

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3987 OF 2021

Hari Shankar Rede

.. Petitioner

Versus

Shivaji Rajaram Rede and Ors.

.. Respondents

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- Mr. Abhineet N. Pange a/w. Mr. Swapnil R. Chopade and Mr. Hrishikesh Giri for Petitioner
- Mr. Prabhakar M. Jadhav for Respondent Nos.1 to 3
- Mr. S. D. Rayrikar, AGP for State

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 01, 2023

P.C.:

1. Heard Mr. Pange, learned Advocate for Petitioner; Mr. Jadhav, learned Advocate for Respondent Nos.1 to 3 and Mr. Rayrikar, learned AGP for State.

2. The present Writ Petition takes exception to the demolition notice issued by the Tahsildar in respect of subject properties standing on the subject road belonging to the Petitioner. The impugned notice has been issued as a consequence of the twin orders passed below Section 5 and Section 23 of the Mamlatdar Court Act, 1906 (for short '**said Act**') in statutory proceedings as well as revision proceedings whereby the Petitioner's claim has stands rejected.

3. Mr. Pange, learned Advocate for Petitioner would submit that the Petitioner has a fundamental grievance in as much as the Petitioner

was precluded from filing his written statement in the substantive statutory proceedings under Section 5 of the said Act before the Tahsildar / ALT. He would submit that order dated 31.12.2019 passed under Section 5 has been passed without permitting the Petitioner to file Written Statement as also not allowing the Petitioner to lead evidence which is a valuable statutory right under the said provision as proceedings under the Mamlatdar Court Act, 1960 are considered to be a Code unto itself since it allows the parties to lead evidence. He would therefore submit that the order dated 31.12.2019 as also revision order dated 26.03.2021 passed under Section 23 are bad in law and in view thereof the consequential demolition notice which is impugned in the Writ Petition deserves to be set aside.

4. Mr. Jadhav, learned Advocate for the Respondent as also Mr. Rayrikar, learned AGP in their usual fairness have informed the Court that the Petitioner is right in contending that he was precluded from filing the written statement before the statutory authority in the proceedings under Section 5. This stand adopted by Mr. Jadhav and Mr. Rayrikar is appreciated by the Court.

5. In view of the aforementioned reason, considering that the provisions under the said Act give a valuable statutory right to the parties concerned and the submissions made by Mr. Pange that the written statement on behalf of the Petitioner would be filed if the said

statutory proceedings are revived, I am inclined to quash and set aside the impugned notice dated 22.07.2021 and remand the matter back to the learned Tahsildar / ALT for a fresh hearing of the original statutory proceedings.

6. However Mr. Jadhav has expressed an apprehension that by virtue of remand no undue advantage be taken since the Petitioner has been declared as obstructionist of the portion of the road on which he is in occupation and structures standing thereon were been directed to be demolished. I have considered the objection raised by Mr. Jadhav but it is required to be noted that both the twin orders passed under Section 5 and Section 23 of the said Act were passed without giving an opportunity to the Petitioner to file his written statement as also to lead evidence.

7. In that view of the matter, the impugned notice stands set aside. As also the twin orders dated 31.12.2019 and 26.03.2021 passed below Exh.05 and Exh.23 also stand set aside.

8. Rasta Case No.27 of 2018 stands revived to the file of Tahsildar / ALT for a fresh consideration on the merits and after hearing of parties. However at request of Mr. Jadhav that the learned Tahsildar / ALT is requested to complete the hearing of Rasta Case No.27 of 2018 within a period of six months from today. Needless to state that both the parties shall be at the liberty to file

pleadings in Section 5 proceeding which shall be heard and decided by learned Tahsildar / ALT strictly in accordance with law.

9. It is also clarified that learned Tahsildar / ALT shall not be influenced by any of the observations made in the orders dated 31.12.2019, 26.03.2021 as also this Order. Parties shall appear before learned ALT on 03.02.2023 at 12.00 Noon for fixing the schedule. No unnecessary adjournments shall be granted to the parties unless absolutely necessary.

10. All contentions of the parties are kept expressly open.

11. With the above directions, Writ Petition stands disposed.

[MILIND N. JADHAV, J.]