

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 5540 OF 2021

Radhesham s/o Laxman Khandale
Aged about 44 years, Occ : Agriculturist,
R/o Juni Basti, M-Bahadura, Post – Vihirgaon,
Tahsil and District – Nagpur – 441 204

Petitioner

Versus

1. Additional Divisional Commissioner
Nagpur Division, Nagpur – 01

2. Sub-Divisional Officer (Rural),
Civil Lines, Nagpur – 01

Respondents

3. District Superintendent of Land Records
(Rural), Nagpur, Civil Lines, Nagpur-01

4. Rajesh s/o Bhaurao Khandade
Aged about 41 years, Occ. : Service,

5. Dilip S/o Bhaurao Khandade
Aged about : 40 years, Occ. : Service

6. Devkabai Wd/o Bhaurao Khandade
Aged about 67 years, Occ : Housewife

7. Manda W/o Surendra Tiwari
Aged about : 67 years, Occ : Service

8. Sangita W/o Amol Sawarkar,
Aged about 43 years, Occ : Service
Respondent Nos. 4 to 8 R/o Plot No. 20,

Ujjwal Nagar, Near Govind Lawn, Godhani
Road, Zingabai Takli, Nagpur

9. Shri Sunil R. Ban,
Deputy Superintendent of Land Records
(Rural), Administrative Building No.2, Civil
Lines, Nagpur

10. Shri Sanjay Thakre
Durusti Lipik/ Correction Clerk (Rural),
Administrative Building No.2, Civil Lines,
Nagpur

Mr. A.S. Siddiqui h/f Mr. P.M. Sinha, Advocate for petitioner
Mr. K.L. Dharmadhikari, AGP for respondent Nos.1 to 3
Mr. R.J. Shinde, Advocate for Respondent Nos.4 to 8

CORAM : MANISH PITALE, J.

DATE : 26th APRIL 2022

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally
with the consent of learned counsel appearing for the rival parties.

2. By this writ petition, the petitioner is challenging order
dated 29/11/2021, passed by the respondent No.1 – Additional
Divisional Commissioner, Nagpur Division, Nagpur, whereby an
appeal purportedly filed by respondent No.4 has been allowed and
the order dated 29/09/2018, passed by the Sub-Divisional Officer
has been set aside. According to the petitioner, the course adopted
by the respondent No.1 in the facts and circumstances of the

present case was wholly unsustainable and the impugned order is completely without jurisdiction.

3. The brief facts leading up to filing of the present writ petition are that the respondent No.4 along with respondent Nos.5 to 8 had filed an appeal under Section 247 of the Maharashtra Land Revenue Code, 1966, challenging order dated 29/09/2018, passed by the respondent - Sub-Divisional Officer. The said order was passed in favour of the petitioner as regards revenue entry pertaining to the property in question.

4. The aforesaid appeal numbered as appeal No.41/SRV 43/Mouza-Bahadura/2019, was considered on merits and the respondent No.1 by order dated 18/08/2020, partly allowed the appeal, while confirming the comparative table specified in the order dated 29/09/2018, passed by the Sub-Divisional Officer. A further direction was given that the Deputy Superintendent of Land Records shall take consequential action and make corrections concerning the boundaries and the map.

5. Thereafter, the respondent No.4 appears to have approached the respondent No.1 on 02/11/2021, to initiate a proceeding styled as a contempt petition, seeking to punish the Deputy Superintendent of Land Records for failing to take action in terms of the said order passed by the respondent No.1. Thereafter on 23/11/2021, the respondent No.4 appears to have

filed another application before the respondent No.1, in the style of an appeal, once again challenging the order dated 29/09/2018 of the Sub-Divisional Officer, which he had already challenged by way of the aforementioned appeal bearing No. 41/SRV 43/Mouza-Bahadura/2019 and which was already disposed of by order of the respondent No.1 dated 18/08/2020. The order-sheet dated 23/11/2021, shows that the respondent No.4 was heard through his Advocate and that the Deputy Superintendent of Land Records was also present while there is nothing to show in the said order-sheet that the petitioner, being the contesting party, was either put to notice or heard. Yet, the matter was closed for orders.

6. Thereafter, on 29/11/2021, the impugned order was passed, which records the contentions raised on behalf of respondent No.4 and the respondents i.e. official respondents and there is no reference to either presence of the petitioner or his contentions being recorded. The operative portion of the impugned order records that the appeal stands allowed and the very order of the Sub-Divisional Officer dated 29/09/2018, is set aside.

7. The present writ petition was filed, challenging the said order and while issuing notice on 27/12/2021, this Court granted ad-interim relief.

