

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4640 OF 2019

HARAKCHAND MISHRILAL KARNAWAT AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.D.P.Palodkar, Advocate for the petitioners.
Mr.A.A.Jagatkar, AGP for respondent Nos. 1 to 7.
Mr.G.G.Kadam, Advocate for respondent No.8

(CORAM : BHARATI H. DANGRE, J.)

DATE : JANUARY 10, 2022

PER COURT :

1. Heard the learned counsel for the petitioners and the learned counsel appearing for respondent No.8 and the learned AGP for respondent Nos. 1 to 7 .

2. The petitioners, who are the non applicants in the proceedings initiated by Smt.Chandrabhagabai i.e. respondent No.8, where she filed an application for carrying out the factual assessment/spot inspection, which was allowed by the Tahsildar on 17.10.2018. The present petitioners, objected to the relief being granted in favour of the applicants and the Tahsildar recorded that in the wake of suit

No.115/2018, which was pending in the Civil Court, the spot inspection is not necessary.

3. Being aggrieved, Smt.Chandrabhagabai, through her Power of Attorney, approached the Hon'ble Minister and the endorsement on the appeal/representation record as under : "Tahsildar, Sillod is directed to examine.". This endorsement is dated 26/10/2018. Needless to state that mere endorsement/noting by the Authority is not an order passed by the State Government, as it is a settled position of Law, that unless it is reduced in form of an order by following the process prescribed. However, upon the said application, the learned Tahsildar again initiated the process of hearing and after affording an opportunity of hearing to the applicants as well as the respondents [the present petitioners] passed an order on 19/01/2019, by allowing the application of Smt.Chandrabhagabai and directing the necessary compliance as requested by her in the application, was granted.

4. When the said order dated 19/01/2019 is perused, it can be seen that the Tahsildar has decided the application filed by Smt.Chandrabhagabai on merits and though it was open for the

petitioners to submit that there is no power of review vested in the Tahsildar, as on the earlier occasion, he has rejected the application recording that during the pendency of the civil suit, the relief as sought by Smt.Chandrabhagabai cannot be granted, the respondent [the present petitioner] preferred to contest the application on merits. No objection has been raised about the Tahsildar's power to entertain the application for the second time and with reference to the notings on the representation filed by Chandrabhagabai, to the effect that it did not amount to an order. This clearly indicates that the petitioners acquiesced to the said application and proceeded before the Tahsildar on merits.

5. The learned counsel for respondent No.8 now argue that against the order passed by the Tahsildar, the remedy lies in form of an appeal to the Sub Divisional Officer, instead, the petitioners have directly approached this Court by invoking its writ jurisdiction.

The learned counsel is right in advancing the said submission, since the petitioners have not contested the re-hearing of the application of respondent No.8 on ground of earlier order, the remedy open to him is to approach the Sub Divisional Officer raising all the

possible grounds in assailing the order dated 19/01/2019. The writ petition, therefore, is not maintainable and the petitioner deserve to be relegated to the Appellate Authority i.e. the Sub Divisional Officer, Sillod.

However, since an interim protection is in operation in favour of the petitioners granted on 18/04/2019, while relegating the petitioners to the Sub Divisional Officer, I deem it expedient to direct the authority to dispose of the appeal , if any, filed within a period of 15 days from today, within a further period of 4 weeks from the date of it's institution. Till the appeal is decided, the position which is continued by this Court since 18/04/2019 shall continue to govern the parties.

6. With the aforesaid directions, writ petition is disposed off.

(BHARATI H. DANGRE, J.)