(2011) 08 BOM CK 0049

In the Bombay High Court

Case No : Writ Petition No. 3086 of 2011

Jaitunabi Shekh Musa — APPELLANT

Vs

Additional Commissioner and Others — RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 14(1), 16(2)
Constitution of India, 1950 — Article 226, 227

Citation : (2012) 3 BomCR 387

Hon'ble Judges : Savant R.M., J

Bench : Single Bench

Advocate : A.M. Ghare, H.R. Gadhia, A.R. Deshpande, N.L. Jaiswal and R.R. Dawda, for the Appellant; A.D. Sonak A.G.P., for respondent Nos. 1 and 2 and P.S. Patil, for the Respondent

Judgement

Savant R.M., J.—Rule with the consent of the parties made returnable forthwith and heard. The above petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 18/5/2011 passed by the Additional Commissioner, Amravati Division Amravati, by which order the appeal filed by the respondent No. 3 herein came to be allowed and resultantly the order dated 24/1/2011 passed by the Additional Collector, Washim in Gram Panchayat Case No. 41/BVP Act/16(2)/2009-2010 came to be set aside.

2. The petitioner herein was elected as a member of the Gram Panchayat Wara Jahagir, District Washim. The respondent No. 3 herein had filed a complaint before the Additional Collector alleging that the petitioner is disqualified u/s 14(1)(j-3) of the Bombay Village Panchayats Act on the ground that she has committed encroachment on Government land being Plot No. 585 of the said village. The respondent No. 3 in support of his case, relied upon Form No. 8 maintained by the Gram Panchayat, notice issued by the Gram Panchayat to the 28 persons and the resolution of the Gram Panchayat passed some time in January, 2010. The said complaint of the respondent No. 3 was replied to by the petitioner and the petitioner relied upon the Property Card in respect of Plot No.

562, the Certificate Ex. D to the petition which inter alia is to the effect that there is a change in the serial numbers of the property mentioned in Form No. 8, and the two tax receipts for the years 1999-2000 and 2010-2011 in respect of House No. 438 and House No. 585. The Additional Collector considered the said material and by his order dated 24/1/2011 rejected the application filed by the respondent No. 3 inter alia holding that on the basis of the material on record, it could not be said that the petitioner has encroached upon Plot No. 585 which is a Government land. It is significant to note that the Additional Collector has alluded to the documents in respect of Plot No. 562 and thereafter has come to a conclusion on the basis of the certificate produced by the petitioner that since the numbers of the property change in Form No. 8 every four years, it cannot be said that the petitioner has encroached upon Plot No. 585.

3. Aggrieved by the said order dated 24/1/2011 passed by the Additional Collector rejecting his application, the respondent No. 3 filed an appeal u/s 16(2) of the said Act before the Additional Commissioner. The Additional Commissioner by the impugned order dated 18/5/2011 has allowed the appeal filed by the respondent No. 3 and has thereby set aside the order passed by the Additional Collector. The Additional Commissioner has held that the Additional Collector erred in alluding to the facts related to Plot No. 562 and has thereafter come to an erroneous finding that the petitioner has not encroached upon Plot No. 585. The Additional Commissioner on the basis of the copy of the assessment list as well as the tax receipts, recorded a finding that the petitioner has encroached upon Plot No. 585. The Additional Commissioner has also observed that the Additional Collector has erred in allowing the petitioner to produce a document after the arguments were over.

4. A reading of the order of the Additional Commissioner ex facie discloses that the Additional Commissioner, who is the Appellate Authority, has not considered the findings recorded by the Additional Collector. It is for the Appellate Authority to consider whether the findings recorded by the lower authority were just and proper. In the instant case the allegations of the respondent No. 3 were confined to Plot No. 585 and therefore the Additional Commissioner ought to have considered the findings, if any, of the Additional Collector qua the said issue, however, as can be seen from the order, the same is lacking in the instant case. The Additional Commissioner ought to have recorded a finding qua the encroachment of Plot No. 585 considering the case of the petitioner that the tax receipt in question is in respect of the house property bearing No. 585 and not a plot. The Additional Commissioner therefore ought to have considered the matter from the perspective of the case of the respective parties and the documents produced by them qua Plot No. 585. In that view of the matter, the impugned order passed by the Additional Commissioner dated 18/5/2011 is quashed and set aside and the matter is relegated back to the Additional Commissioner for a de novo consideration of the appeal filed by the respondent No. 3. On remand the Additional Commissioner would be well advised to record his findings in respect of the findings recorded by the Additional Collector qua the

encroachment on Plot No. 585 by the petitioner. The case of the petitioner that the tax receipt is purported to be that of a house property and not a plot is also required to be addressed by the Additional Commissioner. The parties to appear before the Additional Commissioner on 29/8/2011. The Additional Commissioner thereafter to decide the appeal within a period of two months of the first appearance of the parties. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.