8. Mr. Siddiqui, learned counsel appearing for the

petitioner submitted that the procedure adopted by the respondent No.1 in the present case is unknown to law and an appeal already finally decided appears to have been decided again by the respondent No.1, without any source of power or jurisdiction traceable to the provisions of the said Code. It is submitted that the subsequent proceedings initiated at the behest of the respondent No.4 are not even styled as review application, which could be traced to Section 258 of the Land Revenue Code and it appears to be a fresh appeal on the very same cause of action, which stood finally decided by the respondent No.1 itself by the earlier order dated 18/08/2020. Apart from this, it is submitted that the order-sheet shows that no notice was ever issued to the petitioner and there is nothing on record to show that he was heard before the impugned order was passed. On these grounds, it was submitted that the impugned order deserved to be set aside.

9. Mr. K.L. Dharmadhikari, learned Assistant Government Pleader has appeared on behalf of the respondent No.1 and invited attention of this Court to the reply filed on behalf of the said respondents. The learned Assistant Government Pleader could not dispute the fact that on the specific grounds raised on behalf of the petitioner, the reply is silent.

10. Mr. R.J. Shinde, learned counsel had appeared for the respondent Nos.4 to 8 and he sought to defend the impugned order passed by the respondent No.1.

11. The facts as they are discernible from the chronology of events in the present case reveal a shocking state of affairs. The respondent No.1 being a senior officer of the level of Additional Divisional Commissioner has passed the impugned order, which is clearly without jurisdiction and it is not relatable to exercise of power under any of the provisions of the aforesaid Code. The admitted position on facts in the present case shows that the appeal filed by respondent No.4 bearing No. 41/SRV43/Mouza-Bahadura/2019, was finally decided by order dated 18/08/2020 and the appeal was partly allowed. The comparative table contained in the order dated 29/09/2018 of the Sub-Divisional Officer was specifically confirmed by the said order and the Deputy Superintendent of Land Records was directed to take consequential action. The record shows that while a proceeding was sought to be initiated on behalf of the respondent No.4 styled as contempt petition, seeking action against the Deputy Superintendent of Land Records, which proceeding was filed on 02/11/2021, on 23/11/2021, an application appears to have been filed on behalf of respondent No.4. The contents of the said application show that it was once again an appeal filed against the order dated 29/09/2018 of the Sub-Divisional Officer, while the respondent No.4 had earlier filed an identical appeal, which already stood disposed of by order dated 18/08/2020.

12. Although the said proceeding is titled as an appeal, at

the top of the said proceedings, it is stated to be an application and surprisingly in the impugned order, the respondent No.1 has treated it to be an appeal bearing the very same number, which stood disposed of by the earlier order dated 18/08/2020. A perusal of the impugned order dated 29/11/2021, shows that it is purported to be passed in the Appeal No. 41-Sankirna Arja/SRV 43/2019, which is the very same appeal number which stood disposed of by the earlier order dated 18/08/2020.

13. This Court is unable to understand as to how the respondent No.1 could exercise jurisdiction in this manner. It is not only surprising, but, a shocking state of affairs that a senior officer of the level of respondent No.1 proceeded to act in such a manner unknown to law. The said appeal having been finally disposed of by order dated 18/08/2020, could at best have been reviewed by exercise of power under Section 258 of the Code. But, admittedly, there was no review application filed or pending before the respondent No.1. The respondent No.4 appears to have reagitated the appeal that already stood disposed of by order dated 18/08/2020. It is not as if the respondent No.1 was unaware of the said appeal having been disposed of by order dated 18/08/2020, because the said order finds mention in paragraph No.2 of the impugned order dated 29/11/2021. On this short ground, the impugned order deserves to be set aside.

14. Apart from this, the learned counsel for the petitioner

is justified in contending that the order-sheet on record and other material clearly demonstrate that the petitioner, although being the contesting party, was never put to notice, much less heard in the matter before passing the impugned order dated 29/11/2021. But, the violation of principles of natural justice is only one ground, while the major ground to upset the impugned order is what has been observed hereinabove. This Court expresses surprise and anguish at the manner in which the respondent No.1 has proceeded by virtually reopening the controversy, which had already attained finality by order date 18/08/2020 and in respect of which even the respondent No.4 had not initiated any application akin to an application of review. The impugned order, therefore, is found to be wholly without jurisdiction and completely unsustainable.

15. In view of the above, the writ petition is allowed and the impugned order is quashed and set aside. No order as to costs.

Rule is made absolute in above terms.

JUDGE

MP Deshpande