the parties. It is difficult to understand as to the basis on which the respondent no.1- Collector has passed the impugned order. It has come on record that the matter was remanded by respondent no.7 – Additional Collector to the Sub Divisional Officer, with a direction to carry out a spot inspection and to decide the application of the petitioners on merits. It is when the Sub Divisional Officer, even upon remand, held against the petitioners that the revision application was filed by them, which stood rejected by the respondent no.1 – Collector by the impugned order. The provisions of the Act, 1906 have not been discussed by the respondent no.1- Collector at all to show the reasons as to why it has been held that the revision application filed by the petitioners against the order passed by the Sub Divisional Officer could not be said to be maintainable. This Court is unable to understand the reason stated in the impugned order passed by the respondent no.1- Collector.

5. Hence, there is no alternative but to set aside the impugned order and to remand the matter back to the respondent no.1- Collector for decision on merits. Accordingly, the writ petition is partly allowed. The impugned order is quashed and set aside and the matter is remanded to the respondent no.1- Collector for

fresh consideration of the revision application filed by the petitioners. The respondent no.1- Collector, shall decide the application of the petitioners expeditiously and in any case within a period of three months from today. All contentions of the parties are kept open. The parties are directed to appear before the respondent no.1- Collector on 15.05.2019.

JUDGE

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