2024:BHC-NAG:11924

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

Writ Petition No. 3361 of 2011

(1) Athar Ejaz Khan S/o Gulam Bandenawaz Khan, Age Adult, Occ : Agriculturist

(2) Smt Sabiya w/o. Shabbir Ahmad Khan Age Adult, Occ : Household.

(3) Numan S/o. Shabbir Ahmad Khan Age Minor through Natural Guardian mother petitioner no. 2.
All R/o. Gulzar Pura, Barshitakli, Tq. Barshitakli, District Akola **… Petitioners**

- Versus -

(1) Bharat S/o. Atmaram Dhawale Aged 47, Occupation- Agriculturist, R/o. Ashtanvinayak Colony, Khadki, Tq. & District Akola.

(2) The Sub Divisional Officer, Akola Division, Tq. & District Akola.

(3) The Tahsildar, Barshitakli, District Akola.

(4) The State of Maharashtra Department of Revenue, Through its Principal Secretary, Mantralaya, Mumbai – 32. **… Respondents**

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Mr. S. O. Ahmed, Advocate for the petitioners
Mr. S. A. Mohta, Advocate for the respondent no. 1
Mr. S. C. Joshi, AGP for respondent nos. 2 to 4

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CORAM : ANIL L. PANSARE, J.

DATED : 22-10-2024

ORAL JUDGMENT

Heard at length.

2. The petition arises out of order dated 27-5-2011 passed by respondent no. 2 in an appeal filed by respondent no. 1, thereby setting aside order dated 25-1-2008 passed by the Tahsildar, Barshitakli.

3. Learned counsel for the petitioners submits that the Sub Divisional Officer (SDO) could not have entertained the appeal, the same being barred under sub-sections (4) and (5) of Section 143 of the Maharashtra Land Revenue Code, 1966 (for short 'the MLR Code'). Sub-sections (4) and (5) read thus :

> *"(4) Any person who is aggrieved by a decision of the Tahsildar under this Section may, within a period of one year from the date of such decision, institute a civil suit to have it set aside or modified.*
>
> *(5) Where a civil suit has been instituted under sub-section (4) against the Tahsildar's decision, such decision shall not be subject to appeal or revision."*

As could be seen, where a civil suit has been instituted under sub-section (4) against the Tahsildar's decision, such decision shall not be subject to appeal or revision.

4. In the present case, the decision of Tahsildar was challenged by the vendor (original plaintiff) of respondent no. 1 in

Regular Civil Suit No. 130/2008. The petitioners were party defendants in the said suit. The respondent no. 1 has, pending suit, purchased the suit property from the vendor. The respondent no. 1, on 26-7-2010, moved an application for impleadment as plaintiff no. 2.

5. It is thus evident that respondent no. 1 was aware of pendency of suit and the challenge made thereunder. Despite such status, the respondent no. 1 has challenged Tahsildar's order initially before the Collector and thereafter before the SDO, who entertained the appeal, despite there being specific plea raised by the petitioners that the appeal is barred in terms of sub-section (5) of Section 143 of the MLR Code.

6. The order of SDO, being contrary to the provisions of law, is unsustainable and thus, liable to be set aside. Accordingly, writ petition is allowed. Order passed by respondent no. 2 – Sub Divisional Officer, Akola on 27-5-2011 in Revenue Appeal No. BND-54/Askaripur/2/2010-11 is quashed and set aside.

7. Rule is made absolute in above terms with no order as to costs.

(Anil L. Pansare, J.)

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