



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7071 OF 2015

Arun Chandrabhan Kere

VERSUS

Balu Punjaba Kere And Others

- Mr. P. F. Patni, Advocate for the Petitioner
- Mr. R. R. Karpe a/w Mr. V. H. Pathade h/f Mr. M. K. Kakade, Advocate for Respondent No. 1
- Mr. K. S. Patil, AGP for the Respondent Nos. 2 and 3/State

CORAM : KISHORE C. SANT, J
DATE : SEPTEMBER 18, 2024

PER COURT :

1. Heard parties.

2. By way of this Petition, Petitioner has challenged the order passed by the learned Additional Collector, Chhatrapati Sambhajinagar remanding, section 5 of the Mamlatdars' Courts Act, 1906, proceedings to the Tehsildar for fresh enquiry on 2 counts. First that the order under Section 5(2) is passed by the Naib Tehsildar who cannot be said to be a Tehsildar as it was necessary for the Tehsildar himself to conduct the enquiry and to pass the order. Secondly, for the reason

that the Tehsildar has not personally carried out inspection of the spot and the order was passed.

3. The learned Advocate for the Petitioner vehemently argued that so far as first ground is concerned, same is totally unacceptable. He points out Section 3(a) of the Act which gives definition of word 'Mamlatdar' which reads as under:

3(a) the word "Mamlatdar" shall include any Revenue – Officer exercising for the time being the powers of a Mamlatdar, of a Mahalkari, or of a Tahsildar or Naib Tahsildar, and any other person who may be specially authorised by the State Government to exercise the powers of a Mamlatdar under this Act

He thus submits that Naib Tahsildar also comes under the definition of word Mamlatdar. No illegality is committed by the Naib Tahsildar in deciding the proceedings under Section 5(2) of the Act. So far as second aspect is concerned, he points out that in fact panchnama was drawn. Panchnama was prepared and report was called and it is only after such exercise the case was decided. He thus submits that it was necessary for

the learned Additional Collector to decide the revision itself on merits. However, the same is remanded on technical grounds. He thus prays for quashing and setting aside of the impugned order with a direction to the learned Additional Collector to decide the revision afresh. Learned Advocate invited attention of the Court to the panchnama wherein it appears to have been signed by the Naib Tahsildar himself. He also points out endorsement on the panchnama which shows that panchnama was carried out in presence of Naib Tahsildar, Circle 1.

4. Learned Advocate for Respondents vehemently opposed the Petition. He submits that remand order is passed on two points. Firstly, Naib Tahsildar is not considered as Tahsildar. So far as this aspect is concerned, he did not contest it seriously. So far as second aspect is concerned, not drawing of panchnama by the Tahsildar and not preparing by himself he submits that from the record it is clear that only a report was called from the Circle Office. He thus prays for rejection of the Petition.

5. Considering the position, this Court finds that it was necessary for the learned Additional Collector to decide Revision on its own merit by himself as from the panchnama it does appear that panchnama was drawn by and in presence of Naib Tahsildar and secondly, in view of definition of Section 3(a) Naib Tahsildar is also included in the definition of Mamlatdar.

6. In the result, Petition succeeds on above grounds and is disposed of as such. Learned Additional Collector to decide revision afresh on its own merits. As the Petition is pending since year 2015 and section 5 proceeding is started in the year 2012, learned Additional Collector is expected to decide revision as early as possible and in any case, before 31.10.2024.

(KISHORE C. SANT, J.)