

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 3165 OF 2017

Smt. Sundari Somnath Salian

..Petitioner

Versus

The State of Maharashtra & Ors.

..Respondents

Mr. Sunil G. Karandikar for petitioner.

Mr. Avinash H. Fatangare i/b. Archana S. Shelar for Respondent No.5.

Mr. C. D. Mali, A.G.P. for the State/Respondent Nos.1 to 4.

CORAM : SARANG V. KOTWAL, J.

DATE : 10 MARCH 2023

PC :

1. The petitioner herein has challenged the order dated 22/04/2014 passed by the Secretary and Special Executive Officer (Appeals) in the Revision Application S-30/2710/PK.139/G-4 PK.524(01)/2012/AVPU, as well as, the order dated 31/10/2014 rejecting the review of that particular order.

2. The petitioner had requested for a road for accessing her plot at City Survey No.7754. The Tahsildar, Ambernath vide order dated 25/03/2008 directed that the plot admeasuring 16 Sq.mtr. from the plot No.81 owned by the respondent No.5 Society be

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allotted to the petitioner for a road accessing to her plot after depositing certain amount. That order was challenged by the respondent No.5 Society before the Collector, Thane. The said authority vide order dated 19/09/2008 rejected the objection raised by the society and upheld the order passed by the Tahsildar. However, vide Clause 3 of the said order dated 19/09/2008 it is clarified that the said portion could be used by the petitioner only for accessing her plot as a road to her plot. She was directed not to erect any compound around that particular portion. This particular clause of the Collector's order was challenged by the petitioner before the Additional Commissioner (Konkan Division) Mumbai. That appeal was dismissed vide order dated 14/10/2009 and the order passed by the Collector was confirmed. In this particular appeal before the Additional Commissioner, the petitioner had challenged only the restriction on putting up a compound around that portion. There was, of course, no challenge by the petitioner for grant of that particular portion for her use.

3. The petitioner thereafter filed the Revision U/s.257 of the Maharashtra Land Revenue Code 1966 (for short 'M.L.R.Code')

before the Government of Maharashtra. That Revision application was rejected vide order dated 22/04/2014. While rejecting that revision application, the Secretary and Special Executive Officer (Appeals) for Government of Maharashtra also set aside the orders dated 25/03/2008 passed by the Tahsildar, Ambernath, the order dated 19/09/2008 passed by the Collector, Thane and the order dated 14/10/2009 passed by the Additional Commissioner (Konkan Division) Mumbai. The petitioner then preferred a review application of that order before the same authority. That review was also dismissed.

4. The petitioner in these circumstances has approached this court challenging the order passed by the Government of Maharashtra U/s.257 of the M.L.R. Code.

5. Learned counsel for the petitioner submitted that the State Government exceeded the scope of revision application preferred by the petitioner. The Government could only have taken into consideration the objection raised by the petitioner and the contentions raised by the petitioner. It was not open for the

Government to have considered the legality or validity of the order passed by the Tahsildar, Ambernath, the Collector, Thane and the Additional Commissioner (Konkan Division) Mumbai. Therefore, prejudice is caused to the petitioner because she was not given notice that all these three orders would be set aside by the impugned order. He further submitted that the Revisional Authority had taken into consideration Section 143 of the M.L.R. Code, but the petitioner was not heard and in consonance of the principles of natural justice, she at least deserved hearing before any adverse order was passed in her own revision application.

6. Learned counsel for the Respondent No.5 submitted that the said respondent had filed their written submissions before the revisional authority, therefore, the petitioner was very much aware of the stand taken by the society. Therefore, the petitioner was not taken by surprise when the order was passed by the revisional authority. Learned counsel for the Respondent No.5 relied on the Judgment passed by a Single Judge of this Court in the case of **Pandurang Chandrabhan Bauche and another Vs. Jalindhar**

Sarandhar Tupe & Ors.¹ to contend that the powers U/s.143 of the M.L.R. Code could be used only in respect of an agricultural land and not for the lands which are situated within the city limits.

7. I have considered these submissions and I have perused the impugned orders passed by the revisional authority. The revisional authority has referred to Section 143 of the M.L.R. Code and has observed that the Tahsildar does not have power to pass any order in respect of a road leading to a plot which was not an agricultural land. To that extent, I do not find any infirmity in that order. However, the fact remains that the petitioner was not given any opportunity to make her submissions. Therefore, only to that extent and in the interest of justice, the petitioner deserves some hearing before any adverse order was passed by the revisional authority in the petitioner's own revision application. In such a case, the petitioner could have come up with other factual aspects of the matter and some solution could have been found between the parties. Some workable consequential relief could have been considered. The Judgment relied on by learned counsel for the

¹ 2009 (3) Mh.L.J. 467

Respondent No.5 also supports the reasoning given by the revisional authority. Therefore, legally, I do not see that the revisional authority had committed any error. The only difficulty is that the petitioner was not heard when an adverse order was passed in her own revision application. She was not put to notice that such order was contemplated. Therefore, only because of that, I am inclined to remand back this revision proceeding before the revisional authority. Except for the power of the Tahsildar U/s.143 of the M.L.R. Code referred to herein above, the other contentions of the petitioner, as well as, of the respondent No.5 are left open. It is also necessary to take care of the consequences of cancellation of the order passed by the Tahsildar which can be decided by the revisional authority and for that purpose it is also necessary to remand back the revision application to the revisional authority.

8. Hence, the following order:

O R D E R

- i) The Writ Petition is allowed.
- ii) The Revision Application filed by the petitioner is

remanded back to the Revisional Authority.

- iii) It is made clear that, all other contentions of both the parties, except with reference to Section 143 of the M.L.R. Code, are left open.
- iv) The Revision Application shall be decided within a period of three months from today.
- v) The Writ petition is disposed of.

(SARANG V. KOTWAL, J.)