

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

WRIT PETITION NO. 2677 OF 2019

Mohan Purushottam Bhetalu and another

vs.

The State of Maharashtra through, Divisional Commissioner Amravati & anr.

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

Court's or Judge's orders

Smt. Ira Khisti, counsel for petitioner.

Smt. H. N. Prabhu, AGP for respondents No.1 & 2.

CORAM : MANISH PITALE J.

DATED : 17/01/2020

By this writ petition, the petitioners have challenged order dated 08/06/2017, passed by the respondent No.1, Divisional Commissioner, whereby Revision Petition filed by the petitioners stood partly allowed and consequential directions were given.

2. The petitioners were aggrieved by an order dated 19/10/2013, passed by the respondent No.2 Collector, whereby land allotted to the father of the petitioner No.1, for grazing of cattle was forfeited on the ground that there had been breach of conditions. It was observed that the petitioner No.1 had illegally carved a layout in the said land and that plots had been demarcated.

3. In this regard the petitioner No.1 had also initiated proceeding before the Civil Court for declaration

and injunction, but the same stood dismissed on the ground of jurisdiction.

4. The learned counsel appearing for the petitioners invited attention of this Court to a report dated 31/08/2013, prepared by the Talathi and submitted to the Tahasildar, wherein it was categorically stated that there were neither any plots, nor any construction activity observed on the land in question. The learned counsel for the petitioners emphasized on the said report to demonstrate that the aforesaid order passed by the Collector was wholly unsustainable.

5. It is a matter of record that the petitioners filed revision petition under Section 257 of the Maharashtra Land Revenue Code, 1966, before the Divisional Commissioner to challenge the said order of Collector. By the impugned order, the Divisional Commissioner only partly allowed the revision petition, by setting aside the order of the Collector and directed that the Collector shall grant regularization for breach of conditions to the petitioner No.1 and grant permission for exchange of lands as per Rules.

6. It is contended on behalf of the petitioners that in the face of the aforesaid report of Talathi and in the absence of any material of breach of conditions, the Divisional Commissioner in the impugned order ought not to have proceeded on the basis that there had been breach of conditions and that the process to grant

regularization was required to be undertaken. It was submitted that the respondent No.1, Divisional Commissioner failed to appreciate the material on record in the correct perspective.

7. In response, the learned AGP submitted that there was delay on the part of the petitioners in approaching the Divisional Commissioner and this Court and that therefore, contentions raised on behalf of the petitioners did not deserve consideration. It was submitted that considering the material on record, the grievances raised by the petitioners could be addressed if the matter was decided afresh by the respondent No.1 Divisional Commissioner.

8. Having heard the rival parties and considering the material on record, it appears that report of the Talathi dated 31/08/2013, has not been taken into consideration either by the respondent No.2 Collector or by the respondent No.1 Divisional Commissioner in the correct perspective. It is surprising that in the impugned order, the Divisional Commissioner had recorded as follows :-

“11. The impugned order of Respondent No.1 is based upon wrong report submitted by the Talathi concerned and The Tahsildar concerned therefore, the impugned order is based upon contradictory reports such orders cannot be legally appropriate.”

9. A perusal of the report of the Talathi and the order passed by the respondent No.2 Collector, shows that the aforesaid observations made by the Divisional Commissioner are not based on proper appreciation of record. The authorities will first have come to the conclusion and reach a finding that there has been breach of conditions on the part of the respondent No.1.

10. In view of the above, it would be appropriate to direct the respondent No.1 Divisional Commissioner to consider the controversy afresh.

11. Accordingly, the writ petition is partly allowed.

12. The impugned order dated 08/06/2017 passed by the respondent No.1, Divisional Commissioner is quashed and set aside.

13. The respondent No.1, Divisional Commissioner is directed to consider the grievances raised by the petitioners afresh by calling for a report from the Talathi/Tahasildar as regards the allegations of breach of conditions made against petitioner No.1. It is after calling for detailed report from the Talathi/Tahasildar that the respondent No.1 Divisional Commissioner shall proceed in the matter.

14. The proceedings before the respondent No.1 Divisional Commissioner shall be decided finally

afresh within a period of **eight weeks** from today.

15. Writ petition is disposed of in above terms.
No order as to costs.

JUDGE

KOLHE/P.A.