

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

989 WRIT PETITION NO.5252 OF 2021
WITH WP/5254/2021 WITH WP/5253/2021

**ASHOK TATYABA KAJALE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS**

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Advocate for Petitioners : Mr. D.R. Shelke
AGP for Respondents 1 to 6 : Mr. S.K. Tambe
Advocate for Respondents 7 to 11 : Mrs. Rashmi S. Kulkarni h/f.
Mr. S.S. Kulkarni
Advocate for Respondent 12 : Mr. P.V. Barde

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**CORAM : S.V. GANGAPURWALA &
R.N. LADDHA, JJ.**

DATED : 11/08/2021.

PER COURT :

. The learned counsel submits that during the pendency of the present writ petitions, the respondent No. 2 Commissioner without authority and jurisdiction has passed the order on 2.2.2021, thereby directing to hand over writ land to the legal heirs of Vithal Kondaji Kajale and Damu Tukaji Kajale. The said order is without authority.

2. The learned counsel seeks leave to amend the writ petition and assail the order dated 2.2.2021 passed by the respondent No. 2. Leave is granted. Amendment be carried out forthwith.

3. Mr. Shelke, learned advocate for the petitioner submits that the directions under the impugned order dated 8.3.2021 are illegal. The petitioners were never served with any notice before these directions were issued under the order dated 8.3.2021 by the Sub Divisional Officer (S.D.O.) to Tahsildar.

4. The learned counsel for petitioners further submits that the appellate jurisdiction cannot be created by the Government Resolutions and executive fiat.

5. Mrs. Kulkarni, learned advocate appearing for respondent Nos. 7 to 11 submits that the Commissioner is exercising his executive powers while passing the order. No illegality is committed while passing the said order. The learned counsel further submits that the petitioner has not filed an appeal

and has directly assailed the order passed by the S.D.O. before this Court.

6. The learned counsel further submits that the order of Commissioner can be assailed before the Revenue Minister of the State and as such, this Court may not exercise the powers under Article 226.

7. We have also heard Mr. Barde, learned advocate for respondent No. 12 and the learned A.G.P

8. The petitioners have assailed the order dated 8.3.2021 passed by the S.D.O. by filing the present writ petition. The petitioner was granted interim protection. During the pendency of the writ petition, the Commissioner has passed the order thereby directing to hand over of the possession. The order of S.D.O. dated 8.3.2021 is pursuant to the order passed by the Commissioner. The S.D.O. was infact executing the order of Commissioner, however, the order of Commissioner was without notice to the petitioners. According to the petitioners, the said order was never

communicated to the petitioners.

7. The fact remains that the order was passed behind the back of the petitioners and without notice to the petitioners. It is the cardinal principal of the civil jurisprudence that whenever an order prejudicial to the interest of any party is passed, principles of natural justice are required to be followed. In the present case, the said principle has been flouted.

8. In the light of above, we are inclined to grant opportunity to the petitioner.

9. The order passed by the Commissioner dated 2nd February 2021 (Exh. R-1) is set aside and the parties are relegated before the Commissioner i.e. Assistant Commissioner, Office of Divisional Commissioner, Nasik. The parties shall appear before the authority passing the order dated 2nd February 2021 on 7th September 2021.

10. As the order dated 2nd February 2021 is set aside, the

consequential order of S.D.O. dated 8.3.2021 would not survive.

11. The Assistant Commissioner after hearing all the parties may pass orders in accordance with law preferably within three months from the date of appearance of the parties. All contentions of respective parties are kept open.

10. The writ petitions are accordingly disposed of. No costs.

[R.N. LADDHA, J.]

[S.V. GANGAPURWALA, J.]

ssc/