



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

Writ Petition (WP) No. 5003 of 2022

Durgaprasad S/o Kameshwarprawad Sinha and another

Versus

Narendra S/o Panjabrao Gaikwad and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Rohan Gautam, Advocate for the petitioners.

Shri U.R.Phasate, AGP for the respondent no.5/State.

CORAM : ANIL S. KILOR, J.

DATED : 31st OCTOBER, 2023.

Heard.

2. This matter pertains to the dispute relating to the mutation entries. The petitioners claimed to be owners of land in dispute and that the respondent nos. 1 to 4 are the previous owners of the said land.

3. It is the case of the petitioners that the Sub Divisional Officer passed the order dated 19th July, 2021 in a revenue appeal filed by the respondent nos. 1 and 2 and one Lumeshwar S/o Devrao Itankar and Jaswinder S/o Triloksingh Khanduja against the petitioners, which came to be allowed vide order dated 19th July, 2021.

Admittedly, the said order was passed *exparte* as the petitioners failed to appear in the said matter, though they were served.

4. As it was the pandemic period, citing the said reason for non-appearance, the petitioners moved an application under Sub-Section (3) of Section 232 of the Maharashtra Land Revenue Code, 1966 (in short referred as 'MLR Code, 1966') before the Sub Divisional Officer, Nagpur (Rural) to quash and set aside the order dated 19th July, 2021.

5. The Sub Divisional Officer, Nagpur (Rural) vide impugned order dated 11th - 13th August, 2021 refused to entertain the said application on the ground that the remedy of appeal is provided under Section 247 of MLR Code, 1966. Hence, this petition.

6. After going through the record and the impugned order passed by the Sub Divisional Officer, it is evident that, the petitioners have availed the remedy under Section 232(3) of MLR Code, 1966 for the reason that the order passed by the Sub Divisional officer was *exparte*.

7. Thus, the whole controversy revolves around the question whether the proceeding filed by the petitioner under Sub-Section (3) of Section 232 of MLR Code, 1966 is maintainable.

8. For this purpose, it is necessary to refer to the provisions of Section 232 of MLR Code, 1966 reads thus:

232. Hearing in absence of party.

(1) If on the date fixed for hearing a case or proceeding, a Revenue Officer or Survey Officer finds that summons or notice was not served on any party due to the failure of the opposite party to pay the requisite process fees for such service, the case or proceeding may be dismissed in default of payment of such process fees.

(2) If any party to a case or proceeding before the Revenue Officer or Survey Officer does not appear on the date fixed for hearing, the case may be heard and determined in his absence or may be dismissed in default.

(3) The party against whom any order is passed under sub-section (1) or (2) may apply within thirty days from the date of such order to have it set aside on the ground that he was prevented by any sufficient cause from paying the requisite 'process fees' for service of a summons or notice on the opposite party or from appearing at the hearing and the Revenue Officer or Survey Officer may, after notice to the opposite party which was present on the date on which such order was passed and after making such inquiry as he considers necessary set aside the order passed.

(4) Where an application filed under sub-section (3) is rejected, the party aggrieved may file an appeal to the authority to whom an appeal lies from an original order passed by such officer.

(5) Except as provided in sub-section (4) or except where a case or proceeding before any such officer has been decided on merits, no appeal shall lie from an order passed under this section.

9. In the present matter as the Sub Divisional Officer, Nagpur (Rural) has decided the matter in absence of the petitioners vide the order dated 19th July, 2021, the said order falls within the purview of Sub-Section (2) of Section 232.

10. Sub-Section (3) of Section 232 of the MLR Code, 1966 states that the party against whom any order is passed under Sub-Section 1 and 2 may apply within thirty days from the date of such order to have set aside on the ground that he was prevented by any sufficient cause from paying the requisite 'process fee' or for service of a summons or notice on the opposite party or from the appearing at the hearing.

11. In the circumstances, considering the language of Section 232 (2) and Section 232(3), I have no hesitation to hold that the application filed by the petitioners under Sub Section 3 of Section 232 of MLR Code, 1966 is maintainable.

12. Thus, it is evident that the order passed by the Sub Divisional Officer, Nagpur (Rural), refusing to entertain the application filed by the petitioners under Section 232 of the MLR Code, 1966 is erroneous and liable to be quashed and set aside. Accordingly, I pass the following order.

i. The writ petition is allowed;

- ii. The order dated 11th / 13th August, 2021 passed by the Sub Divisional Officer, Nagpur (Rural) is hereby quashed and set aside;
- iii. The matter is remanded back to the Sub Divisional Officer, Nagpur (Rural), Nagpur to decide the same afresh after hearing both the parties.
- iv. The parties shall appear before the Sub Divisional Officer, Nagpur (Rural), Nagpur on **7th November, 2023.**

[ANIL S. KILOR, J.]