

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 7249 OF 2024
IN
SECOND APPEAL NO. 778 OF 2019**

Mohiddin Babumiya Jamadar ... Applicant

IN THE MATTER BETWEEN

Tararani Vidyapeeth Kolhapur ... Appellant

Versus

The State of Maharashtra & Ors. ... Respondents.

Mr. Nagesh Y. Chavan, *for the Applicant (Respondent No.3 in SA/778/2019.)*

Mr. Yuvraj Narvankar, *for the Respondent (Appellant in SA/778/2019).*

Mr. Tanaji Mhatugade, *for the Respondent Nos.2 & 4.*

Mr. A. S. Gawai, *AGP for State-Respondent No.1.*

CORAM : SANDEEP V. MARNE, J.

Dated : 1 April 2024.

P.C. :

The Application is filed seeking clarification of the Order dated 8 November 2023. This Court, while allowing the Second Appeal passed following Order :

8. Be that as it may, the Collector has sought to recover possession of the excess land on the basis of the report / plan at Exhibit-170 submitted by witness-Krishna Jondhalekar. This witness has submitted that the land in possession of the Plaintiff is bounded on North and South by municipal road and on West by a stream. He has admitted that the said stream passes through the property of the Plaintiff. He has admitted that there is an auditorium in the said land and the Plaintiff is in possession of the same. The witness-Krishna Jondhalekar has admitted that the property under Survey No.401/1/A is recorded in the survey records in the name of Tararani Vidyapeeth. He admits that the area of the land in possession of the Plaintiff does not exceed the area recorded in 7/12 extract.

9. It is not in dispute that the Plaintiff-Trust was not given a personal hearing. The witness-Krishna Jondhalekar has also admitted that the notice was not given to the Plaintiff to remain present at the time of taking the measurements. The map at Exhibit-170 was not drawn in presence of the Plaintiff. The decision that the Plaintiff is in possession of excess area has been taken without giving him an effective opportunity of meeting the allegations made against it. Both the courts below have failed to consider this vital aspect.

10. It is trite that an authority determining questions affecting the rights of the parties are duty bound to act judicially, observing the rules of natural justice. In the instant case, the Collector has transgressed the principle underlying *audi alteram partem* rule by ordering recovery of possession of land, which is undisputedly in possession of the Plaintiff since 1954, without affording any opportunity to the Plaintiff to meet the allegations of encroachment. The result is that such decision which is in breach of principle of natural justice cannot be sustained.

11. Hence, the appeal is allowed. The impugned judgment is set aside. Consequently, the suit is decreed. The Defendants, their servants, etc. are restrained from acting on order dated 06/06/2023 (Exhibit-203) and interfering with possession of the Plaintiff in respect of land under Survey No.401/A/2A and or land admeasuring 1570 sq. meters delineated in the plan at Exhibit-170.

2. Mr. Chavan, the learned counsel appearing for Applicant would seek clarification of the Order to the limited extent that the directions given by this Court restraining the Defendants from acting on Order dated 6 June 2003 and from interfering with the possession of Plaintiff in respect of suit land shall not be misconstrued to mean as if the Defendants in the Suit are perpetually restrained from taking any action in respect of Plaintiff's possession over the suit land.

3. Mr. Narvankar, the learned counsel appearing for original Plaintiff would submit that Plaintiff has not committed any encroachment in respect of any portion of the land in question. This position is disputed by Mr. Chavan.

4. Perusal of the findings recorded by this Court in paragraph Nos.9 and 10 of the Order would clearly indicate that the main reason why the Suit is decreed is because principles of natural justice were not followed while seeking to recover possession of the land in question from Plaintiff. This would obviously mean that the action for recovery of possession can always be taken by the Collector after following the principles of natural justice. The directions issued by this Court in paragraph No.11 of the Order are restricted only in respect of Order dated 6 June 2003 and it would always be open for the Collector to initiate fresh proceedings and follow principles of natural justice, before taking any action against Plaintiff. This however shall not be implied as if this Court has issued any directions to the Collector to take any action against Plaintiff.

5. With the above clarification, Interim Application is disposed of. All contentions of the parties on merits, including maintainability and limitation in respect of fresh proceedings, if and when initiated by the Collector, are kept open.

SANDEEP V. MARNE, J.

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