



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

994 WRIT PETITION NO.5184 OF 2023

ABHANG MADHAVRAO SAWANT
VERSUS
THE HONBLE MINISTER REVENUE AND FOREST DEPARTMENT
AND OTHERS

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Advocate for Petitioner : Mr. Khande Avinash A.
AGP for Respondents-State : Mrs. M. L. Sangit
Advocate for Respondent No.6 : Mr. K. P. Rodge h/f Mr. P. G. Rodge

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CORAM : ARUN R. PEDNEKER, J.
DATE : 29/11/2023

PER COURT :

1. Heard the learned Advocate appearing on behalf of the petitioner.
2. It is the contention of the petitioner that the petitioner had challenged the order dated 29/06/2006 passed by the Tahsildar before the respondent No.4 – the Sub-Divisional Officer, Udgir. Thereafter, by order dated 26/08/2010, the Sub-Divisional Officer, Udgir set aside the order of the Tahsildar and remanded the matter back for fresh hearing. The petitioner filed an appeal before the respondent No.3- Additional Collector, Latur. The Additional Collector by order dated 05/04/2011 dismissed the appeal filed by the petitioner, however while dismissing the appeal of the petitioner, the order passed by the Sub-

Divisional Officer dated 26/08/2010 to the extent of remand was also quashed and the order of the Tahsildar dated 29/06/2006 was upheld. The order passed by the Additional Collector was confirmed by the Additional Commissioner so also by the Minister and aggrieved thereby the present petition is filed.

3. A primary contention of the petitioner is that the Sub-Divisional Officer had quashed the order passed by the Tahsildar dated 29/06/2006 and the matter was remitted back to the Tahsildar.

4. He submits that in a appeal filed by the him against the order of Sub Divisional officer, the appellate authorities could have not travelled beyond the order of the Sub-Divisional Officer. His appeals at best could have been dismissed and that he could have been not put in a more adverse position than the order appealed against order passed by the Sub-Divisional Officer dated 26/08/2010.

5. Per contra, the learned Advocate appearing on behalf of respondent No.6 submits that the orders passed by the appellate authorities i.e. the Additional Collector, and thereafter, the Commissioner and Minister are correct orders. He submits that the matter have been decided on merits by the appellate authorities and

that the petitioner having filed the appeal he himself invited the orders on merits.

7. Having considered the submission of both the parties. It is to be noticed that the appeal was filed by the petitioner before the Additional Collector challenging the order of the Sub-Divisional Officer. The order passed by the Sub-Divisional Officer was partly in favour of the petitioner and thus he had only challenged that part of the order which was against him. The contention of the petitioner before the additional collector was that the matter ought to have been decided by the Sub-Divisional Officer on merits and should have not remanded the matter to the Tahsildar. The appellate authority i.e the Additional Collector and thereafter the Additional Divisional Commissioner and the Minister has travelled beyond the appeal in setting aside the orders passed by the Sub Divisional Officer in its entity as no appeal against the same was preferred by the respondent No.6. There was no challenge before the authorities to the extent of the order of remand by the respondent No.6. As such, the Additional Collector has travelled beyond the appeal filed by the petitioner and has set aside that part of the order which was not appealed against by any party.

8. In view of the same, the orders passed by the Additional

Collector dated 04/05/2011 and the Additional Commissioner and the Minister, are set aside to that extent that it sets aside the entire order passed by the Sub Divisional Officer dated 26/08/2010. The orders passed by the Sub Divisional Officer dated 26/08/2010 is maintained and the matter stands remitted back to the Tahsildar to decide the proceeding in terms of the orders passed by the Sub Divisional Officer dated 26/08/2010. With the above observation, the petition is disposed of.

9. The Tahsildar to decide the proceedings expeditiously and not beyond six months after production of certified copy of this order.

(ARUN R. PEDNEKER, J.)

vj gawade/-.