

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2567 OF 2021

Abdul Shakur Abbasali Chaudhari ... Petitioner

Vs.

Nivrutti Sopak Karpe & Ors. ... Respondents

...

Mr. Veerdhaval Kakade for the petitioner.

Mr. Samir M. Suryawanshi for respondents Nos.1 to 5.

Mr. S.D. Rayrikar, A.G.P. for respondent Nos.7 and 8.

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 07TH JANUARY, 2022.

P.C. :-

1. This matter was heard on 03/01/2022. Thereafter, again it was heard on 04/01/2022 and, the following order was passed:

“1. Mr. Suryawanshi, the learned advocate representing respondent Nos.1 to 6 was connected on-line. However, he is not noticed on the screen.

2. The petitioner submits that he was not served with the notice in the proceedings under Section 5 of the Mamlatdar Courts Act, 1906. This aspect raised by him in his revision under Section 23 of the said Act, was not considered.

3. The learned A.G.P., on instructions, submits that the record indicates that a notice was issued to the petitioner on 01/03/2019. However, the record does not indicate service of notice on the petitioner.

4. Since Mr. Suryawanshi is not available on-line, let this matter be listed on 07/01/2022 for passing orders.

5. Interim relief, granted earlier, to continue till the next date of hearing.”

2. Considering the issue that there is no evidence with the revenue authority to indicate that the petitioner was served with the notice of hearing, in the matter filed by respondent Nos.1 to 6 under Section 5 of the Mamlatdar Courts Act, 1906, I am not required to advert to the submissions of the learned counsel for the respective sides on the merits of the impugned orders.

3. The learned A.G.P. called upon the concerned revenue authority to inspect the entire R. & P. to state as to whether the notice of hearing, issued on 01/03/2019, was served upon the petitioner. On instructions from the revenue authority, the learned A.G.P. submits that though a copy of the notice dated 01/03/2019

is available in the file, there is no indication or evidence to conclude that the said notice was served upon the petitioner and, despite such service of notice, the petitioner did not appear in the proceedings.

4. This aspect of the petitioner not being heard, was raised by him before the revisional authority, by preferring a revision under Section 23(2) of the 1906 Act. The impugned order dated 26/04/2021 passed by the revisional authority, would indicate that he has only perused the office copy of the notice dated 01/03/2019 and did not take the efforts to find out whether the said notice was actually served upon the petitioner or not. Without considering the said aspect, the revisional authority sustained the order of the Mamlatdar dated 29/08/2019, vide the impugned order dated 26/04/2021.

5. In view of the above, this petition is allowed on the following conditions:

- a) By quashing and setting aside the impugned orders dated 29/08/2019 and 26/04/2021, the proceeding, under Section 5 of the 1906 Act, bearing No.SR/07/2018 is restored to the file of the Mamlatdar, Khed, Pune.
- b) All the litigating parties would appear before the

Mamlatdar on 28/01/2022 at 2.00 p.m. Separate notice of hearing need not be issued by the Mamlatdar to the litigating parties.

- c) The petitioner, respondent in the said proceedings, shall file his written reply along with documents, if any, on the said date i.e. on 28/01/2022.
- d) The concerned authority shall afford a reasonable opportunity of hearing to the parties and shall conclude the hearing on or before 28/02/2022.
- e) Thereafter, the Mamlatdar would proceed to deliver an order on 15/03/2022 at 3.00 p.m.
- f) All the litigating parties shall remain present on the said date and time for the pronouncement of the order.
- g) The Mamlatdar would keep the copies of the order ready, at the time of pronouncement, to be delivered to the parties by following the procedure as is applicable.
- h) Status quo, existing as on date, shall be maintained, till 15/03/2022.

- i) All the contentions of the litigating parties are kept open.
- j) If the petitioner does not appear before the Mamlatdar on 28/01/2022 or does not file the written reply, the Mamlatdar will be at liberty to proceed to decide the said proceedings, on its merits.

[RAVINDRA V. GHUGE, J.]