



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8507 OF 2015

Ramesh Dadarao Jarhad,
Age 70 years, Occu. Agricultural,
R/o. Jarhad Galli, Badnapur,
Taluka Badnapur, District Jalna .. Petitioner

Versus

1. The State of Maharashtra
Through the Secretary and
Special Executive Officer (Appeals),
Ministry of Forest and Revenue,
Mantralay, Mumbai
2. The Divisional Commissioner,
Aurangabad
3. The Sub Divisional Officer (Revenue)
Jalna
- 3-A Additional Collector, Collector Office,
Jalna
4. Tehsildar, Badnapur, District Jalna
5. Primary Health Clinic Badnapur
Through Chief Executive Officer
Zilla Parishad, Jalna
6. Sanjay Manikrao Kamble,
Age Major, Occu. Nil,
R/o. Badnapur, District Jalna .. Respondents

Mr. Vasant D. Salunke, Advocate for Petitioner;
Mr. P. P. Dawalkar, AGP for Respondents No.1 to 4;
Mr. P. D. Suryawanshi, Advocate for Respondent No.5;
Mr. R. R. Imale, Advocate for Respondent No.6

CORAM : SACHIN S. DESHMUKH, J.

DATE : 06-10-2026

PER COURT:-

1. The petitioner challenges the judgment and order dated 03.06.2015 passed by Respondent No. 1, the Secretary and Special Executive Officer (Appeals), Ministry of Forest and Revenue, allowing Appeal No. 2014/Pra.Kra.110/J7/Pra.Kra.949 (08)2014/AVPu and revoked the following three subordinate orders:

- (i) The order of the Deputy Commissioner (Entertainment Tax), Aurangabad Division, Aurangabad (No. ROR/CK/528/2012) dated 25.04.2014.
- (ii) The order of the Additional District Collector, Jalna (No. 2012/Ashti/Appeal/CR-56) dated 27.09.2012.
- (iii) The order of the Divisional Officer, Jalna (No. 2011/ROR/CR-114) dated 17.05.2012.

Further, vide clause (3) of the order under challenge, respondent No. 1 remanded the matter to the District Collector, Jalna, for a fresh inquiry and decision and specifically directed to personally visit the site, thoroughly examine the entire record, and complete the necessary proceedings within a period of three months.

2. The petitioner claims to be the owner and in possession of agricultural land situated at village Badnapur, District Jalna. His father, Dadarao Jarhad, was the recorded owner of Survey Nos. 122 and 123, admeasuring 24 Acres 22 R and 17 Acres 37 R, respectively, since prior to the year 1951. The petitioner relies upon the revenue records and *Khasra Pahani Patraks* in support of the said claim.

3. Pursuant to the proceedings under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, Survey Nos. 80 and 81 were consolidated and converted into Gut No.108 of village Badnapur, recorded in the name of the petitioner's father, Dadarao Jarhad.

4. In the year 1989, the petitioner's father transferred an area admeasuring 2 Acres 20 Gunthas from Gut No.108 in favour of his nephew, Dhanaji Haribhau Jarhad, and the corresponding mutation entry was effected in the revenue record.

5. After the death of Dadarao Jarhad, the petitioner claims to have succeeded to the property along with other legal heirs. Pursuant to an arrangement amongst the family members, Gut No.108 subsequently came to be exclusively held by the petitioner and the same was recorded by mutation entry No.917.

6. In the *interregnum*, Dhanaji Haribhau Jarhad transferred the aforesaid land in favour of Prakashchandra Jaiswal and others by a registered sale deed dated 12.02.1990, pursuant to which mutation entry No.750 was effected. The Jaiswal family thereafter donated an area of 1 Hectare, equivalent to 2 Acres 20 Gunthas, in favour of the Primary Health Clinic, Badnapur, by a registered deed dated 18.05.1990, and mutation entry No.767 was accordingly effected.

