

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7699 OF 2014

1. Huru Begum w/o Sharif Khan,
Age 58 years, occup. Household,
R/o Mangalk Bazar, Qadradab,
Jalna
2. Afroz s/o Sharif Khan,
Age 30 years, occup. Labour,
R/o Mangal Bazar, Qadradab,
Jalna
Through Constituted Attorney Holder,
i.e. General Power of Attorney
Shri Amzad Ali s/o Janab Ali Mullick,
Age-41 years, occu: Business,
r/o Room No. 5-B, 5th Floor,
57-A, Memonwada Road, Mohammad
Ali Road, Mumbai 400032. .. Petitioners

versus

1. The State of Maharashtra
Through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai - 400032.
2. The Hon'ble Minister for
Revenue & Forest Department,
Maharashtra State, Mantralaya,
Mumbai -400032.
3. The Divisional Commissioner,
Aurangabd.
4. Ramkunwar s/o Kundanmal Gupta,
Age-76 years, occu: Business,
5. Smt. Nirmala Devi w/o Ramkunwar Gupta,
Age-72 years, occu: Business,

6. Rajendrakumar s/o. Ramkunwar Gupta,
Age-54 years, occu: Business,
7. Mahendrakumar s/o. Ramkunwar Gupta,
Age-41 years, occu: Business,
8. Jitendrakumar s/o. Ramkuwar Gupta,
Age-38 years, occu: Business, .. Respondents

Respondents No. 4 to 8 resident of
Sadar Bazar Police Station Road,
Old Mondha, New Jalna.

Ms. Pradnya S. Talekar, Advocate instructed by Talekar and Associates for petitioners

Mr. P.N. Kutti, Assistant Government Pleader for respondents no. 1 to 3

Mr. A. B. Kale, Advocate for respondents no. 4 to 8

CORAM : SUNIL P. DESHMUKH, n J.

DATE : 31st August, 2017

ORAL JUDGMENT

1. Petitioners are before this court, aggrieved by order dated 13-08-2014 passed by respondent no.2 – Honourable Minister for Revenue and Forest, Maharashtra State, in the two proceedings pending before him, setting aside orders dated 11-10-1982 and 28-02-2013 passed by the Divisional Commissioner, and remanding the proceedings to the Divisional Commissioner for deciding the same afresh.

2. The two proceedings, one in the form of revision and another as an appeal pending before the Honourable Minister were in respect of orders dated 11-10-1982 and 28-02-2013 passed by the Divisional Commissioner, Aurangabad in cases bearing no.RVWS/III/Inam/1978/16 and ROR/Rev/395/2012/J respectively.

3. Learned counsel Ms. Pradnya Talekar appearing for petitioners points out that a writ petition bearing no. 5373 of 2013 had been filed by present petitioners challenging order passed by the Honourable Minister (Revenue) dated 12-06-2013 overruling the objections by the petitioners to the maintainability of revision in view of the Hyderabad Atiyat Inquiries Act, 1952 ("HAI Act").

4. She further submits that revision which had been preferred in 2013 against order passed in 1982 was absolutely a delayed proceeding and without deciding aspect of delay condonation, the order passed by the Revenue Minister had not been sustainable. She submits, in the circumstances, the Honourable Single Judge of the High Court under order dated 06-08-2013 in aforesaid writ petition no. 5373 of 2013 had set aside order dated

12-06-2013 passed by the Honourable Minister and sent the matter back to the Honourable Minister for deciding application for delay condonation and also the issue of maintainability of proceedings under the Maharashtra Land Revenue Code, 1966.

5. Thereupon, the Honourable Minister (Revenue) by order dated 21-09-2013 purportedly condoned the delay and under further order dated 04-01-2014 purported to hold that he would have jurisdiction to decide the matter.

6. The petitioners, aggrieved by aforesaid two orders of the Honourable Minister (Revenue) had been before this court under writ petition bearing no. 837 of 2014. The Honourable Single Judge of the High Court in his order dated 28-01-2014 passed in said writ petition had observed that the petitioners had challenged the maintainability of proceedings filed by respondents under the Maharashtra Land Revenue Code before the Honourable Minister, contending that the Honourable Minister may not have jurisdiction to entertain the proceedings, for, order dated 11-10-1982 passed by the Divisional Commissioner had been under HAI Act and that order passed by the Honourable

Minister does not make reference to order dated 11-10-1982 of the Divisional Commissioner assailed by the respondents considering that said order does not refer to as to pursuant to which provisions the same had been passed and yet, held that he had jurisdiction to consider the order dated 11-10-1982. It has been observed by the Single Judge that it was expected of the Honourable Minister to give finding in respect of issue of maintainability of proceedings before him and about his jurisdiction to entertain the same and also to reflect upon in respect of provisions under which he had considered the order dated 11-10-1982.

