

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

Writ Petition No. 2205 of 2020

Wainganaga Bahu-Uddeshiya Vikas Sanstha Vs. The State of Maharashtra
through its Secretary, Revenue Department and others

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

Court's or Judge's orders

Mr. B.G. Kulkarni, Advocate for the petitioner
Mr. N.R. Patil, AGP for respondents No.1 to 3.

CORAM : MANISH PITALE, J.

DATED : NOVEMBER 03, 2020

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this writ petition, the petitioner has approached this Court, challenging order dated 30/08/2019, issued by respondent No.3 – Sub Divisional Officer. This is the third round of litigation before this Court.

3. In the first round of litigation, the question decided by this Court was, as to whether the Sub Divisional Officer was the competent authority to exercise power of the Collector under Section 51 of the Maharashtra Land Revenue Code, 1966. By judgment and order dated 26/11/2013, the said issue was decided in favour of the office bearers of the petitioner and the matter was remitted to the Additional Collector for decision on merits.

4. The question was whether the petitioner was entitled to allotment of land for running a College / educational institution. The second round of litigation before this Court was necessitated when the authorities opined that allotment of land was required to be cancelled because the application was made in individual capacity by the office bearers of the petitioner. By order dated 11/02/2019, this Court found that the approach adopted by the respondent authorities was not justified and that the application for allotment of land was to be considered as an application made by the petitioner – Society and not individuals. Accordingly, this Court directed in its order dated 11/02/2019, that the application be considered on merits as an application made by the petitioner – Society and that the same be disposed of expeditiously.

5. Pursuant thereto, respondent No.2 – Additional Collector passed order dated 31/05/2019, directing that respondent No.3 – Sub Divisional Officer can consider the application for allotment of land as an application preferred by the petitioner – Society and to proceed further in the matter as per rules. It is thereafter that the impugned order had been passed by the Sub Divisional Officer, wherein it has been held that the office of the respondent No.3 does not have power to proceed in the matter.

6. The learned counsel appearing for the petitioner submitted before this Court that once the respondent No.2 – Additional Collector had passed order dated 30/12/2019, the respondent No.3 – Sub Divisional Officer could not have passed the impugned order by wrong application of the concerned Rules

i.e. the Maharashtra Land Revenue (Disposal of Government Land) Rules, 1971. It was submitted that the respondent No.3 – Sub Divisional Officer ought to have considered the application of the petitioner in terms of Rule 6 of the said Rules, which pertains to allotment of land for schools and colleges and that appropriate orders ought to have been passed. Instead, the respondent No.3, not only wrongly applied the aforesaid Rules, but, relied upon unamended Rule 7 of the aforesaid Rules. On this basis, it was submitted that the Writ Petition deserved to be allowed in terms of prayer clauses (i) and (ii).

7. The learned AGP appeared in the matter and conceded to the fact that the respondent No.3 – Sub Divisional Officer could not have applied unamended Rule in the facts and circumstances of the present case. It was sought to be submitted that in terms of application made on behalf of the petitioner, Rule 7 of the said Rules applied.

8. Having considered the material on record and submissions made on behalf of rival parties, this Court is of the opinion that the respondent No.3 – Sub Divisional Officer erred in passing the impugned order. A perusal of the relevant Rules, particularly Rule 6 thereof would show that it pertains to allotment of land to schools and colleges and this was the very purpose for which the petitioner – Society has submitted the application. The respondent No.2 – Additional Collector in order dated 31/05/2019, specifically directed the respondent No.3 – Sub Divisional Officer to consider the said application as an application made by the petitioner – Society and to take appropriate action in the matter in terms of Rule 6 Part-2 of the aforesaid Rules. Despite such a clear direction given by respondent

No.2, the respondent No.3 proceeded on an erroneous basis and sought to apply Rule 7 of the said Rules and that too in the unamended form.

9. This Court is of the opinion that the respondent No.3 – Sub Divisional Officer fell in error while passing the impugned order dated 30/08/2019 and that, therefore, the impugned order is rendered unsustainable.

10. In view of the above, the Writ Petition is allowed in terms of prayer clauses (i) and (ii) and thereby the impugned order is quashed and set aside and the respondent No.3 – Sub Divisional Officer shall proceed to pass an appropriate order in terms of the direction given by respondent No.2 – Additional Collector by considering the application of the petitioner under Rule 6 Part-2 of the aforesaid Rules. The petitioner shall comply with necessary formalities as a consequence of such an order of allotment that shall be passed by respondent No.3 – Sub Divisional Officer, in accordance with law.

11. The writ petition stands disposed of.

JUDGE