

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 312 OF 2020

(Bheshej Pralhadgir Giri Vs. Secretary, Revenue Department, Mantralaya, Mumbai & Ors.)

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

Court's or Judge's orders.

Shri Ajay D. Tote, Advocate for the petitioner.
Shri D.P. Thakare, Additional Government Pleader for
respondent Nos. 1 to 4/ State.
Shri A.S. Deshpande, Advocate for respondent No.5.

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CORAM : ANIL S. KILOR, J.
FEBRUARY 28, 2023.

The present Writ Petition is arising out of the proceedings filed by respondent No.5 before the Tahsildar under Section 143 of the Maharashtra Land Revenue Code, 1966 (for short "the Code") for grant of new way to approach to her field from the field of the petitioner. The Tahsildar allowed the said application. However, the Sub-Divisional Officer set-aside the order of the Tahsildar in an appeal. Vide order dated 6/6/2019, the Additional Collector upheld the order of the Sub-Divisional Officer. However, the Hon'ble Minister vide order dated 20/8/2019 set-aside the order of the Additional Collector, which is under challenge in the present Writ Petition.

2] The brief facts of the present case are as under :

i] Respondent No.5 filed an application under Section 143 of the Code for grant of new way to approach

to her field through the field of the petitioner. The petitioner opposed the said prayer of respondent No.5 on various grounds including respondent No.5 is not the original owner of the field but she had purchased the said field in the year 2012 and as she has alternate approach way available, the application under Section 143 of the Code is not tenable. The Tahsildar, after hearing both the parties and considering the oral as well as documentary evidences mainly the Spot Inspection Report, passed the order dated 13/7/2015 thereby allowed the application of respondent No.5.

ii] The petitioner feeling aggrieved by the aforesaid order passed by the Tahsildar approached to the Sub-Divisional Officer by filing an appeal. The Sub-Divisional Officer vide order dated 28/6/2017 allowed the said appeal and remanded the matter back to the Tahsildar. The Tahsildar vide order dated 16/2/2018 allowed the application of respondent No.5 against which the petitioner went into an appeal before the Sub-Divisional Officer. The Sub-Divisional Officer vide order dated 26/10/2018 set-aside the order dated 16/2/2018 passed by the Tahsildar against which respondent No.5 went into an appeal before the Additional Collector to reverse the order of the Sub-Divisional Officer and maintain the order of the Tahsildar which appeal came to be dismissed by the Additional Collector against which respondent No.5 preferred an appeal before the Hon'ble Minister which came to be allowed by the Hon'ble

Minister vide order dated 20/8/2019 which order is under challenge in the present Writ Petition.

3] Shri A.D. Tote, learned Counsel for the petitioner submits that the Sub-Divisional Officer while setting aside the order of the Tahsildar has observed that the Tahsildar has failed to record its finding on various issues which are important and emerged after considering the case of both the parties. It is therefore argued that the Hon'ble Minister, without recording any reasons for not accepting the findings recorded by the Additional Collector and the Sub-Divisional Officer and maintaining the order of the Tahsildar, allowed the appeal preferred by respondent No.5.

4] On the other hand, Shri D.P. Thakare, learned Additional Government Pleader supports the case of the Hon'ble Minister and submits that after considering the evidences available on record, the Hon'ble Minister has rightly maintained the order of the Tahsildar and set-aside the order of the Additional Collector.

5] Shri A.S. Deshpande, learned Counsel for respondent No.5 re-iterates the submission of the learned Additional Government Pleader. In addition, he submits that at the time of drawing map and Spot Inspection Report, the petitioner was personally present, and therefore, the findings recorded in the Spot Inspection Report are binding on the petitioner and that now he cannot argue contrary to the said Spot Inspection Report. He accordingly submits that the findings recorded by the Hon'ble Minister and the Tahsildar are based on the Spot

Inspection Report and as such he prays for dismissal of the Writ Petition.

6] In the light of the rival contentions of the parties, I have perused the Writ Petition, the documents filed along with the Writ Petition, the reply filed on behalf of the respondents and the impugned order.

7] After going through the record, it is evident that the Sub-Divisional Officer has categorically observed that on various points, the Tahsildar has not recorded any finding which ought to have been recorded by the Tahsildar. The points recorded by the Sub-Divisional Officer are as under :

i] There is no mention about the approach way which the vendor of respondent No.5 was using before transferring the title of the field in favour of respondent No.4.

ii] There is no finding recorded by the Tahsildar as to whether because of erection of compound by one Bhalchandra Mahurkar and thereby closing the approach way of respondent No.5, need of new way arisen.

iii] Keeping aside the original cause of action, the new cause of action was considered and way was granted.

iv] Shri Mahurkar ought to have constructed the compound leaving the approach way.

v] Whether the applicant (petitioner herein) is entitled to claim approach way from Dhura or otherwise under Section 143 of the Code.

In addition to the above referred points, the Sub-Divisional Officer has further observed that in the evidence of one Datta it has come on record that an alternate way is available for respondent No.5. Thus, the Sub-Divisional Officer, after finding that the Tahsildar has not recorded any finding as regards the points raised by him in his order, allowed the appeal and set-aside the order of the Tahsildar which was upheld by the Additional Collector finding the same just and proper.

8] The Sub-Divisional Officer ought to have remanded the matter back to the Tahsildar to record findings on each point recorded by the Sub-Divisional Officer which according to him the Tahsildar has not answered. However, the Sub-Divisional Officer simplicitor set-aside the order of the Tahsildar instead of remanding the matter back to the Tahsildar. The Additional Collector also committed the same mistake by maintaining the order of the Sub-Divisional Officer and not remanding the same to the Tahsildar.

9] The Hon'ble Minister, without considering the findings recorded by the Sub-Divisional Officer and the Additional Collector so also without recording justifiable reasons for not accepting those findings and the reason for reversal of such findings, allowed the revision thereby set-aside the order of the Additional Collector and upheld the order of the Tahsildar. In

absence of any reason for reversal of the findings of the Sub-Divisional Officer and the Collector, the order passed by the Hon'ble Minister is vitiated.

10] In the circumstances, I am of the opinion that the present Writ Petition needs to be allowed by setting aside the order of the Hon'ble Minister and remanding the matter back to the Tahsildar to answer the points raised by the Sub-Divisional Officer in his order dated 26/10/2018 and of which note has been taken by this Court in this order. Accordingly, I pass the following order :

ORDER

- i] The Writ Petition is partly allowed.
- ii] The order dated 20/8/2019 passed by the Hon'ble Minister is hereby quashed and set-aside. The matter is remanded back to the Tahsildar to decide the application of respondent No.5 afresh after considering the observations made by the Sub-Divisional Officer in his order dated 26/10/2018 and after recording finding on each point raised by the Sub-Divisional Officer.
- iii] The petitioner and respondent No.5 are directed to appear before respondent No.4 – Tahsildar on 13/3/2023 at 12 noon.

(JUDGE)

Sumit