

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

WRIT PETITION NO. 3864 OF 2022

Syed Abdul Aziz Shah alias Syed
Jamshid Shah S/o Syed Gulam
Mehmood Shah, Aged about 82 years,
R/o Gondwakdi, Tq-Padarkawda,
District Yavatmal

...Petitioner

// VERSUS //

1. The Divisional Commissioner,
Amravati Division, Amravati Tq. &
Dist.Amravati
2. The District Collector, Yavatmal
3. Sub-Divisional Officer, Kelapur, Dist.
Yavatmal
4. Sub-Divisional Officer, Wani, Dist.
Yavatmal
5. Tahsildar Kelapur, Tahsil Office
Kelapur, Tq. Kelapur, Dist. Yavatmal
6. Rajesh Kalyanprasad Pancholi, Aged
about 67 years, Occ.: Agriculturist, R/o
main line Pandarkawda, Tq.
Pandarkawda, Dist. Yavatmal
7. Jawahar Brijlal Jaiswal,
Aged about 67 years, Occ.Business
R/o Main line Pandarkawda, Tq.
Pandarkawda, Dist. Yavatmal

... Respondents

Shri A.B.Mirza, Advocate for the petitioner.
Ms. Shamsi Haider, AGP for the respondent nos. 1 to 5.
Shri S.S.Deshpande, Advocate for the respondent no.6.

**CORAM : ANIL S. KILOR, J.
DATED : 24th APRIL, 2023.**

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. In this writ petition, the order of transferring the appeal proceeding from the file of Sub Divisional Officer, Kelapur to Sub Divisional Officer, Wani, passed by the District Collector, Yavatmal dated 25th April, 2022, is under challenge.

3. The only grievance raised by the petitioner is that the transfer was made on the application made by the respondent making certain allegations against the Sub Divisional Officer, Kelapur. It is pointed out that the application runs in eight pages making bald allegations against the Sub Divisional Officer, Kelapur.

4. It is submitted that without hearing the petitioner, the application came to be allowed.

5. On the other hand, Shri Deshpande, learned counsel for the respondent submits that under Section 226 of Maharashtra Land Revenue Code (in short hereinafter referred as 'MLR Code'), the power which was exercised by the Collector is purely an administrative power and therefore there is no question of hearing the petitioner before passing any order. It is submitted that hearing is not stipulated under Section 226 of the MLR Code, before passing any order.

6. Since, the matter revolves around the powers of the authorities under Section 226 of MLR Code, it would be appropriate to refer Section 226 which read thus:

Section 226 : Power to transfer cases to and from subordinates

(1) A Commissioner, a Collector, a Sub Divisional Officer or a Tahsildar may make over any case or class of cases, arising under the provisions of this Code or any other enactment for the time being in force, for decision from his own file to any Revenue Officer subordinate to him competent to decide such case or class of cases or may withdraw any case or class of cases. from any such Revenue Officer and may deal with such case or class of cases himself or refer the same for disposal to any other Revenue Officer competent to decide such case or class of cases.

2) A Commissioner, a Collector, a Sub-Divisional Officer, or a Tahsildar may make over for inquiry and report any case or class of cases arising under the provisions of this Code or any other enactment for the time being, in force from his own file to any Revenue Officer subordinate to him.

7. From the language of the Section 226 of MLR Code, I find substance in the submission of the learned counsel for the respondent to the extent that the power is an administrative power. However, I am not agreeable with the further submission of the learned counsel for the respondent that grant of hearing is not necessary in this case.

8. In normal case, for the administrative reason if the authorities transfer the matter from one subordinate officer to another under Section 226 of MLR Code, obviously there is no need of grant of hearing. However, here in this case the transfer is not for any administrative reason

but on a complaint of the respondent which runs in eight pages making allegations against the officer.

9. In such matters, any order passed in favour of the applicant would adversely affect the interest of the non-applicant and therefore in such matters hearing is necessary.

10. As in the present matter, admittedly, no hearing was given to the petitioner before deciding the application made by the respondent for transfer of the appeal from Sub Divisional Officer, Kelapur to Sub Divisional Officer, Wani, I am of the opinion that the impugned order needs to be quashed and set aside with direction to the Collector to decide the application a fresh after hearing both the parties. Accordingly, I pass the following order.

- i. Writ petition is partly allowed;
- ii. Impugned order dated 25th April, 2022 passed by the District Collector, Yavatmal is hereby quashed and set aside.
- iii. The matter is remanded back to the District Collector, Yavatmal to decide a fresh after hearing both the parties.

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

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