

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

946 WRIT PETITION NO.6445 OF 2021

MADHAV RUSHIKESH BHOSALE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. Tekale Nikhil S.
AGP for Respondent Nos.1 to 5-State : Mr. S. B. Pulkundwar.
Advocate for Respondent No.6 : Mr. Bhandari Anand P.

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**CORAM : RAVINDRA V. GHUGE, AND
S. G. MEHARE, JJ.**

DATE : 07.07.2021

PER COURT :-

1. By this petition, the petitioner has put forth prayer clauses 'B' and 'C' as under :

"(B) The Hon'ble High Court may be pleased to issue writ of Quo Warranto or any other appropriate writ or order or direction in the nature of writ and thereby quash and set aside the communication dated 23.04.2021 issued by respondent No.5."

"(C) Pending hearing and till final disposal of the writ petition, this Hon'ble High Court may be pleased to stay the effect, operation and implementation of communication dated 23.04.2021 and restrained the respondent authorities to obstruct the petitioners from running the petrol pump."

2. We are not adverting to the entire contentions of the

petitioner and the submissions of the learned AGP on behalf of respondent Nos.1 to 5, for the reason that it is an admitted position that the impugned order dated 23.04.2021 has been passed by the Circle Officer, Killari, Taluka Ausa, District Latur without hearing the petitioner and without following the principles of natural justice.

3. Suffice it to say that one, Satish Vishwanath Lohar had approached the Hon'ble Lokayukta of Maharashtra by putting forth a complaint that the petitioner was unauthorisedly operating a petrol pump in land Survey No.47-B at Mouze Killari, Taluka Ausa, unauthorizedly as the said land was already acquired by the Government in a public project. The impugned order reflects that the Circle Officer - respondent No.5 received a letter from the office of the Hon'ble Lokayukta, dated 03.01.2020 and granted only 24 hours' time to the petitioner to vacate the concerned land by removing his petrol pump and his entire establishment.

4. The petitioner submits on the basis of the record that no opportunity of hearing was given to the petitioner and no reasoned order has been passed. We called upon the learned

AGP to respond to this contention and he submits on the basis of the record that there is no document with him, which would indicate a notice of hearing to the petitioner. He is unaware that a hearing was conducted. He states that a reasoned order was not passed.

5. The petitioner submits that they approached this Court with expediency on 28.04.2021. However, by the time, this court granted ad-interim protection with a direction to maintain *status quo* vide order dated 08.06.2021 (the second day after re-opening post vacations), respondent No.5 had already sealed the petrol pump without following any procedure, muchless by adhering to the principles of natural justice.

6. The petitioner has placed on record a report prepared by the Tahsildar, Ausa (undated) addressed to the Assistant Registrar, Office of the Hon'ble Lokayukta at Mumbai. After a detailed inquiry into the complaint filed by Mr. Satish Vishwanath Lohar, the Tahsildar has mentioned that the petitioner herein has inherited land Survey No.47-B. The original owner of the land was Vitthal Mahadu Bhosle, his son

Rushikesh Vitthal Bhosle and thereafter the present petitioner Madhav Rushikesh Bhosle are the title holders of the land since 1958. Land admeasuring 5.94 Hectors in Survey No.47-B was subjected to acquisition to the extent of 44.93 R. 1.01 Hector was available with the petitioner, who sold 0.40 R. land, on 13.12.2010, vide Kharedi Khat No.4088 of 2010 to Sharad Abhimanyu Bhosale. Today, 0.61 R. land is available with the petitioner and that portion has not been acquired. Mutation entry No.3772 indicates that the petitioner's land to the extent of 0.60 R. has been erroneously shown to be acquired. However, land admeasuring 2 Acre 10 Gunthas from Survey No.47-A owned by the original owner Eknath Mahadu, was acquired in 1958 for the Omerga - Latur road. Erroneously, Survey No.47-B was mentioned in place of 47-A. As such, the land of the present petitioner to the extent of 0.60 R. in Survey No.47-B is intact and the entire land admeasuring 0.61 R. has not been acquired. The last paragraph of the said report running into 5 pages, indicates a firm conclusion arrived at by the Tahsildar that the complaint filed by the complainant Mr. Satish Vishwanath Lohar was without any merit and was baseless.

7. It is settled law that reasons are the heart and soul of an order. An order without reasons reflects non-application of mind. An opportunity of hearing is inherently necessary before passing an adverse order. Non hearing of a litigant before passing an adverse order amounts to violation of the principles of natural justice.

8. In view of the above, this petition is partly allowed. The impugned communication dated 23.04.2021 is quashed and set aside. The seal applied on the petrol pump of the petitioner shall be forth with removed, as there is no material before us indicating that the petitioner is operating a petrol pump illegally.

9. However, we clarify that respondent No.5 or any revenue authority having jurisdiction, will follow the due procedure of law and afford an opportunity of hearing to the petitioner before taking any action against the said petrol pump existing in land Survey No.47-B at village Killari, Taluka Ausa, District Latur.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-