

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

928 WRIT PETITION NO.11622 OF 2017
WITH
CIVIL APPLICATION ST. NO. 4033 OF 2022

JAISINGH GOVINDS RAJPUT
VERSUS
SUB DIVISION OFFICER DHULE AND OTHERS

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Advocate for Petitioner : Mr. V. B. Anjanwatikar
AGP for Respondent/State : Mr. P.G. Borade
Advocate for Respondent 8 : Mr. R.R. Sancheti
Advocate for Respondent 10 : Mr. G.V. Wani
Advocate for intervenors : Mr. V.V. Wagh

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CORAM : SMT. BHARATI H. DANGRE, J.
DATED : 09/02/2022

PER COURT :

1. Civil Application seeking intervention is tendered across the bar and it is submitted that on 5th March 2020, this Court had permitted the application of the intervention to be filed. However, since pandemic intervened the application could not be filed. Copy of the Civil Application which is not registered is tendered on record and in the peculiar fact that the writ petition requires disposal and since the learned counsel for the petitioner did not dispute the fact that the intervenors were party to the proceedings before this Court in earlier round of litigation i.e. Writ Petition No. 6509/2012, the intervention needs to be granted.

2. The application is therefore taken on record and the registry is directed to accept it's filing and number the same. It is also directed not to raise objection about the paper on which the application has been transcribed since application is sworn on 4.3.2020. The registry is therefore, directed to accept the filing as it is and allot number to the civil application.

3. The application seeking intervention is allowed. Necessary amendment shall be carried out in the writ petition by the petitioner within a period of three days from today.

4. Heard the learned counsel for the petitioner and with his assistance I have perused the copy of the proceedings of the writ petition. The claim of the petitioners is to the effect that the petitioner and the respondent Nos. 3 to 13 are engaged in agricultural activity and the Gat number of the petitioner's land is 157 whereas Gat numbers of lands of respondents are 126, 137, 139, 140, 141 and 142 situated at Moghanshivar, village Hindrun. Alleging obstruction at the instance of respondents, the petitioner sought recourse to the provisions of Mamlatdars' Court Act, 1906 by preferring an application to Tahsildar Dhule for removal of the obstacles and sought injunction. The proceedings landed up to this Court in the form of Writ Petition No. 6509/2012 and this Court, noticing that there was breach of

principles of natural justice, since no notice was issued to the present petitioner nor the petitioners were party to the order of the Sub Divisional Officer which was transgressing the principle of natural justice, came to be set aside. Furthermore, since it was recorded that Mamlatdar had also failed to adhere to the procedure under sections 8 and 9 of the Act, the order of Mamlatdar was set aside and the matter was remanded back to the Mamlatdar by giving him opportunity to rectify the defects. Notices were directed to be issued to all the concerned and the Mamlatdar was directed to arrive at a decision after adhering the procedure prescribed under the Act.

In this proceedings the intervenors are respondents.

5. Upon the order passed by this Court, the Mamlatdar was again approached and he passed the order on 7.12.2015, granting the application filed by the petitioner and the Mamlatdar granted his application by issuing appropriate directions. This order was subjected to challenge by filing RTS Revision No. 18/2016 before the Sub Divisional Officer Dhule, who partly allowed the revision filed by the opponents and quashed and set aside the order passed by the Mamlatdar on 7.12.2015 and remanded the matter back to the Mamlatdar for re-determination within a period of six months.

In passing the said order the Sub Divisional Officer was

impressed by non compliance of the requirements of section 7 of Mamlatdar's Court Act 1906, which contemplate that all suits under the Act to be commenced by filing of plaint presented to the Mamlatdar which shall contain the contents set out in the said section. The Sub Divisional Officer noticed that there was no compliance of clause BB, C and F and therefore plaint was not complete in all aspects which deserves consideration by the Mamlatdar under the Act of 1906. Several other necessary details were conspicuously absent in the plaint and which were highlighted in the order dated 16.8.2017 and he deemed it fit to remand the proceedings to the learned Mamlatdar. It is informed that the proceedings are not yet concluded and are pending before him as on date.

6. This petition is instituted in the year 2017 and at one point of time, the learned counsel for the petitioner raised objection to the exercise of power by the Sub Divisional Officer and argued that he do not possess the authority to conduct revision under section 23 (2) of the Mamlatars' Court Act, 1906. This issue was referred to Special Bench and it has now been settled by the Division Bench of this Court (Justice R.K. Deshpande and Justice Vinay Joshi), where it has been held that the delegation of the power by Collector under section 23(2) of Mamlatdars' Court Act to the Deputy Collector or Assistant Collector

who is working as Sub Divisional Officer of the concerned division is just and proper.

In the wake of aforesaid decision, the said objection of the petitioner about competency of the Sub Divisional Officer has been ruled out.

7. On perusal of the impugned order passed by the Sub Divisional Officer who has categorically recorded that plaint instituted do not comply the requirements of the provisions of section 7 of the Act of 1906, the Sub Divisional Officer has rightly remanded the proceedings to Mamlatdar, however, though the order has been passed in the year 2017, the Mamlatdar i.e. Tahsildar Dhule shall decide case No. 68/2013 pending before him within a period of three months.

With the aforesaid directions being issued by upholding the impugned order, the writ petition is dismissed.

[SMT. BHARATI H. DANGRE, J.]

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