

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5713 OF 1995

Syed Chand Syed Mustafa,
Age-47 years, Occu-Service,
Driver, R/o Baiji Pura,
Aurangabad

PETITIONER

VERSUS

1. The Collector, Parbhani,
District : Parbhani,
2. The State of Maharashtra,
Through G.P. Bench at Aurangabad,
3. Amrutha S/o Yeshwantha Kale,
Age-60 years, Occu-Agriculture,
Village – Devsadi, Tq.Jintoor, Dist.Parbhani,
4. Dayanand S/o Amruthrao Kale,
R/o Devsadi, Tq.Jintoor, Dist.Parbhani.

RESPONDENTS

Mr.Mohd.Mustafa Ahmed Momin, Advocate for the petitioner.
Mrs.S.S.Raut, AGP for respondent Nos. 1 and 2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 05/05/2016

ORAL JUDGMENT :

1. This matter was Admitted by an order dated 22/07/1996. No interim relief was granted to the petitioner.

2 I have heard Mr.Momin, learned Advocate at length in this matter.

3. The contention of the petitioner is that he is the owner and possessor of the property at issue. He was convicted for the offence of murder and was in jail from 1947 till 1967. The property Survey No.21 was illegally and unauthorizedly possessed by Ramrao Kale and after his death by Dayanand Amrutrao Kale, who had purchased the property from Ramrao Kale.

4. The petitioner is aggrieved by a letter issued by the District Collector dated 25/05/1995 intimating the learned Advocate for the petitioner that R.C.S.No.184/1984 in which the petitioner was defendant No.1, has been decreed by judgment dated 26/08/1995.

5. The operative part of the order dated 26/08/1985 reads as under :-

“Plaintiffs suit against defendant Nos. 1 and 2 is decreed as follows :-

Plaintiffs 1 and 2 are hereby declared the owners of suit field Survey No.21 /4 of village Devsadi, Tal.Jintoor.

The defendants 1 and 2 are hereby permanently restrained from causing obstruction and interference in the plaintiffs possession

over the suit field.

The defendant No.1 shall pay the cost of this suit to the plaintiffs and bear his own cost.

Decree be drawn accordingly.

dated : 26/08/1985”

6. The District Collector was the Custodian of the property. As a Custodian of the Evacuee property, State of Maharashtra, he had also recommended to the Under-Secretary of the Government of India, Ministry of Supply and Rehabilitation, Department of Rehabilitation by his letter in favour of the petitioner. It is, therefore, submitted that the District Collector be directed to decide Case No.323/1990 pending with him.

7. I have considered the submissions of Mr.Momin.

8. None appears for the respondents.

9. The letter of the District Collector dated 25/05/2015, which is impugned in this petition, is neither an order passed by the collector in his capacity as a Quasi-Judicial Authority, nor can this Court exercise its supervisory jurisdiction to issue a direction to the State to conduct a particular enquiry instituted by the petitioner, which is

pending.

10. Notwithstanding the above, the petitioner is defendant No.1 in RCS No.184/1984 which suit has been decreed by the order dated 26/08/1985. A decree by a competent Civil Court, cannot be nullified or watered down by issuing any directions to the Collector. Even if, the petitioner contends that the judgment and decree is without jurisdiction or is legally unsustainable, same cannot be accepted unless the said decree has been set aside by a superior Court on its merits.

11. In the light of the above, this petition is devoid of merit and is, therefore, dismissed. Rule is discharged.

12. Nevertheless, in the event the petitioner desires to approach the competent Court within 6 (six) weeks from today for assailing the decree dated 26/08/1985, the time spent by the petitioner in this Court from 09/11/1995 till the passing of this order shall be taken into account while considering the aspect of delay.

(RAVINDRA V. GHUGE, J.)