

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12526 OF 2024**

Murlidhar Nana Bothre and ors. ... Petitioners

versus

The State of Maharashtra and ors. Respondents

Mr. Girish Godbole, Senior Advocate along with Mr. Sumit Kothari and Ms. Deepashikha Godbole i/b. Mr. Sumit Kothari, Advocate for the Petitioners.

Ms. Aloka A. Nadkarni, AGP for Respondent Nos.1 to 3/State.

Mr. Mandar Limaye, Advocate for Respondent Nos.4b(a) and 4b(b).

Mr. Akshay Petkar along with Mr. Aniket Malu and Mr. Nikhil Sawkar, Advocate for Respondent No.6.

CORAM : R. M. JOSHI, J.

DATE : 4th SEPTEMBER, 2024.

P.C. :

1. This petition takes exception to the order dated 29th July 2024 passed by Sub-Divisional Officer, Khed in RTS Revision No.433 of 2022 and order dated 6th July 2022 passed by Tahsildar, Khed (Pune) in Application No.SR/4/2020 and modified order dated 20th July 2020.

2. Heard learned counsel for both sides.

3. Learned senior counsel appearing on behalf of the petitioners, at the outset, has drawn attention of this Court to the manner in which the order came to be passed by Tahsildar. It is his submission that though there was a stay granted to the proceeding by Sub-Divisional Officer (SDO), Tahsildar proceeded further with the hearing of the proceeding

and decided the same. It is alleged that in order to overcome the order of transfer of proceedings, ante dated order came to be passed. It is his further submission that even on merits, he would be in position to satisfy this Court about seeking quashments of the orders impugned.

4. Learned counsel for the contesting respondents opposed the said submissions by referring to the order dated 6th June 2022 passed by the SDO in Appeal No.341 of 2022. It is contended that though order of status-quo came to be passed, the same was only applicable in respect of the proceeding under Section 143 of the Maharashtra Land Revenue Code 1966 (for short "the Code") and not in respect of the proceeding under Section 5 of the Mamlatdars' Court Act 1906. It is their further submission that on merit these respondents have good case for sustainment of the orders impugned.

5. It is settled principle of law that justice is not only to be done but it is also seen to have been done. The judicial as well as quasi judicial authorities, therefore, are duty bound to maintain utmost discipline and transparency in conducting proceedings, so also while passing the orders. Ex facie perusal of the record indicates that the proceeding was filed under Section 143 of the Code before Tahsildar, Khed. By passing order dated 4th May 2022, an amendment was allowed by Tahsildar to the said proceeding and this proceeding was converted into proceeding under Section 5 of the Mamlatdars' Court Act. There is no dispute about the fact that this very order was challenged before the SDO in Appeal No.341 of

2022 and by order dated 6th June 2022, status-quo was directed to be maintained.

6. This Court finds substance in the contention of learned senior counsel appearing on behalf of the petitioners that status-quo was to the proceedings before the Tahsildar. The order dated 6th July 2022 passed by Tahsildar, Khed, also indicates that the order dated 6th June 2022 was treated as a stay of the proceedings only. However, it is interpreted by Tahsildar that the said stay was in respect of the proceedings under Section 143 of the Code and not to the proceedings under Section 5 of the Mamlatdars' Court Act. Though it is said so in the order, this Court does not find the said reason appropriate but an apparent excuse. It is pertinent to note that order dated 4th May 2022 of granting amendment to the proceedings under Section 143 of the Code and conversion of the said proceedings under Section 5 of the Mamlatdars' Court Act was challenged in appeal before the SDO and in the context of said order, SDO had directed the proceedings to be stayed. It was, therefore, incumbent on the part of the Tahsildar to stay his hands away from the proceedings. Apart from this, it is pertinent to note that this order was duly conveyed to the Tahsildar and, it is thereafter, the proceedings were closed and decided in absence of petitioners herein.

8. There is one more facet to the issue i.e. there was an order passed on 7th July 2022 by Additional Collector, transferring the proceedings from Tahasildar to another officer. In this back drop, there is

allegation that to overcome such order of transfer of proceeding, ante dated order came to be passed. There cannot be a positive finding recorded on this aspect but considering overall facts and circumstances of the case, the allegation to that effect cannot be discarded in *limine*.

9. Though learned counsel for the contesting respondents have raised issue with regard to the maintainability of the Appeal No.341 of 2022 against the order passed by the Tahsildar dated 4th May 2022 as well as taking objection with regard to the order passed by Additional Collection of transferring the proceedings from Ms. Vaishali Waghmare to another Tahsildar, it is pertinent to note that irrespective of the merit of the case, it is apparent from the record that the Tahsildar, Khed, has shown undue haste in deciding the application with absolutely wrong interpretation of the order passed by SDO granting stay to the proceedings. Similarly, there is violation of principles of natural justice. It cannot be considered as a coincidence that there was an order passed on 7th July 2022 by Additional Collector of transferring proceedings from this authority to another person and the order impugned came to be passed on a day before i.e. on 6th July 2022.

10. This Court in Writ Petition No.10152 of 2022 has passed following order by noting conduct of the same Tahsildar in paragraph 5 which reads as under :

“5. Be that, as it may, it appears from the petition and reply filed by the respondent, that Additional Collector, Pune vide administrative order dated 07.7.2022 made over proceedings, then

pending before Tahasildar, Khed, Rajgurunagar to Tahasildar Ambegaon. Learned Counsel for the contesting respondents, on instructions, submits that order of Additional Collector dated 07.7.2022 was brought to the notice of Tahasildar, Khed, Rajgurunagar. It is submitted that, in spite of order dated 7.7.2022 passed by the Additional Collector, the Tahasildar overlooked it and issued order u/s 5 of the Mamlatdars' Courts Act, purportedly passed on 6.7.2022. In other words, according to the respondents, order was given a date of 06.07.2022 though it was prepared on 7.7.2022 or at subsequent time. It is one of the grounds taken in the revision by the respondents. The allegations are serious. If that be so, let the petitioner implead Miss Vaishali Waghmare, Tahasildar, Khed Rajgurunagar as party respondent."

11. All these facts more than sufficiently demonstrate that the order passed by the Tahsildar is in defiance of the order of status-quo granted by SDO and also by showing undue haste and without giving an opportunity of hearing to the petitioner. Thus, this Court is of the view that even without going into the merits of the case, it would be absolutely necessary that the order impugned dated 29th July 2024 is set-aside. Accordingly, the said order is set-side. The proceedings before Tahsildar are restored to the stage as on 4th May 2022. Resultantly, consequent proceedings have become redundant.

12. Learned counsel for the contesting respondents submits that appropriate directions be issued to the Tahsildar to decide the proceedings under Section 5 of the Mamlatdars' Court Act within a stipulated period. Learned senior counsel appearing for the petitioners does not object to the said request.

13. Having regard to the nature of the proceedings and time spent in between, it would be appropriate to direct the Tahsildar to decide the said proceedings within a period of six weeks in accordance with law.

14. All issues sought to be raised by rival parties are specifically kept open before Tahsildar. This Authority is expected to hear both sides and pass orders in accordance with law. Needless to say that the proceeding be heard and decided by any person other than the one who passed order dated 29th July 2024.

15. The petition, therefore, stands allowed in the above terms.

(R. M. JOSHI, J.)