

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

C.A.O. NO.1478/2015
IN
M.C.A. STAMP NO.13808/2015
IN
WRIT PETITION NO.6039/2004

Shri Ramchandra s/o Sakharam Mahajan,
 aged about 73 Yrs., Occu. Agriculturist,
 R/o Mahajan Market, Sitabuldi, Nagpur.

..Applicant/Petitioner.

..Versus..

1. The Additional Collector Bhandara,
Collectorate, Bhandara.
2. The Superintendent of Land Records,
Bhandara.
3. The Divisional Forest Officer,
Bhandara, Opposite Collectorate
Bhandara.

..Non-applicants/Respondents.

 Shri A.S. Jaiswal, Senior Advocate assisted by Shri N.A. Padhye Advocate for the
 applicant/petitioner.

Shri S.M. Bagde, A.G.P. for non-applicants/respondents 1 and 2.

Shri P.A. Gode, Advocate for non-applicant/respondent no.3.

CORAM : Z.A. HAQ, J.

DATE : 9.9.2015

ORAL JUDGMENT

1. Heard Shri A.S. Jaiswal, Senior Advocate assisted by Shri N.A. Padhye
 Advocate for the applicant, Shri S.M. Bagde, A.G.P. for non-applicants 1 and 2 and

Shri P.A. Gode, Advocate for non-applicant no.3.

2. **Rule.** Rule made returnable forthwith.

3. For the reasons stated in the application and the fact that the application is not opposed by the non-applicants inasmuch as the reply is not filed by the non-applicants, the delay of 359 days in filing the application for restoration of miscellaneous civil application is condoned.

4. The civil application is allowed.

M.C.A. STAMP NO.13808/2015

5. Heard Shri A.S. Jaiswal, Senior Advocate assisted by Shri N.A. Padhye Advocate for the applicant, Shri S.M. Bagde, A.G.P. for non-applicants 1 and 2 and Shri P.A. Gode, Advocate for non-applicant no.3.

6. **Rule.** Rule made returnable forthwith.

7. Considering the fact that the petition was admitted by this Court and was pending for final hearing and accepting the reasons stated in the application which are

not controverted by the non-applicants inasmuch as the reply is not filed by the non-applicants, the order passed by this Court on 26/06/2014 is recalled. The petition is restored.

8. The miscellaneous civil application is allowed accordingly.

WRIT PETITION NO.6039/2004

9. Heard Shri A.S. Jaiswal, Senior Advocate assisted by Shri N.A. Padhye Advocate for the petitioner, Shri S.M. Bagde, A.G.P. for respondents 1 and 2 and Shri P.A. Gode, Advocate for respondent no.3.

10. The petitioner claims that he had been owner of land admeasuring 163.05 hector which was a forest land. According to the petitioner, the Collector had granted permission to the petitioner to convert 15 acres of land out of above referred land for agricultural purposes. It is submitted that the name of the petitioner was recorded in the revenue records as owner of 156.38 hectores of land i.e. Survey No.11/1. According to the petitioner, his name was also recorded as owner of 15 acres of agricultural land i.e. Survey no.34. According to the petitioner, these entries were taken pursuant to the order passed by the Collector on 14th May, 1999. The grievance of the petitioner is that, exercising powers of review under Section 258 of the

Maharashtra Land Revenue Code, learned Collector has removed the name of petitioner from the revenue records and has shown that the above referred lands are reserved forest lands owned by the State Government. The petitioner has challenged the order passed by the Collector on 19th November, 2004, on the ground that the impugned order does not take into consideration the relevant documents. The Senior Advocate has argued that the Collector while passing the impugned order has not adverted to the objection raised by the petitioner that the powers of review cannot be exercised inasmuch as the Authority is neither exercising the powers of review on its own nor there is any application by any person invoking the powers of review of the Collector. The Senior Advocate has also made submissions pointing out that the impugned order is not sustainable. However, in view of the proposed order, in my view, they are not required to be dealt at this stage.

11. Shri P.A. Gode, Advocate for the respondent no.3 has pointed out from the copies of the notifications dated 5th November, 1957 and 6th August, 1970 and the copies of the 7/12 extracts, that the claim as made by the petitioner cannot be accepted.

13. Without delving into the merits of the matter, in my view, the impugned order is required to be set aside on the ground that the learned Collector has not taken into

consideration the relevant documents. It is undisputed that the Taluka Inspector of Land Records submitted report dated 6th February, 1999 to the Superintendent of Land Records, Bhandara, the copy of which is placed on the record of the writ petition as Annexure R-II on page 153. In the order passed by the Collector on 14th May, 1999, reference of spot inspection report dated 27th November, 1998 prepared by Taluka Inspector of Land Records, Paoni is found. The order dated 14th May, 1999 does not refer to the report dated 6th February, 1999. In the impugned order there is no reference to either of the reports i.e. report dated 27th November, 1998 and 6th February, 1999. The dispute is about the identification of 15 acres of land which according to the petitioner is permitted to be used for agricultural purposes under the order of the Collector dated 27th August, 1947. The claim as made by the petitioner could not have been decided by the subordinate Authorities without there being proper spot inspection report on the record. The relevance of the reports dated 27th November, 1998 and 6th February, 1999 should have been discussed by the Authority while passing the impugned order. It should not be understood that the Authority has to take decision only on the basis of the reports dated 27th November, 1998 and 6th February, 1999. The Authority is required to consider the above referred reports along with other evidence and material on the record and then record the findings. If the evidence on the record is insufficient, the Authority should take proper steps in the matter so that the issue involved is properly decided.

13. Hence, the following order :

- (i) The impugned order is set aside.
- (ii) The matter is remitted to the Collector, Bhandara for taking fresh decision in the matter.
- (iii) The petitioner and the representative of respondent no.3 shall appear before Collector, Bhandara on 14th October, 2015 at 11 a.m. and abide by the further instructions in the matter.
- (iv) Rule made absolute in the above terms.

In the circumstances, the parties to bear their own costs.

JUDGE

Tambaskar.