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

WRIT PETITION NO.2589 OF 1992

1. Laxman Rama Dhokane,
Age major, Occu. Agriculturist

2. Babanbhai s/o Laxman Dhokane
(deceased), through L.Rs.

2A. Balkrushna Laxman Dhokane,
Age 55 years, Occu. Agri & Advocate

2B. Ramesh Laxman Dhokane,
Age 50 years, Occu. Agri.,

2C. Sharad Laxman Dhokane,
Age 47 years, Occu. Agri. And Service

2D. Ashok Laxman Dhokane,
Age 40 years, Occu. Agri.,

All R/o Umbre, Taluka Rahuri,
District Ahmednagar .. Petitioners

Versus

1. The State of Maharashtra,
Through Secretary,
Revenue and Forest Department,
Government of Maharashtra,
Mantralaya, Bombay 32

2. Machhindra s/o Ganpat Dhokane,
Age major, Occu. Agri.,

3. Gangadhar s/o Ganpat Dhokane,
Age major, Occu. Agri.,

Both R/o Village Umbre,
Taluka Rahuri, Dist. Ahmednagar .. Respondents

Mr V.S. Bedre, Advocate for petitioners
Mr R.P. Phatke, A.G.P. for respondent No.1

CORAM : N.W. SAMBRE, J.

DATE : 26th March 2015

ORAL JUDGMENT

1. The petition involves the question as regards allotment of alluvial land because of change in perennial flow of Karpara river in Rahuri Taluka, District Ahmednagar.

2. Petitioners claim to be owners of Survey No.157 and claimed that the said river flows through Survey No.157. According to them, the part of Survey No.157 was washed away and some alluvial land was created to which they made claim for allotment. Their claim for allotment was turned down by the Assistant Collector, Ahmednagar and the alluvial land was allotted in favour of the opponents i.e. respondents No.2 and 3 herein who, according to Assistant Collector, are owners of Survey No.141. The said order passed by the Assistant Collector in July 1978 was subject matter of challenge in Land Appeal No.12/1978 before the Additional Collector, Ahmednagar. The Additional Collector, Ahmednagar dismissed the said appeal by order dated 10th September 1979 and the said order was reversed by the Additional Commissioner, Nasik Division, Nasik in Appeal No.Desk/I/349/81 by order dated 19th June 1984.

3. The Additional Commissioner, Nasik Division, Nasik ordered allotment of alluvial land to the extent of 2 acres and 17 gunthas on payment to the occupant of Survey No.157 and 1 acres and 12 gunthas to the occupant of Survey No.141/2. The balance land, if any, was ordered to be allotted to occupant of Survey No.141/1.

4. The petitioners claimed that pursuant to the order passed by the Additional Commissioner, Nasik Division, Nasik, they have deposited the amount of Rs.310.68 ps. in the government treasury on 10th September 1984 towards the fine and the cost of the possession. The said fact was pressed into service with an intention to establish their possession over the alluvial land.

5. The respondents, feeling aggrieved thereby, preferred revision before the State Government vide Revision No.S-30/3384/2193/69/J-6/CR-955/90/A&R which came to be allowed by the State Government by order dated 18th July 1992, whereby the order passed by the Additional Commissioner allotting alluvial land in favour of the petitioners, came to be set aside, as such the present petition.

6. Mr Bedre, learned Counsel for the petitioners-claimants of alluvial land, while questioning the legality and validity of the order passed by the State Government with an intention to get the restoration of order of allotment of alluvial land, which was passed in favour of the petitioners, has invited attention of this Court to the fact that the earlier, statements of the present petitioners and their brother who were holding the land Suvey No.157 jointly, were recorded. He submits that the alluvial land was formed prior to 1960 which had prompted the petitioners to approach the revenue authorities to allot the same in their favour. In support of his contention, learned Counsel for petitioners has placed reliance upon the statements recorded by the revenue Officer on 13th December 1960, 23rd March 1964, 21st August 1967, 30th January 1988 so as to

canvass that the petitioners were the first claimants of the land being adjacent owners and in view of Sections 32 and 33 of the Maharashtra Land Revenue Code, the Collector i.e. Revenue Officer is duty bound to offer the land in question to the petitioners.

7. In addition to above, learned Counsel for the petitioners urged that the Assistant Collector, who has allotted the land to the respondents No.2 and 3 herein and the said order of allotment was upheld by the Additional Collector, Ahmednagar, ignoring the very scheme provided Sections 32, 33, 65 and 66 of the Maharashtra Land Revenue Code. He would further urge that it was duty of the revenue authority, i.e. Talathi as contemplated in Maharashtra Land Revenue (Alluvion and Diluvion) Rules, 1967 (hereinafter referred to as “the rules” for the sake of brevity) to report the area of the first alleviated or diluviated land including that of location of the same, so as to assist the Collector in taking a decision as regards offering of the land to be alleviated in favour of the adjacent land owner. In support of his contention, learned Counsel for the petitioner also pressed into service the provisions of Rule 2,3 and 4 of the Rules.

