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

WRIT PETITION NO.6701 OF 2014

1. Balaji s/o Sopan Mundhe,
   Age 52 years, Occu.Agriculture,
   R/o Selmoha, Taluka Gangakhed,
   District Parbhani

2. Prabhakar s/o Sopan Mundhe
   Age 55 years, Occu.Agriculture
   R/o Selmoha, Taluka Gangakhed,
   District Parbhani

3. Baburao s/o Sopan Mundhe,
   Age 48 years, Occu. Agriculture
   R/o Selmoha, Taluka Gangakhed,
   District Parbhani ..Petitioners

Versus

1. Namdeo s/o Bhujangrao Mundhe,
   Age 58 years, Occu. Agriculture,
   R/o Selmoha, Taluka Gangakhed,
   District Parbhani

2. Trimbak s/o Manaji Mundhe,
   Age 55 years, Occu. Agriculture,
   R/o Selmoha, Taluka Gangakhed,
   District Parbhani

3. The Sub-Divisional Officer,
   Gangakhed, Taluka Gangakhed,
   District Parbhani

4. The Tahsildar,
   Gangakhed, Taluka Gangakhed,
   District Parbhani ..Respondents

Mr J.M. Murkute, Advocate for petitioners
Mrs R.V. Ghule, Advocate for respondents No.1 and 2
Mr S.P. Daund, A.G.P. for respondents No.3 and 4

CORAM : N.W. SAMBRE, J.

DATE : 31st March 2015

PER COURT

1. The petitioners were non-applicants before the Tahsildar in a proceeding taken out under Section 155 of the Maharashtra Land Revenue Code (hereinafter referred to as “the Code” for the sake of brevity), for correction of the revenue record. The said proceedings were taken out at the behest of respondents No.1 and 2 to the present petition.

2. The Tahsildar, Gangakhed, in tune with the scheme of Section 155 of the Code had issued notice to the present petitioners and on 10th February 2015, has passed a reasoned order in exercise of powers under Section 155 of the Code, thereby directing correction of the revenue entries as under :

(i) Out of Gut No.303, the land ad-measuring 0.81-R which stood in the name of Sopan Ganpati be mutated in the name of his legal representatives vide mutation entry No.174;

(ii) Land ad-measuring 1 hectare, 1-R which is now in the name of Nivrutti Waman be mutated in the name of his legal representatives;

(iii) Land 0.54-R which stood in the name of Shamrao Ranba be mutated in the name of his legal representatives.

3. The above referred order, since was prejudicial to the rights and interest of the present petitioners, had been questioned before the Sub Divisional Officer, Gangakhed. The Sub-Divisional Officer, Gangakhed vide order dated 31st May 2014, refused to accept

the appeal preferred by the petitioners and directed them to approach the Deputy Superintendent, Land Records, Gangakhed, as such the present petition.

4. Initially, this Court had given an opportunity to the petitioners to approach the said appellate authority i.e. Sub-Divisional Officer, however, petitioners were not ready to accept the said proposition. In view thereof, the petition is taken up for final disposal on merits by consent of the parties.

5. It is the case of the petitioners that powers under Section 155 of the Code are to be exercised in a very limited sphere, i.e. only to the extent of correction of the holdings in 7/12 extract. Learned Counsel for the petitioners urged that the scheme, as contemplated under Section 155 of the Code, provides that parties should be in an agreement as regards the error in the holdings/measurement of the area and upon such agreement/admission of the parties, the Collector can pass appropriate orders under the said provisions.

6. Learned Counsel for the petitioners would urge that by ordering correction, the Tahasildar has exceeded his jurisdiction or rather has exercised the jurisdiction which is not vested in him, as according to learned Counsel, the correction of the revenue record is permissible in case a mistake is noticed but there cannot be adjudication of the matter on merits by the Tahsildar. As such, he prayed for quashing of the order passed by the Tahsildar.

