

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2845 OF 1993

Bhalchandra V. Thanekar
(since deceased through heir
and Legal representatives
Ganga B. Thanekar and ors) and ors. .. Petitioners
vs.
Yeshwant M. Koli and ors. .. Respondents

Mr. A.R. Gole for the Petitioners.
Ms Gauri Godse for Respondent No.1.
Mr. S.D. Rayrikar, AGP for Respondent Nos.2 to 5.

CORAM : M. S. SONAK, J.
DATE : 20 JANUARY 2016.

P.C. :-

- 1] The challenge in this petition is to the following orders
 - a] Order dated 28 June 1988 made by the Consolidation Officer, Thane Region, Thane purporting to exercise revisional jurisdiction under Section 257 of the Maharashtra Land Revenue Code, 1966 (LRC);
 - b] Order dated 10 March 1992 made by the Collector of Thane, dismissing the petitioners appeal against the aforesaid order dated 28 June 1988;
 - c] Order dated 28 July 1992 made by the District Inspector of Land Record (DILR) rejecting the petitioners application for allotment of suit property bearing CTS No. 119 at Koliwada, Thane

2] Mr. Gole, learned counsel for the Petitioners, has submitted that the name of predecessor-in-title of the Petitioners was recorded in the survey record right from the year 1916. He submits that the Respondent No.2, who even otherwise has no jurisdiction or authority to exercise under the LRC, could not have any exercised of revisional jurisdiction to disturb the entries made in the survey records after lapse of over 70 years. Mr. Gole, placed reliance upon the decision of the Hon'ble Apex Court in case of ***Santoshkumar S. Patil and ors. Vs. Balasaheb T. Shevale & ors. - (2009) 9 SCC 352***, for the proposition that the revisional jurisdiction under Section 257 of the LRC must be exercised within a reasonable time and ordinarily within three years. Mr. Gole submitted that the order dated 28 July 1992 for allotment of the suit property to the Petitioners was made to Respondent No.3, i.e., Collector of Thane, who is appropriate authority. However, the same has been rejected by the DILR, who had no jurisdiction whatsoever to deal with the matter. For all these reasons, Mr. Gole submitted that the Rule is liable to be made absolute in terms of prayer clause (a) of this petition.

3] Ms Gauri Godse, learned counsel who appears for legal representative of Respondent No.1, submitted that the Petitioners have alternate remedy available to them. In any case, she pointed out that the enquiry report, upon which the Petitioners placed reliance itself recommends the removal of name of Govinda, who, the Petitioners claimed to be their predecessor-in-title from the survey record. She points out that the this report of Enquiry Officer made on 3 January 1916 was never challenged by the Petitioners or the said Govinda, at any stage. Further, Ms Godse points out that the Petitioners by an application dated 26 November 1991 has applied to the Collector of Thane for allotment of the suit property in their favour. This itself implies that the Petitioners accept that the property is owned by the Government. Ms Godse points out that the Petitioners have set up a contradictory case. The Respondents, who she also represents, had also asserted that the suit property belongs to the Government and on the said basis applied for deletion of the name of the Petitioners or parties through whom the Petitioners allegedly claims. For all these reasons, Ms Godse submits that there is no warrant to interfere with the impugned orders.

4] The rival contentions now fall for my determination.

5] At the outset, it is not quite clear as to whether the Petitioners have indeed alternate remedy to question the impugned orders. In any case, Rule was issued in this petition on 7 October 1993 and the interim relief was granted in terms of prayer clause (d). Therefore, at this stage, it will not be appropriate to relegate the Petitioners to avail alternate remedy, if any.

6] Although, enquiry report of 3 January 1916 does recommend the removal of name of Govinda, there is no record to indicate that the name of Govinda through whom the Petitioners claim was in fact removed from the survey records. Therefore, the fact remains that the name of Govinda and thereafter, the persons who claimed under him, remained in the survey records up to 1988, when Respondent No.1 applied to the authorities for their deletion and the inclusion of name of the Government in respect of the suit property. Respondent No.2, assuming that he had jurisdiction and authority to exercise powers under Section 257 of the LRC, has directed deletion of the entry, after a period of almost 70 years since the date of making of such entry. Section 257 of the LRC, confers revisional powers upon the authorities specified under the LRC. Such revisional powers can be exercised either *suo motu* or on the basis of application made by

any aggrieved party. Although, no period of limitation as such has been prescribed under the LRC for the exercise of revisional powers, the Hon'ble Apex Court in case of *Santoshkumar (supra)*, has ruled that such powers has to be exercised within a reasonable time and that ordinarily a period of three years will constitute reasonable time. In this case, the exercise of powers after lapse of almost 70 years, cannot therefore, be sustained. The impugned orders dated 28 June 1988 and 10 March 1992, are required to be set aside on the said ground alone and same are hereby set aside.

7] Insofar as the contention of Ms Godse that the Petitioners have taken contradictory stand is concerned, it must be noted that Mr. Gole, on basis of instructions from the Petitioners who are present in the Court, has made a statement that the Petitioners do not claim ownership to the suit property on the basis of entries in the revenue record. This statement is accepted. Even otherwise, it is settled position in law that mere entries in revenue record are never determinative of title to the properties in question. Mr. Gole submits that the application for allotment of the suit property was made to the Respondent No.3, so that the Petitioners could acquire ownership to the suit property. In view of this statement, there is no

question of any contradictory claims involved.

8] The order dated 28 July 1992 made by the DILR, in the matter of the Petitioners application for allotment of the suit property in his favour is required to be set aside, as the DILR had no jurisdiction to deal with an application to the said nature. In fact, Respondent No.1 or his legal representative had also applied for allotment of the suit property in their favour. The application was, however, addressed to Respondent No.2. Even now, in case, the Respondent No.1 (legal representative) applies to the Collector for allotment, suitable directions can be issued to the Respondent No.3 to consider and decide the applications made by the Petitioners as well as the Respondent No.1 (legal representative) in accordance with law and on their own merits. Accordingly, directions to the said effect are hereby issued.

9] Accordingly, Rule is made absolute to the aforesaid extent only. The impugned orders dated 28 June 1988 and 10 March 1992 and 28 July 1992 are hereby set aside. The Petitioners application dated 26 November 1991 and the application of the Respondent No.1 (legal representative), if made within four weeks from today,

are directed to be considered by the Respondent No.3 on their own merits and in accordance with law, within a period of six months from today.

10] The petition is disposed of in the aforesaid terms. There shall be no order as to costs.

11] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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