IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR
WRIT PETITION NO.5329 OF 2008

1) Jagran Gramin Vikas Sanstha, Chandrapur, A Registered Trust through its President – Shri Matin Sheikh, R/o Jatpura Gate, Chandrapur, District Chandrapur.

2) Rajiv Gandhi Arts, Commerce and Science College, Chandrapur Through its Principal. ...PETITIONERS

...V E R S U S...

1) The Divisional Commissioner, Nagpur

2) The Collector, Chandrapur. ...RESPONDENTS

Shri N.B. Karade, Advocate for petitioners.
Shri A.M. Kadukar, A.G.P. for respondents.

CORAM:- V. M. DESHPANDE, J.
DATED :- 5th FEBRUARY, 2021.

ORAL JUDGMENT

Heard Shri Neeraj Karade, learned counsel for the petitioners and Shri Amit Kadukar, learned Assistant Government Pleader for both respondents.

(2) By this writ petition, the petitioners have challenged the order passed by the respondent no.2-Collector, Chandrapur dated 02.12.2008 in case No.Nivi/Ka-15/Khastha Vika/ 1358/2008.

(3) The submission on behalf of the learned counsel for the petitioners is that the order impugned was passed behind the back

of the petitioners and without giving opportunity of being heard. He submits that without any opportunity of hearing being offered, the Collector, Chandrapur cancelled the earlier order dated 06.11.2008, by which a hall constructed from Member of Parliament's local area development fund was handed over to the petitioners. He, therefore, submits that the order impugned is in the breach of principles of natural justice.

(4) This writ petition came up for admission on 16.12.2008. Notices were issued to the respondents and it was ordered that the parties shall maintain status quo in respect of the property. On 20.01.2009 the petition was admitted for final hearing by issuing Rule. Though this writ petition is pending from 2008, till today no submissions were filed on behalf of the Collector, Chandrapur controverting the factual position stated on oath by the petitioners.

(5) The petitioner no.1 is a Trust and Society registered under the provisions of the Bombay Public Trusts Act and under the Societies Registration Act. The petitioner no.1 administers and runs petitioner no.2- Rajiv Gandhi Arts, Commerce and Science College at Chandrapur from 2002-03. At the time of filing of this writ petition, there were around 750 students studying in the respondent no.2-College.

(6) Undisputedly, in the vicinity of petitioner no.2-College a big hall was constructed utilizing Member of Parliament's local area development fund about 13 to 14 years ago. As per petitioners, the said hall was handed over to S.P. College, Chandrapur for starting cultural centre, however the said cultural centre was never started. It is stated in the petition on oath that the hall was totally neglected, resulting into the damage to the property.

(7) It is also contended in the petition by petitioners that petitioner no.2-College was in need of a hall for education and cultural purpose and for starting library. Therefore, on 29.05.2008, the President of the petitioner no.1 gave a letter to the Collector, Chandrapur. In the said letter it was brought to the notice of the Collector that adjacent to the petitioner no.2-College there exists a hall, which is in vacant condition and since it is not being used by anybody it is being wasted away and therefore if the said hall is allotted to the petitioners it can be used for imparting education. The petitioners have also filed on record at 'Annexure-B' a communication from Tahsildar, Chandrapur dated 07.10.2008 addressed to the Collector, which shows that for last 7 years from the said letter dated 07.10.2008 the hall is not being used at all and the property is being wasted away.

(8) In the backdrop of the aforesaid two communications, the Collector, Chandrapur vide order dated 06.11.2008 passed an order, which is placed on record at 'Annexure-C' of this writ petition. In the said order, it was observed by the Collector that after construction of the hall from the Member of Parliament's local area development fund, when the hall was given to S.P. College, Chandrapur for starting a cultural centre, the same was not started by the said College for about 7 to 8 years. Therefore, the Collector by the said order allotted the said hall in favour of the petitioners on the conditions stated in the order.

(9) It is the contention of the petitioners that in view of the said order the petitioners were put in possession of the hall. The petitioners carried repairs and for that they spent about Rs.1,00,000/- and also started library.

(10) As per the contention of the petitioners, on 02.12.2008 all of a sudden the petitioners received a communication from the Collector, whereby it was informed that order dated 06.11.2008 giving possession to the petitioners is revoked and cancelled.

(11) The impugned order which is at 'Annexure-E' to this writ petition, is most cryptic order. It sans any reasons as to why the Collector is of the view to revoke the earlier order

dated 06.11.2008. There is nothing in the said order to show that before passing the said order any opportunity of hearing was given to the petitioners.

(12) By order dated 06.11.2008 Collector himself handed over the possession of the hall to the petitioners and as per uncontroverted statements made on oath, the petitioners have incurred expenses of Rs.1,00,000/-. Once petitioners were placed in possession the opportunity of hearing ought to have been given to the petitioners as to why the earlier allotment should be cancelled. By earlier order dated 06.11.2008, a particular right was created in favour the petitioners, though it was a revocable one. It could be always within the right of Collector to revoke its earlier order however for that an opportunity to show-cause ought to have been given to the petitioners and the petitioners ought to have been heard before revocation of the said order.

(13) In view of the earlier order dated 25.02.2020 in this writ petition, today, Shri Amit Kadukar, learned Assistant Government Pleader on oral instructions from Shri Nilesh Gond, Tahsildar makes a statement that as on today the hall is still in possession of the petitioners.

(14) Since impugned order is passed behind the back of the petitioners, the writ petition is allowed. The order dated 02.12.2008 passed by the Collector, Chandrapur cancelling the earlier order dated 06.11.2008 is hereby quashed and set aside.

(15) The order dated 06.11.2008 passed by the Collector, Chandrapur in favour of the petitioners has been restored.

(16) It will be open for the Collector, Chandrapur to revoke the order dated 06.11.2008, however, if he wish to do so, he is directed to issue show-cause notice to the petitioners and also give an opportunity of hearing to the petitioners and thereafter can pass the order, in accordance with law.

(17) Since the petitioners are in possession of the hall, the possession of the petitioners is protected till the earlier order dated 06.11.2008 is revoked in accordance with law and giving the petitioners the opportunity of hearing.

Rule is made absolute in above terms. No order as to costs.

JUDGE

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