

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

WRIT PETITION NO.5946 OF 2022

(DINESH HANUMANPRASAD TIWARI..VS.. HARISHAM RAMBHAU THOMBRE & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Rohit M. Vaidya, Advocate for Petitioner.
Shri A.V.Bhide, Advocate for Respondent Nos.1 to 13.
Ms Hemlata Jaipurkar, A.G.P. for Respondent Nos. 14 to 17.

CORAM : ANIL S. KILOR, J.

DATED : JUNE 21, 2023.

1. Heard.
2. In the present matter, this Court, while issuing notice has observed thus:

“2. By this petition, the petitioner has challenged order dated 21/09/2022, whereby the Sub-Divisional Officer has rejected the application for interim stay moved on behalf of the petitioner.

3. The petitioner is aggrieved by order dated 12/08/2022, passed by the Mamalatdar (Tahsildar) and he has filed revision application under the provisions of the Mamalatdar's Courts Act, 1906 before the Sub-Divisional Officer.

4. When notice dated 19/09/2022 was received from the Circle Officer for execution of the order passed by the Mamalatdar, the petitioner moved the Sub-Divisional Officer for grant of stay.

5. A perusal of the impugned order shows that the application for stay has been rejected mainly on the ground that there is a caveat in the matter. It is submitted on behalf of the petitioner that if an opportunity was granted to the petitioner,

he would have served the caveator and pressed the prayer for grant of interim stay, but the Sub-Divisional Officer proceeded to reject the application itself. It is submitted that if the interim stay is not granted, the revision application would be infructuous and that the petitioner has strong prima facie case to demonstrate that the order of the Mamalatdar is not sustainable.”

3. Shri Bhide, learned counsel for the respondent Nos. 1 to 13 accepts the fact recorded by this Court that the stay application was rejected only for the reason that there was a caveat.

4. In the circumstances, I have no hesitation to hold that the impugned order is illegal and not sustainable in the eyes of law. Accordingly, I am of the opinion that the matter needs to be remanded back to the Sub-Divisional Officer to decide the same afresh. Accordingly, I pass the following order:

- i) The writ petition is partly allowed.
- ii) The impugned order dated 21/09/2022 passed by respondent No.15-Sub-Divisional Officer is hereby quashed and set aside.
- iii) The matter is remanded back to the Sub-Divisional Officer, Chandur Railway to decide

the revision application and also the stay application afresh, on its own merits, within a period of four months from today.

- iv) The parties shall appear before the Sub-Divisional Officer on 05/07/2023 at 11:00 a.m.

The writ petition is **disposed of** accordingly.
No order as to costs.

JUDGE

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