



drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.542 OF 2016

Narayan Gangadhar Yewale
Age - 45 years, Occ - Agriculture
R/o Chandegaon, Taluka - Rahuri
District - Ahmednagar

PETITIONER

VERSUS

1, The Additional Commissioner
Nashik Division Nahik

RESPONDENTS

2. The Additional Collector,
Taluka - Shrirampur, District - Ahmednagar

3. Sub Divisional Officer
Shrirampur, Taluka - Shrirampur
District - Ahmednagar

4. Tahsildar Shrirampur
Taluka - Shrirampur, District - Ahmednagar

5. Circle Officer, Belapur,
Taluka - Shrirampur, District - Ahmednagar

6. The Talathi, Village Valadgaon
Taluka - Shrirampur, District - Ahmednagar

.....
Mr. P. S. Dighe h/f Mr. V. R. Dhorde, Advocate for the Petitioner
Mrs. M. L. Sangit, AGP for Respondent - State

.....

[CORAM : MANJUSHA DESHPANDE, J.]

DATE : 8th JANUARY, 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith. Writ Petition is taken up for final disposal with the consent of the learned Advocates

for the parties.

2. Petitioner has challenged the legality and validity of orders passed by Respondent No. 1 – Additional Commissioner, Nashik Division, Nashik dated 5th January, 2015 thereby dismissing RTS Revision No. 5 of 2013 for non prosecution and order rejecting Miscellaneous Application No. 16 of 2015 for setting aside the order dated 5th January, 2015, dated 30th June, 2015 .

3. Brief facts, giving rise to the present Writ Petition, are that, the Petitioner is an agriculturist having agricultural land at village Chandegaon, Taluka – Rahuri. In the month of May, 2010, petitioner received notice dated 4th May, 2010 issued by Respondent No.4 – Tahsildar stating that Petitioner along with one person has illegally excavated sand from Pravara riverbed at village Valadgaon and hence, imposing penalty of Rs.11,60,525/- on the Petitioner.

4. Being aggrieved by the order passed by Respondent No. 4 – Tahsildar imposing penalty on him, the Petitioner filed Appeal No. 180 of 2010 under section 247 of the Maharashtra Land Revenue Code, 1966 before Respondent No. 3 – Sub Divisional Officer, Shrirampur. The Sub Divisional Officer, Shrirampur, after hearing the RTS Appeal No. 180 of 2010, confirmed the order passed by the Tahsildar, Shrirampur. Order dated 22nd March,

2012, passed by the Sub Divisional Officer, was challenged by the Petitioner before Additional Collector, Ahmednagar in Second Appeal No. 69 of 2012, which was dismissed by the Additional Collector, Ahmednagar, by order dated 20th December, 2012. Hence, the Petitioner filed RTS Revision No. 5 of 2013 on 4th February, 2013, before Respondent No. 1 - Additional Commissioner, Nashik challenging order passed by the Additional Collector, on various grounds. Respondent No. 1 issued notice on 3rd September, 2013 to the petitioner asking him to remain present for hearing on 29th November, 2013. Thereafter, no notice of hearing was issued to the petitioner.

5. It is the contention of the Petitioner that since the petitioner was represented through Advocate, it was expected that the Advocate would take care of the matter. However, all of a sudden, the RTS Revision filed by the Petitioner came to be dismissed by the Additional Commissioner, Nashik by order dated 5th January, 2015, for non prosecution, holding that the petitioner and the respondents have remained absent from time to time and, therefore the RTS Revision is dismissed for want of prosecution.

6. Upon going through the impugned order dated 5th January, 2015, it transpires that the Additional Commissioner, Nashik has

observed that the Petitioner as well as Respondents have remained consistently absent from 2nd May, 2013, therefore, the Additional Commissioner, Nashik has come to the conclusion that both the parties are not interested in working out the matter. Hence, the RTS Revision application has been dismissed for non prosecution.

7. On receipt of the order dated 5th January, 2015 through post, the petitioner immediately approached Respondent No.1, by filing application on 18th February, 2015, for restoration of the RTS Revision.

8. On going through the application filed by the Petitioner for restoration of the Revision, it discloses that the Petitioner has categorically mentioned that the Petitioner, being an agriculturists, was busy in agricultural activities and hence his absence was neither deliberate nor intentional. The Petitioner has also expressed his intention to proceed with the matter and, therefore, it was requested to restore the RTS Revision.

9. It is the contention of the petitioner that though the Petitioner has filed application for restoration of RTS Revision, giving satisfactory reasons, without considering the reasons stated in the application, the Additional Commissioner, Nashik by subsequent order dated 30th June, 2015, has held that the RTS

Revision was dismissed without any inquiry, in absence of satisfactory reason, it would not be appropriate to restore the matter.

