

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11384 OF 2024

Shree Machhi Mahajan,
Society duly registered,
Through its secretary,
Ravindra Pema,
Address:- Shree Satyanarayan Mandir,
Kathiria, Nani Daman, - 396 210

...Petitioner

Versus

The Collector,
Daman.

...Respondent

Adv. Manoj Badgujar, for the Petitioner.

Adv. Hiten Venegaonkar a/w Manoj Sabale, for the Respondent.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE : 29 JANUARY 2025

ORAL JUDGEMENT (Per Advait M. Sethna, J.):

1. Rule, returnable forthwith. With the consent of the parties heard finally.
2. This petition is filed by the petitioner under Article 226 of the Constitution of India, praying for the following substantive reliefs :-

- (a) Rule be issued;
- (b) By grant of appropriate writ, order or direction, this Hon'ble Court may be pleased quash and set aside order dated 08.08.2024;"

3. The petitioner is a society registered under the Society Registration Act, 1860 which works for welfare of the Macchi/Tandel (fishing) community in Daman District. The respondent is the Collector, Daman and Diu who has passed the order dated 8 August 2024 ("**impugned order**" for short). The

petitioner is mainly aggrieved by an impugned order which read thus:-

“ORDER

“Whereas, the name of Shri Macchi Mahajan Nani Daman with respect to an area of 14700 sq. mt of survey No. 6/2 of village Kathiria in other rights for the purpose of public welfare and charitable use;

And whereas, the Mamlatdar, Daman vide report dated 12/07/2024 reported that Shri Macchi Mahajan school sports complex is constructed on the said Government land;

And whereas, it has been brought to the notice of the undersigned that the reported construction was done without obtaining valid permission from the Competent Authority land, the said activity is in contravention to the provisions of section 31 of the Goa, Daman and Diu Land Revenue Code, 1968 for restriction on use of land and in violation to the conditions (b) and (c) under Rule 4 of the Goa, Daman and Diu Land Revenue (Conversion of use of land and non-agricultural Assessment) Rules, 1969;

And whereas, it is also brought to the notice that said allotted land which was for the use of public welfare and charitable purpose is being used by Shri Macchi Mahajan Nani Daman for private use and generating profit from it which is deviation of use for the purpose other than for which it is assigned as provided u/s 18 of the of the Goa, Daman and Diu Land Revenue Code, 1968; Therefore, I, Saurabh Mishra, Collector, Daman in exercise of the power conferred in me u/s 18 and 33 of the of the Goa, Daman and Diu Land Revenue Code, 1968 hereby pass the order as under:

- 1. The name of Shri Macchi Mahajan Nani Daman shall be deleted from the other rights in respect of survey no. 6/2 of village Kathiria.*
 - 2. Shri Macchi Mahajan Nani Daman shall hand over the peaceful possession of the said land within 07 days of the receipt of this order Enquiry Officer, City Survey, Daman.*
 - 3. The Mamlatdar, Daman shall carry out the mutation accordingly.*
- Given under my hand and seal on 08th Day of August, 2024.”*

- 4.** We have heard learned counsel for the parties, and with their assistance, we have perused the record.

5. A perusal of the impugned order would clearly indicate that it was passed without opportunity of hearing to the petitioner, who, therefore, is undoubtedly the aggrieved person. We find that the impugned order is passed by the respondent in exercise of powers conferred under section 18 read with section 33 of the Goa, Daman and Diu Land Revenue Code, 1968. It is apparent that under the said order, the name of the petitioner is deleted from the land records in respect of subject land bearing survey number 6/2 of village Kathiria, Daman and the impugned order, the petitioner was also directed to handover peaceful possession of the said land within seven days of passing of the impugned order, and consequential amendments to be carried out in the mutation entries in regard to deletion of the petitioner's name.

6. We find substance in the submission of Mr. Manoj M. Badgujar, learned counsel for the petitioner to the effect that the impugned order is passed in violation of the principles of natural justice. This is for reasons more than one. We find that the petitioner was not heard when the order was passed which is not controverted by the respondent. Further, the impugned order assigns no reasons arriving at the conclusion leading to deletion of the petitioner's name from the land records and insofar as the subject land is concerned.

7. It is settled law that when an order entails civil consequences such as the one in the given facts and circumstances of the case, the acquainted person ought to have been heard and given a reasonable opportunity to represent his case before the authority. Such mandatory requirement and facets of natural justice was given a complete go-by, by the said respondent in the present case as rightly submitted by Mr. Badgujar. Also, no show cause notice prior to passing of the

impugned order was issued to the petitioner which is again not disputed. This clearly deprived the petitioner of the opportunity of representing its case before the said respondent. As correctly submitted by Mr. Badgujar, learned counsel for the petitioner, it appears that the petitioner had absolutely no idea as to the material relied upon by the respondent which led to the impugned order being passed against the petitioner. Had the petitioner known about such material and had been represented before the said respondent, he would have been better equipped to present his case. This did not happen. The consequences of such order are grave in as much as the petitioner's name is deleted from the land record *in absentia* which has caused grave prejudice to the petitioner. Mr. Hiten Venegaonkar, learned counsel for the respondent would fairly submit that the petitioner was not heard before passing of the impugned order. Thus it is clear that the impugned order was passed contrary to the settled jurisprudential principles of natural justice which forms a part of Article 14 of Constitution of India, as held by the Supreme Court in **Delhi Transport Corporation v. DTC Mazdoor Union**¹ and **Union of India & Anr v. Tulsiram Patel**².

8. In view of the forgoing discussion, we pass the following order which would serve the interest of justice :-

ORDER

- (i) The impugned order dated 8 August 2024 passed by the respondent - Collector, Daman is hereby by quashed and set aside.

¹ AIR 1999 SC 564

² (1985) 3 SCC 398

- (ii) The proceedings are remanded to respondent for *de novo* consideration and determination of the rights/claim of the petitioner on all issues in accordance with law.
- (iii) The respondent shall pass appropriate order after hearing the petitioner in accordance with law, not later than four weeks from the date on which this order is made available to the said respondent.
- (iv) All rights and contentions of the parties are expressly kept open.
- (v) Rule is made absolute in above terms. No order as to costs.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]