

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.963 OF 2014

Sanjay Anandrao Khobragade & Ors.

-vs-

The Addl. Commissioner, Nagpur & Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. P. Bhandarkar, Advocate for petitioner.
Smt. Bharti Maldhure, AGP for respondent Nos.1 to 4.
Shri M. P. Khajanchi, Advocate for respondent Nos.5 to 10.

CORAM : A.S.CHANDURKAR, J.

DATE : JUNE 19, 2015

By the present writ petition, order passed by the Additional Commissioner, Nagpur exercising revisional jurisdiction under Section-257 of the Maharashtra Land Revenue Code 1966 (for short, the said Code) is under challenge. By said order, the revisional authority has set aside the orders passed by the appellate authority and has restored the order passed by the Tahsildar dated 09/02/2010.

Proceedings that were initiated under provisions of the said Code in relation to mutation entry No.204 came to be terminated by order dated 15/02/2008 passed by the Additional Commissioner wherein it was held that the revenue authorities were not empowered to adjudicate upon the validity of partition deed dated 28/08/1985. It was held in said proceedings that the validity of the partition deed could not be examined in said proceedings and hence the revision filed by the

present petitioners came to be dismissed. Subsequently, fresh proceedings were initiated by filing an application before the Tahsildar and on 10/02/2010 it was held that considering the provisions of Section-150 of the Code as well as the earlier orders passed by the Additional Commissioner, no further action was warranted. This order however came to be set aside by the Sub-Divisional Officer and it was declared that necessary mutation entry be taken in terms of the partition deed. This order in turn was confirmed by the Additional Collector. In the revision application, after considering the earlier adjudication vide order dated 15/02/2008, it was observed by the Additional Commissioner that the present petitioner should have obtained necessary declaration regarding genuineness of the partition deed from the Civil Court. After observing that in view of the earlier adjudication between the parties, no different order could be passed, the revision application came to be dismissed.

Shri S. P. Bhandarkar, learned counsel for the petitioners submitted that the Additional Commissioner was not justified in reversing the order passed by the Sub-Divisional Officer directing the mutation entries to be taken as per the partition deed. He submitted that the earlier adjudication could not be held against the petitioners for the purposes of holding that they were required to approach the Civil Court. It is submitted that the contesting respondents had in fact approached the Civil Court but had withdrawn the civil suit filed by

them. He therefore submitted that the order passed by the Additional Collector was required to be restored.

Shri M. P. Khajanchi, learned counsel appearing for respondent Nos.5 to 10 supported the impugned order. According to him, the findings recorded in the earlier round had attained finality and hence the Additional Commissioner was justified in setting aside the order passed by the Additional Collector. He further submitted that under Section-150 of the Code, jurisdiction in the matter vested with the Talathi.

I have heard the respective counsel. After having perused earlier adjudication between the same parties, it is clear that by order dated 15/02/2008, the Additional Commissioner had held that the question of validity of partition deed was beyond the jurisdiction of the revenue authorities and hence any dispute in that regard was required to be resolved by approaching the Civil Court. Merely because the civil suit filed by the contesting respondents had been withdrawn, that would not confer jurisdiction on the revenue authorities to adjudicate upon the correctness of the partition deed. In view of the observations made by the Additional Commissioner in the order dated 15/02/2008, the present petitioners could have approached the Civil Court for appropriate reliefs. However, present proceedings were initiated before the Tahsildar when in fact such jurisdiction was vested with the Talathi under Section-150 of the Code. In view of this, the conclusion arrived at by the Additional Commissioner in the

impugned order cannot be said to be suffering from any jurisdictional error. There is therefore no case made out to interfere in writ jurisdiction. Writ petition is therefore dismissed with no order as to costs.

JUDGE