



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4168 OF 2024

BHAVSING HARCHAND PARADESHI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS

...

Mr. Ravindra V. Gore h/f Mr. Bhushan Mahajan, Advocate for the
Petitioners.

Mr. S. B. Jadhav, AGP for Respondents-State.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 20th AUGUST, 2024.

P.C.:-

1. The petitioners impugn order dated 16.01.2024 passed in Revision No.49/2023 by Sub Divisional Officer, Pachora, by which proceeding under Section 5 of the Mamlatdar's Courts Act has been remanded back to the Mamlatdar for fresh decision.

2. Mr. Gore, learned Advocate appearing for the petitioners submits that petitioners had made an application under Section 5 of the Mamlatdar's Courts Act before the Tahsildar, Bhadgaon. In pursuance of the said application spot panchanama was carried, the parties laid their evidence and submitted relevant documents. After considering the pleadings and evidence, learned Mamlatdar was pleased to allow the application, thereby directing that respondents shall not obstruct customary way used by the petitioners from Gut No.161 and 162/2. The respondents preferred Revision No.49/2023 before Sub Divisional Officer, Pachora. The learned Sub Divisional Officer after hearing parties, remanded matter back to the Mamlatdar without recording adequate reasons requiring such remand. He would submit that entire material was available before the Sub Divisional Officer, who could have taken

decision based on the same. He would submit that casual remand would not be permissible under law.

3. The learned Advocate appearing for the respondents however supports the order of remand and submits that there are glaring contradiction in observations made by the Mamlatdar. The Mamlatdar was expected to record clear findings of fact. Therefore, remand was absolutely necessary in the facts of the case.

4. Having considered submissions advanced, it is apparent that Mamlatdar had passed detailed order accepting case of the petitioners. The learned Sub Divisional Officer in exercise of powers under Section 23 of the Mamlatdar's Courts Act was expected to examine legality, propriety and correctness of such order within parameters of his revisional jurisdiction. As rightly pointed out by Mr. Gore first twelve pages of the order are devoted to discuss pleadings of the parties and material on record. However, in last paragraph the observation is made that there is inconsistency in findings recorded by the Mamlatdar and evidence on record or the findings recorded by Mamlatdar was not in conformity with the evidence tendered into service.

5. It is well settled that matter can be remanded back for specific purpose. The casual remand of the matter is not permissible. The analogy under Order 41 Rule 23 of the Civil Procedure Code needs to be applied and reasons are required to be recorded. Even while remanding matter back to any Authority, specific points for consideration on remand are required to be indicated so that concerned Authority shall take further steps in compliance with the directions under remand order. At this stage, reference can be given to the judgment of this Court in case of

Gangaram s/o Rajaram Ingole Vs. Malkarjun s/o. Gangadhar Hundekar and Ors¹.

6. In the present case, apparently entire material relied upon by the parties and submitted during the proceeding was before Sub Divisional Officer, who could have rendered conclusive decision on merit. No specific reasons are given by him as to why he felt remand is necessary. Further no specific directions are given to Mamlatdar to either cause enquiry on specific point or record evidence of the parties. In absence of any such contingency, order of remand cannot be justified. In that view of the matter, it would be appropriate to quash and set aside the impugned order and direct Sub Divisional Officer to decide Revision on its own merits on the basis of material already tendered by the parties. Hence, following order:

ORDER

- a. Writ Petition is partly allowed.
- b. The impugned order dated 16.01.2024 passed in Revision No.49/2023 by Sub Divisional Officer, Pachora, is hereby quashed and set aside.
- c. The learned Sub Divisional Officer is directed to decide Revision on merit on the basis of material already tendered into service by the parties.
- d. Parties shall appear before Sub Divisional Officer, Pachora on 30.08.2024. After appearance of the parties, they shall be at liberty to tender written notes of arguments, if any, and also make oral submissions.

¹ 2011 (1) ALL MR 874.

e. The learned Sub Divisional Officer shall decide Revision Application within a period of four months from the date of appearance of the parties on its own merits.

f. Writ Petition is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/August-2024