7. It is stated that that Gut No.108 is situated adjacent to the Aurangabad-Jalna Highway and is valuable agricultural land. A portion of the land had been sought to be used for burial purposes by members of the Christian community of village Badnapur. The attempts were made in the year 2001 to enter upon the said land and bury dead bodies therein. The petitioner approached the police authorities and FIR came to be registered.

8. The petitioner, thereafter, instituted Regular Civil Suit No.387 of 2001 before the learned Civil Judge, Senior Division, Jalna, seeking, *inter alia*, protection of possession and an injunction restraining the defendants. The said suit came to be decreed on 13.12.2004. The decree was thereafter attained finality.

9. Thereafter, the proceedings were initiated for acquisition of a portion of Gut No.108 for the purpose of a Christian graveyard. A

notification under Section 4 of the Land Acquisition Act was issued, followed by notice under Section 5-A. The petitioner submitted objections before the Special Land Acquisition Officer and contended that the proposed acquisition concerned land is in his ownership and possession.

10. The acquisition authorities, in replies and proceedings, acknowledged ownership and possession of the petitioner over Gut No.108. The petitioner challenged the acquisition proceedings in Writ Petition No.4318 of 2004, which came to be allowed vide judgment and order dated 03.04.2014, holding that the acquisition proceeding lapsed.

11. Relying upon the aforesaid civil and writ proceedings, the petitioner contended that title and possession over Gut No.108 had been recognized by competent judicial forums and that the same could not have been reopened in mutation proceedings under the garb of challenge to mutation entry.

12. In the meantime, respondent No.6, claiming to represent the Christian community of village Badnapur and acting under a power of attorney, preferred proceedings under Section 247 of the Maharashtra Land Revenue Code questioning mutation entries Nos.767 and 917. The said entries related to transactions effected in the years 1990 and 1993.

13. The said appeal was instituted after a considerable lapse of time. Respondent No.6 accordingly preferred an application for condonation of delay. The petitioner opposed the application and relied upon the revenue entries, his possession over the land, the decree of the Civil Court and the order in Writ Petition No.4318 of 2004.

14. The competent authority, by order dated 17.05.2012, rejected the application for condonation of delay. It was observed, *inter alia*, that the material on record indicated that respondent No.6 was aware of the petitioner's claim of ownership and possession over Gut No.108. The appeal was consequently not entertained on account of delay.

15. The order dated 17.05.2012 was challenged before the Additional Collector, Jalna, who, rejected the challenge. Further, challenge before respondent No.2 - the Divisional Commissioner, by way of revision. The revision also came to be dismissed by order dated 25.04.2014.

16. Respondent No.6 thereafter carried the matter further before respondent No.1. During the course of those proceedings, respondent No.1 considered the question of delay and also observed that the matter was not liable to be rejected on that ground of delay. Respondent No.1 also proceeded to examine the substantive issue on merit concerning the allotment of the land.

17. Respondent No.1, by the impugned judgment and order dated 03.06.2015, partly allowed the proceedings, set aside the orders under challenge and directed respondent No.3, the Collector, Jalna, to inquire into the matter and take appropriate steps in the light of the observations contained in the impugned order. The same is challenged in the present petition under Article 227 of the Constitution of India. Hence, the petition.

18. Learned counsel for the petitioner submitted that the order under challenge proceeds on an erroneous appreciation of the material on record and does not deal with the binding effect of the decree passed by the Civil Court and the subsequent judgment of this Court in Writ Petition No.4318 of 2004.

19. It is submitted that the petitioner's title and possession over Gut No.108 had been the subject matter of judicial consideration. The Civil Court had decreed Regular Civil Suit No.387 of 2001 in favour of the petitioner and this Court, while deciding Writ Petition No.4318 of 2004, had also considered the grievance of the petitioner concerning the proposed acquisition of the very property.