8. Learned Assistant Government Pleader, while opposing the claim of the present petitioners has urged that the Assistant Collector and the Additional Collector, having regard to the location map of the land to be alleviated, has passed order in favour of occupants of land Survey No.141, who are respondents herein. In support of his contention, he has taken me through both the orders impugned so as to canvass that the orders are based on field investigation and the

report submitted by the revenue officers, who are working in the field. He would further urge that except for the order of Commissioner, all the authorities have concurrently held against the present petitioners, seeking claim of allotment of land in question and as such, according to him, this Court should be slow in interfering with the orders passed by the authorities below.

9. Having considered the rival contentions of the parties and after going through the map, which is placed on record at Exh.B, page 19, it is noticed that the river Karpara flows through Survey Nos.141 and 157, which are located opposite to each other because of the flow of river.

10. It is not in dispute that the alluvial land of which the petitioners have sought to establish their claim, is located on the opposite side of Survey No.157 and adjacent to Survey No.141. The said alluvial land cannot be claimed to have been adjacent to Survey No.157, as in between the alluvial land and Survey No.157, the said river flows.

11. In the above referred background, the Assistant Collector, in the light of the claim put forth by the petitioners has noted that the District Inspector of land records has measured the land in question on 13th December 1960 and submitted a report, from which it could be noticed that Survey No.157 is located on the East side of the alluvial land ad-measuring 2 acres 17 gunthas and said alluvial land is on the opposite side of Survey No.157 and adjacent to Survey No.141/1, as such given finding that the owners of Survey No.157 are not entitled for allotment of the land.

12. The Additional Collector, Ahmednagar, while dealing with the appeal preferred under Section 247 of the Maharashtra Land Revenue Code at the behest of present petitioners, noted that in view of provisions of Section 32 of the Maharashtra Land Revenue Code, an option is required to be given to the adjacent owner of the alluvial land to purchase the same and further noted that the alluvial land is located adjacent to Survey No.141/1A and 141/2B and Survey No.157 is separated from the alluvial land by the river Karpara.

13. In the appeal preferred before the Additional Commissioner, Ahmednagar though petitioners have succeeded, however, the Additional Commissioner contrary to the record has noted that a part of the alluvial land is available which is adjacent to the land of the present petitioners. The basis for forming such an opinion by the Additional Commissioner appears to minutely reading the map which is placed on record. Once both the authorities, i.e. Assistant Collector and Additional Collector, based on the report submitted by the District Inspector of Land Records have noted that in between alluvial land and the land owned by the petitioners i.e. Survey No.157, river Karpara flows, but it is really hard to digest that the Additional Commissioner can form an opinion that a part of alluvial land is located adjacent to the petitioners land.

14. It is required to be noted that in the scheme of Sections 32 and 33, the land in question i.e. the alluvial land which vests in the Government, in the interest of public revenue, can be disposed of subject to provisions of Section 32 of Maharashtra Land Revenue

Code. The said sections further provide that the Collector is duty bound to offer the said land to the occupant (if any) of the bank or shore on which such land has formed. The price of the land so offered is also fixed in prescribed manner i.e. in case if to be offered to the occupant of the land on the bank or shore shall not exceed three times the annual assessment thereof. It is only in case the occupant refused to accept the offer of the Collector, on condition mentioned in sub-section (1) of Section 32, the land can be disposed of by the Collector without any restriction as to price described under Section 33 of the Maharashtra Land Revenue Code which is in regard to giving temporary right, in case if the area of such land is less than one acre. However, in case the area of such land exceeds one acre, same has to be subject to disposal by Collector as per provisions of Section 32. Even, perusal of the rules reflects that the revenue Officer, Talathi is required to ascertain and record the increase and decrease due to alluvion and diluvion of the land and to make a report to that effect to the Tahsildar. He is also required to make an entry to that effect in the record maintained by him and subject to the provisions contained in Section 33, 65 and 66 of the Code and act according to the orders passed by the Tahsildar in that regard. The description of such alluvial land is contemplated under the provisions of Rule 4 which is in tune with the provisions of Sub-section 2 of Section 32 of the Act.

15. In the present case, what is noticed from the order of Assistant Collector is, for the purpose of his satisfaction, he has called the report from the Talathi and further got the land measured from the District Inspector of Land Records and then based on the map and the

report of Talathi, has formed an opinion that the alluvial land is located adjacent to Survey No.141 and not Survey No.157 of the petitioners. The said considerations have been duly weighed before the Additional Collector and also the State Government while exercising the powers under Section 257 of the Maharashtra Land Revenue Code and the revisional powers therein, but for the factual mis-appreciation done by the Additional Commissioner in his order of allotment of alluvial land in favour of the petitioners.

16. The orders passed by the Assistant Collector, the Additional Collector, Ahmednagar and the State Government appear to be in tune with the scheme of Section 32 of the Maharashtra Land Revenue Code and the rules dealing with the disposal of alluvion and diluvion land.

17. In my opinion, no perversity or illegality is noticed in the orders which are questioned before this Court. As such, the writ petition being devoid of merits, stands dismissed. Rule discharged.

(N.W. SAMBRE, J.)

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