

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4027 OF 2021

Shri. Ashok Namdev Bhange & Ors.

...Petitioners

Vs.

Shri. Dattatraya Narayan Manjare & Ors.

...Respondents

Ms. Gunjan Shah i/b. Mr. Kayval Shah for Petitioners.

Mr. M. A. Choudhari for Respondent Nos.1 to 3.

Mr. S. R. Rayrikar, AGP for State/Respondent Nos.4 to 7.

CORAM : G. S. KULKARNI, J.

DATE : NOVEMBER 30, 2021

PC :

1. Not on board. Taken on board on a praecipe being moved on behalf of the petitioners.

2. The application is for extension of ad-interim reliefs granted by this Court (M. S. Karnik, J.) by an order dated 11 August, 2021. Having referred to the said ad-interim order, Mr. Choudhari, learned counsel for respondent nos.1 to 3 submits that when the Court passed the said ad-interim order, the attention of the Court possibly was not drawn to page no.85, which according to him, indicates that the impugned order dated 5 January, 2021 passed by the Sub-Divisional Officer, MHADHA was already implemented.

3. On a perusal of the document, annexed at page 85 which is a copy of village extract Form No. 6 containing the mutation, it appears that the order

passed by the Sub-Divisional Officer on 5 January, 2021 has been implemented as a reference to the same qua the entry recorded therein can be seen.

4. Be that as it may, learned counsel for the petitioners would submit that the order dated 5 January, 2021 is already challenged in an appeal filed before the learned Additional Collector, Solapur (RTD Second Appeal No.03/2021) which is pending adjudication. Learned counsel for the petitioners submits that although such appeal was filed along with interim application before the Additional Collector, Solapur, this petition was required to be filed assailing the order dated 9 February 2021 passed by the Additional Collector on stay application. Perusal of the said order indicates that it is not an order on the merits of the petitioners' case. The solitary observation which has been made in such order is that the petitioners had not submitted some supporting documents which were before the Sub-Divisional Officer and for such reason the stay application has been rejected. In my opinion, in such situation the Additional Collector being an Appellate Authority ought to have granted an opportunity to the petitioners to produce all relevant materials, if according to him, it was not so placed on record. Also, it is not clear from the limited observation that which materials/documents were not available, as it is the petitioners case that the entire material was available.

5. The order passed by the Sub-Divisional Officer dated 5 January, 2021 as noted above has been implemented, however the learned counsel for the petitioners states that there are subsequent entries where the village form no.16 has been again modified by deleting the effect of the order dated 5 January, 2021 passed by the Sub-Divisional Officer, although such a deletion or any new document in the same form is not placed on record before this Court. I do not intend to delve on these issues as the proceedings are pending before the Appellate Authority.

6. In the above circumstances, in my opinion, no useful purpose would be achieved by keeping this petition pending which is filed against the rejection of the stay application as also when the petitioners' appeal assailing the order dated 5 January, 2021 passed by the Sub-Divisional Officer, MHADHA is pending. The petition is accordingly disposed of by the following order:-

ORDER

i. The impugned order dated 9 February 2021 passed by the Additional Collector on the petitioners' stay/interim application is quashed and set aside. The petitioners' stay/interim application is restored on the file of the Additional Collector.

ii) The learned Additional Collector shall hear the petitioners on the stay/interim application and/or on the appeal as the case may be and make

an endeavour to pass appropriate orders within a period of four weeks from today.

iii. In the meantime, the petitioners are permitted to file additional documents to point out to the Collector that effect of the order dated 5 January, 2021 has been subsequently withdrawn by any further entry as made on the Village Extract No.6.

iv. The Additional Collector shall consider the rival contentions and pass appropriate orders on the pending proceedings.

v. At the first instance, the parties shall appear before the learned Additional Collector on 06 December, 2021 at 11.00 a.m.

vi. Disposed of in the above terms. No costs.

(G. S. KULKARNI, J.)