10. Learned Advocate for the Petitioner submits that it is on account of negligence on the part of Advocate of the Petitioner, who failed to attend the hearing before the Additional Commissioner, Nashik the impugned order dated 5th January, 2015 has been passed. It is further submitted that without considering the reasons given by the Petitioner in the application filed under Order IX, Rule 4 of the Civil Procedure Code, the Additional Commissioner, Nashik refused to interfere with order dated 5th January, 2015, vide order dated 30th June, 2015. Learned Advocate for the Petitioner further submits that, in view of the fact that the Revision Application has not been decided on merits and considering the facts and circumstances of the case, both the orders passed by the Additional Commissioner, Nashik are required to be quashed and set aside, and in the interest of justice, the matter is required to be remanded back to the Additional Commissioner, Nashik for hearing and final disposal of the RTS Revision, on merits.

11. Learned AGP appearing for the Respondents - State has opposed the prayers made by the Petitioner and submitted that

in view of the consistent absence of the Petitioner, there is nothing wrong in the orders passed by the Additional Commissioner, Nashik. It is further submitted that though Advocate engaged by the litigant is expected to attend the matter, however, the litigant is also expected to ensure that the Advocate engaged by him is attending the dates of hearing from time to time. Hence, if at all this Court is of the opinion that the matter is required to be remanded back to the Additional Commissioner, Nashik cost is required to be imposed on the Petitioner.

12. Having perused both the orders passed by the Additional Commissioner, Nashik as well as the application filed by the Petitioner, it is evident that, in the order dated 5th January, 2015 itself, the reason given by the Additional Commissioner, Nashik is that the Petitioner as well as the respondents have remained absent consistently. It is the contention of the Petitioner that, since the Petitioner was all along represented through Advocate engaged by him, the Petitioner was expecting the matter to be attended by the Advocate and the Advocate would take care of the proceedings. However, Advocate for the Petitioner has failed to attend the matter on the scheduled dates of hearing, as a result, the proceedings have been dismissed for non prosecution.

13. After hearing the parties and on going through the documents produced on record as well as the impugned orders, it is clear that the impugned order dated 5th January, 2015 is a cryptic order. The said order is passed only due to the absence of the parties for hearing. Though the Additional Commissioner, Nashik has given reason of absence of the parties, however, the fact remains that the matter was entrusted to the Advocate by the petitioner, who represented him and once the brief is entrusted to the Advocate, it is for the Advocate of the Petitioner to attend and take care of the hearing in the matter. When the brief is entrusted to the Advocate, it is expected that the Advocate would take care of the case and the litigant is not expected to suffer on account of inaction on the part of his Advocate. The litigant is innocent party who should not be allowed to suffer for the negligence on the part of the Advocate. This has been the consistent view taken by the Supreme Court as well as High Court in various Judicial Pronouncements. Learned Advocate for the Petitioner has placed reliance on judgment of this Court in **“Bhausheb Hiranman Mokale and Others V/s Laxman Shankr Gaikwad”** reported in **2011 (6) AIR Bom. R 637**, wherein, similar view is taken by this Court. Similarly, in a **“Ashok Ravaji Vadodriya V/s Municipal Corporation of Greater Bombay”** reported in **2003 (3) Mh.L.J. 1003**, this

Court relied on the principles laid down by the Supreme Court in ***“Rafiq and another V/s Munshilal and Another (1981) 2 SCC 788***, wherein it is categorically held that the obligation of the party is to select his Advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. To go the Court to inquire as to what is happening in the Court with regard to his matter and inform his lawyer is not part of his job.

14. Hence, considering the consistent view taken by the Supreme Court as well as by this Court, and in view of the fact that substantive rights of the Petitioner are at stake as he is facing penalty of huge amount imposed by the Tahsildar, it is necessary to hear the RTS Revision on merits. Therefore, in my opinion, the impugned orders passed by the Additional Commissioner, Nashik deserve to be quashed and set aside in the interest of justice.

15. Accordingly, Writ Petition is allowed. Order passed by Respondent No. 1- Additional Commissioner, Nashik Division, Nashik in RTS Revision No.5 of 2013 dated 5th January, 2015 is quashed and set aside. Resultantly, order dated 30th June, 2015, refusing to restore the RTS Revision No. 5 of 2013 is also quashed and set aside. The matter is remanded back to

Additional Commissioner, Nashik Division, Nashik for deciding RTS Revision No. 5 of 2013 on its own merits, after affording opportunity of hearing to the respective parties. Rule is made absolute in above terms.

**[MANJUSHA DESHPANDE_]
JUDGE**

drp/wp542-16.16.doc