20. It is further submitted that respondent No.1 could not have proceeded to reopen the question of the petitioner's title and the allotment of the land without properly considering the effect of the aforesaid judicial proceedings. The order under challenge is cryptic

inasmuch as it does not meaningfully deal with the material findings recorded in those proceedings.

21. Learned counsel also assailed the manner in which respondent No.1 dealt with the question of delay. It was submitted that the proceedings challenging the mutation entries were initiated after an inordinate delay and that the authorities below consistently and concurrently refused to entertain the challenge on the ground of delay. Respondent No.1 ought to have restricted the proceedings to the legality of the orders concerning condonation of delay rather than proceeding to adjudicate upon the substantive title and validity of the allotment.

22. It is further submitted that respondent No.1, having entertained the matter beyond the issue of delay, proceeded to record observations regarding the alleged illegality of the allotment without affording the petitioner an effective and adequate opportunity to meet the substantive case. The petitioner was, thus, deprived of a fair opportunity to place the material and defend title on merits.

23. Learned counsel has further submitted that respondent No.1 exceeded the jurisdiction available under Section 257 of the Maharashtra Land Revenue Code. In the facts of the present case, the revisional authority could not have, unsettled the revenue

entries and the rights of the petitioner on the basis of observations in absence of the material on record.

24. It is also submitted that the order under challenge does not adequately consider the judgment and decree of the Civil Court, the judgment of this Court dated 03.04.2014, the revenue records, the history of the mutation entries and the earlier orders refusing to condone the delay. It was therefore submitted that the order suffers from non-application of mind and is liable to be set aside.

25. The learned A.G.P. for respondents No.1 to 4 and Mr. Imale, learned counsel for respondent No.6 support the order under challenge and prayed for dismissal of the petition.

26. Learned counsel for respondent No. 5 opposed the petition by filing an affidavit-in-reply. Respondent No.5 contends that Prakash Jaiswal and others donated one hectare of land to the Health Department for a Primary Health Centre (PHC) *via* a gift deed (Letter No. 2272/1990) dated 30.05.1990. Consequently, Mutation Entry No. 767 was sanctioned on 18.06.1990 in the name of PHC Badnapur. This PHC was subsequently transferred to Somthana, Taluka Badnapur, by a Government Resolution dated 26.07.2006.

27. Upon hearing the learned counsel for the respective parties and upon perusing the material placed on record, it is apparent

that the challenge raised by respondent No.6 to the mutation entries was initiated after an unexplained delay of about 21 years and was instituted only in the year 2011. The Sub-Divisional Officer, upon considering the application for condonation of delay, rejected the same for want of satisfactory explanation had been furnished for such inordinate delay. The said order was thereafter confirmed by the Collector vis-a-vis Additional Commissioner. However, while entertaining the matter at the revisional stage, the revisional authority proceeded to examine the merits of the dispute although the fact that the delay had not been satisfactorily explained.

28. In the case of *State of Jharkhand and others versus Ashok Kumar Chokhani*, AIR 2009 SC 1927, the Hon'ble Apex Court has observed as under;

"3. ... but it is well settled that while deciding an application of condonation of delay in filing the appeal, the High Court could not go into the merits of the same. Even assuming that the High Court had the power to go into that question, then also, in our view, the impugned order does not disclose any reason why the subject matter in the appeal did not suffer from any infirmity."

29. When confronted with above principles, Mr. Imale, learned counsel appearing for respondent No.6 fairly conceded that the

revisional authority had travelled beyond the scope of the proceedings while entering into the merits of the dispute.

30. In view of the aforesaid position, the findings recorded by the revisional authority on the merits of the dispute cannot be sustained and are accordingly quashed and set aside.

31. The revisional authority shall consider and confine its determination strictly to the issue of delay after hearing the litigating sides and the available material on record.

32. With the aforesaid directions, the writ petition is disposed of.

33. Pending civil application(s), if any, shall stand disposed of.

[SACHIN S. DESHMUKH]
JUDGE

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