7. Mrs Ghule, learned Counsel for respondents No.1 and 2 would urge that the Tahsildar has proceeded to pass the order based on

admitted facts. According to her, at Mauje Selmoha, Taluka Gangakhed, the area in which the disputed property is located, Gut No.303 was ad-measuring 9 hectare 88-R, however, as per the record with the T.I.L.R. office, the area of said Gut number was to the tune of 8 hectare 52-R. She would further urge that the revenue authority, having noticed that excess area of 1 hectare 36-R land was shown to have been held by the concerned land owners (in absence of title) by virtue of entries in 7/12 extract, the Deputy Superintendent of Land Records, Gangakhed has informed the Tahsildar, Gangakhed about the above aspect which was formed as basis by the Tahsildar for correction of the revenue record. According to her, since the powers are rightly exercised, petition deserves to be dismissed.

8. Learned Assistant Government Pleader, in support of the order impugned, would urge that the cause for taking out the proceedings to the Tahsildar was a report submitted by the Deputy Superintendent of Land Records, Gangakhed on 3rd December 2013 which he noticed while carrying out measurement of the percolation tank. He would urge that the correction of the revenue record is well within the ambit of revenue officer, and the Collector in exercise of powers under Section 155 of the Code can do so by delegating his powers to the sub-ordinate officer, i.e. revenue officer like Tahsildar, in accordance with the scheme of the Code, particularly under Section 9-A of the Code.

9. Having considered the rival contentions of the parties and having perused the order passed by the Tahsildar, which is assailed in the present petition, it is noticed that the cause for taking recourse for

initiation of proceedings under Section 155 of the Code was a communication addressed by the Deputy Superintendent of Land Records, Gangakhed on 3rd December 2013, whereby he had informed that the entries qua holdings of the land by owners in 7/12 extract exceeds to the extent of 1 hectare, 36-R in relation to Gut No.303. He has, in fact, specifically mentioned in the communication that appropriate corrections in 7/12 extracts will be made after measuring the land in question.

10. The Tahsildar has proceeded to consider the revenue entries in 7/12 extracts in relation to the land holding by each of the owners, to name a few, Vyankatesh Bhagwanrao, Tukaram Raghunath Shriniwas Bhagwanrao, Dnyanoba Raghunath, Abarao Munde etc.

11. The Tahsildar has proceeded to analyze the holding of each of the land owners qua entries made in the 7/12 extracts and upon taking into consideration the mathematical calculation, has proceeded to pass the impugned order.

12. The fact that the Tahsildar is one of the revenue Officers under the provisions of the Code, is not in dispute. The right of the revenue Officer to exercise the powers delegated in his favour is also not in dispute and as such, the contention of the petitioners that the powers are required to be exercised only by the Collector, in my opinion, is not sustainable in view of Section 9-A of the Code which provides for delegation of powers to the revenue Officer. If the petitioners are assailing the said position before this Court, the burden is on them to demonstrate that the powers were not delegated to the Tahsildar. Admittedly, the petitioners had appeared before the Tahsildar in the

proceedings in which the impugned order is passed, however, they had not raised any objection to the jurisdiction of the Tahsildar. Apart from this, the factual matrix as is recorded in the order impugned is not questioned qua entries relating to holding of each of the land owners.

13. Perusal of provisions of Section 155 of the Code reflects that the said powers could be exercised by the revenue officer on his own for correction or by delegation of the same for correcting any Clerical error in the revenue record and the said correction can also be carried out, provided the parties interested admit the same. In the present case, the cause was sought to be canvassed by one of the land owners before the Tahsildar and the basis for the same was a letter written by the Deputy Superintendent of Land Record, Gangakhed on 3rd December 2013.

14. In view thereof, in my opinion, the Tahsildar was right in exercising the powers under Section 155 of the Code.

15. As such, no illegality or perversity is noticed in the order impugned. The petition being devoid of merits, stands dismissed.

(N.W. SAMBRE, J.)

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