

Shabnoor

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

WRIT PETITION NO.9383 OF 2015

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AYUB
PATHAN

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Laxman Dyanu Salunke & Anr. ... Petitioners
V/s.
Bebitai Venkatrao Jadhav & Anr. ... Respondents

Mr. Shivaji A. Masal for petitioner.

Ms. Madhubala Kajle, 'B' Panel Advocate for
respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 29, 2025

P.C.:

- 1. Rule.** Rule made returnable forthwith.
- The challenge in the present petition is directed against the order dated 16 July 2015, passed by the Sub-Divisional Authority, Miraj, in exercise of powers under Section 247 of the Maharashtra Land Revenue Code, 1966 ("MLR Code"), whereby the authority purported to adjudicate upon the proceedings arising from an appeal under Section 144 of the MLR Code. The gravamen of the petitioners' contention rests on the jurisdictional propriety of the Sub-Divisional Authority in entertaining the appeal, particularly in light of procedural infirmities that rendered the exercise of power manifestly inequitable. It is pertinent to note that Section 247 of the MLR Code vests quasi-judicial authority in the Sub-Divisional Officer, contingent upon strict adherence to statutory safeguards,

including the imperative of affording reasonable opportunity to contesting parties—a facet conspicuously absent in the instant case.

3. A perusal of the record reveals glaring procedural irregularities. The notice dated 30 May 2015, issued to the petitioners, directed their presence at the Tehsil Office in Tasgaon on 23 June 2015 at 11:00 a.m. However, the impugned order was unilaterally passed by the Sub-Divisional Officer at Miraj on the very same date, thereby depriving the petitioners of their right to appear and present their case. This abrupt departure from the notified venue—Tasgaon to Miraj—without prior intimation or plausible justification, not only engendered confusion but also rendered the notice otiose. Such conduct contravenes the foundational tenets of procedural fairness enshrined under Section 144(3) of the MLR Code, which mandates a reasonable opportunity of hearing prior to any adverse determination.

4. The impugned order, having been passed in flagrant violation of the principles of natural justice, squarely falls within the three exceptions delineated by the Hon’ble Supreme Court in **Whirlpool Corporation v. Registrar of Trademarks, Mumbai (1998) 8 SCC 1**. Specifically, the case at hand invokes the exception where the order is challenged as ultra vires the statutory framework and where the authority acts in defiance of the fundamental precepts of fairness, thereby vitiating the proceedings ab initio. The failure to afford the petitioners a hearing, coupled with the unilateral alteration of venue, constitutes a patent denial of audi alteram partem—a cornerstone of natural justice—thus warranting judicial

intervention.

5. Despite due service upon contesting Respondent No. 1, no appearance has been entered on their behalf. In such circumstances, this Court is bound to proceed ex parte in the absence of a party duly served yet choosing not to participate. However, the absence of representation does not dilute the imperative of ensuring substantive justice, and this Court has independently scrutinized the record to safeguard against procedural miscarriage.

6. Hence, the following order is warranted:

(i) The impugned judgment and order dated 16 July 2015, passed by the Sub-Divisional Officer, Miraj, in RTS Appeal No. 18 of 2015, is hereby quashed and set aside on grounds of procedural illegality and violation of natural justice;

(ii) RTS Appeal No. 18 of 2015 is restored to the file of the Sub-Divisional Officer, Miraj, Sub-Division, Miraj, District Sangli, with a direction to adjudicate the matter afresh in strict compliance with the statutory framework under Sections 144 and 247 of the MLR Code;

(iii) The Sub-Divisional Officer, Miraj, shall conduct a de novo hearing, ensuring that both parties are afforded a full and fair opportunity to adduce evidence, advance submissions, and respond to each other's contentions. The authority shall endeavor to conclude proceedings expeditiously, preferably within a period of three (3) months from the date of receipt of this order, without being influenced by any observations made in the impugned order

or in the present judgment.

7. The Rule is made absolute in the aforesaid terms. No order as to costs.

8. The writ petition stands disposed of accordingly.

(AMIT BORKAR, J.)