7. Ms. Talekar submits, Honourable Single Judge had upheld the contention of the petitioners questioning the propriety of the order dated 04-01-2014 passed by the Honourable Minister. She further fairly refers to that, the high court yet, had refused to interfere with the order of condonation of delay passed by the Minister.

8. Honourable Single Judge in paragraph no. 9 of his order dated 28-01-2014 had observed thus :

" 9. The order dated 04.01.2014 upholding the jurisdiction for respondent no. 2 is quashed and set aside. The respondent no. 2 shall consider the application filed by petitioners raising objection about

maintainability and jurisdiction afresh along with revision. The parties including the concerned authorities are entitled to make necessary submissions in that regard. The Hon'ble Minister shall consider the aspect of jurisdiction and the maintainability on its own merits on the basis of submissions made, the provisions of law and record and shall decide the same along with the main proceedings filed by the present respondents under section 257 of the M.L.R.C. The writ petition accordingly is disposed of with aforesaid observations and directions, however, with no order as to costs. "

9. Learned counsel Ms. Talekar submits that despite aforesaid categorical and clear observations by the learned Single Judge, the Honourable Minister has, though referred to the order dated 28-1-2014 passed by learned Single Judge in writ petition no. 837 of 2014, has missed out on the gist of the directions in the same. She submits that the order of the Honourable Minister nowhere reflects upon maintainability and jurisdiction of the Honourable Minister with reference to any provisions of law and simply purports to consider that order dated 11-10-1982 of the Divisional Commissioner had been passed without opportunity to the other side whereas the situation would emerge that no record had been made available for examination. She submits, in any case, apart from the order impugned in the present writ petition dated 13-08-2014 being untenable and unsustainable, it does not

at all reflect upon any compliance of the directions issued by Honourable Single Judge of this court under his order dated 28-01-2014 in writ petition no. 837 of 2014. She, therefore, urges to allow writ petition and set aside impugned order.

10. Learned counsel appearing on behalf of respondents no. 4 to 8 Mr. A.B. Kale purports to support the impugned order, submitting that the Honourable Minister has considered relevant aspects involved in the matter. He submits that the order impugned does refer to order dated 28-01-2014 passed by this court and in the same, it has further been considered that order dated 11-10-1982 by the Divisional Commissioner was without opportunity to present respondents no. 4 to 8 and is of administrative nature. The Honourable Minister has taken a just view of the matter and has remitted both the matters to Divisional Commissioner for consideration of the same by giving opportunity to the parties. He, therefore, requests not to interfere with impugned order passed by the Honourable Minister.

11. Perusal of order dated 13-08-2014 passed by the Honourable Minister (Revenue) shows that although reference has been made in the same to the order of the

High Court dated 28-01-2014 in writ petition no. 837 of 2014, however, the same does not at all show that the purpose underlying the directions given under said order has been met with and/or considered. The order impugned does not reflect upon as to how the proceedings having been considered to be maintainable or for that matter the Honourable Minister would have jurisdiction to entertain and deal with matters, albeit, it purports to consider that order dated 11-10-1982 by the Divisional Commissioner, Aurangabad was in breach of principles of natural justice and as such setting it aside remitted the matter for reconsideration to the Divisional Commissioner.

12. It is the contention of the petitioners that the record had not been made available, submitting that the concerned subordinate officials have expressed inability to produce the record for being not traceable. The order impugned does not reflect upon this aspect as well.

13. In the circumstances, it would be expedient that a proper order be passed by the Honourable Minister keeping in view the directions contained in the order dated 28-01-2014 of the Honourable Single Judge of this court in

writ petition no. 837 of 2014 as well as contentions of the petitioners that the record had not been made available for making observation about the breach of principles of natural justice. Impugned order is way short of consideration of directions issued by the high court referred to hereinbefore.

14. In the circumstances, impugned order dated 13-08-2014 passed by the Honourable Minister (Revenue) is set aside, remitting the matter to him to deal with the same, keeping in view the observations of the High Court in its order dated 28-01-2014 passed in writ petition no. 837 of 2014. It is expected that the Honourable Minister would carry out the exercise expeditiously and preferably within a period of six months from the date of receipt of writ of this order. Rule made absolute accordingly.

15. Writ petition stands disposed of.

SUNIL P. DESHMUKH
JUDGE

pnd/-