

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2907 OF 2015

Shri Bhanukumar Dhansingh Thakur & Anr.	...Petitioners
vs.	
The Additional Commissioner, Konkan Division, Mumbai & Ors.	Respondents

Mr.Harinder Toor with Subhash Bane I/b. S.B. Legal for Petitioner.
Ms.Geeta Shastri, Addl.G.P. for Respondent Nos.1 to 5 and 7.
Mr.Rajiv Narula I/b. Jhangiani Narula & Associates for Respondent No.6.

CORAM : S.C. GUPTE, J.

13 APRIL 2016

P.C. :

This writ petition, filed under Article 226 of the Constitution of India, challenges an order passed by the State Minister of Revenue of Maharashtra on a review application under Section 258 of the Maharashtra Land Revenue Code, 1966 ("MLR Code").

2 The brief facts of the case may be outlined as follows :

The subject matter of the petition is a land bearing Survey No.170, Hissa No.2 and Survey No.169, Hissa No.2 (Part) at Eksar, Borivali in Mumbai. This land originally belonged to one Chunnilal Bhurabhai. By a registered Gift Deed dated 7 March 1939, Chunnilal transferred this property to his wife Jivkor Chunnilal. The land was mutated in favour of Jivkor Chunnilal. It appears that the names of one Shamsuddin Yakub Patel and Ramilaben Motilal Patel came to recorded in the 'Pik Pahan' (i.e. Survey of Crops) column of record of rights in respect of the suit land by virtue of mutation entry no.5068 dated 12.1.2010. Being aggrieved by this mutation entry, Respondent No.6 herein along with the descendants of deceased Jivkor Chunnilal, who claimed to be the owners of the suit property, filed an appeal under Section 247 of the MLR Code. By his order

dated 4 June 2010, the Sub-Divisional Officer, Mumbai Suburban District directed the Tahasildar, Borivali to cancel mutation entry no.5068 dated 12.1.2010 and further make heirship inquiry in respect of the deceased Jivkor, and bring her heirs and successors on record after due process of law. The order of the Sub-Divisional Officer was carried in appeal by Shamsuddin before the Deputy Collector (Appeals) under Section 247 of the MLR Code. By his order dated 10 February 2011, the Deputy Collector confirmed the impugned order of the Sub-Divisional Officer insofar as it directed cancellation of mutation entry no.5068 and also directions to conduct heirship inquiry and bring heirs and successors of the original holder on record. It appears that subsequent to this order, there was a mutation entry executed in favour of Respondent No.6 herein, namely, mutation entry no.5134 of 11.4.2011, by which the name of Jivkor Chunnilal was deleted from the record of rights and the name of Respondent No.6 herein was added in the 7/12 extract. Surprisingly, thereafter the Petitioners before this court filed a revision application under Section 257 of the MLR Code before the Additional Commissioner, Konkan Division challenging the order and decision of the Deputy Collector (Appeals), Mumbai Suburban District. The grievance of the Petitioners before the Additional Commissioner was that they had come to know that the name of Jivkor Chunnilal had been deleted from the 7/12 extract and the name of Respondent No.6 herein had been added by virtue of mutation entry no.5134 dated 11.4.2011. (The mutation entry was obviously and admittedly effected after the impugned order of the Deputy Collector.) In the premises, the Additional Commissioner held that it was clear that the scope and proceedings in the appeal before the Deputy Collector included a dispute between the parties to the appeal concerning the validity of mutation entry no.5068 in favour of Shamsuddin and not the validity of mutation entry no.5134 of 11.4.2011. In the premises, the Additional Commissioner held that the revisional court had no jurisdiction to deal with the disputes between the Petitioners, on the one hand and Respondent No.6, on the other, in respect of mutation entry no.5134. The Additional Commissioner, in the premises, rejected the revision application of the Petitioners. This order was carried by the Petitioners before the Minister of State (Revenue) by way of a second revision under Section 257 of the MLR Code. By his order dated 9 September 2014, the Minister allowed the revision application

and set aside the order passed by Tahasildar, Borivali on 4 June 2010 and cancelled mutation entry no.5134 dated 11.4.2011 effected on the basis thereof and also directed the mutation in respect of the property to be effected in favour of the Petitioners. The Minister also directed the City Survey Officer, Borivali to enter the names of the Petitioners on the Property Register Card in respect of the suit property. This order was challenged by Respondent No.6 in a review application filed before the Minister of Revenue. By the time the application for review was preferred, there was a change in the Government and a new Minister of Revenue was in place. By his order dated 29 September 2015, the Hon'ble Minister (Revenue) allowed the review application and set aside the order of Minister of State (Revenue) dated 9 September 2014, which was under review before the former and confirmed the order of the Additional Commissioner, Konkan Division dated 15 April 2011, holding that in a dispute concerning entering of names in the column of Crop Survey, the State Minister of Revenue could not have decided the inter se dispute between the purported owners of the subject property, namely, Respondent No.6, whose name appeared in the record of rights by virtue of a mutation entry (which was not in challenge before the authorities below) and the Petitioners (who had no locus to challenge cancellation of the relevant entry in the column of crop survey). Being aggrieved by this order passed on the review application, the Petitioners have preferred the present petition.

3 Learned Counsel for the Petitioners made the following submissions:

- (I) He submitted that the reviewing authority was biased against the Petitioners. He submitted that before the impugned order was passed, an application was made before the reviewing authority by way of an additional affidavit filed on behalf of the Petitioners, requesting the former to recuse from the matter, but the authority refused to do so.
- (II) Learned Counsel also submitted that the review application was beyond limitation. (Subsequently, in the course of hearing, this ground was not

pressed by learned Counsel.)

(III) Learned Counsel submitted that there was no case for review under Section 258 of the MLR Code and supported the original order on merits.

4 As far as the question of bias is concerned, it is an admitted position that the Petitioners had filed a separate petition before this Court, being Writ Petition (Lodging) No.2513 of 2015, claiming that an employee working with the Revenue Department in the office of the Minister was having a partnership with Respondent No.6 and that taking advantage of his employment in the office, this person was in the process of getting a favourable order from the reviewing authority. It is an admitted position that in this petition, though the same is pending before this Court, there is no interim order passed in favour of the Petitioners. Learned Counsel relied on judgments of the Supreme Court in the cases of **State of Gujarat vs. Justice R.A. Mehta (Retired)**¹ and **State of Punjab vs. Davinder Pal Singh Bhullar**². These cases discuss the law on the question of bias of a court or tribunal. Broadly, what they lay down is that there may not be a case of actual bias, but where the circumstances were such as to create a reasonable apprehension in the minds of others that there was a likelihood of bias affecting the decision, the same was sufficient to invoke the doctrine of bias; whilst deciding upon an issue of bias, the court must examine the facts and circumstances of the case from the view point of the people at large and then examine whether or not a real likelihood of bias exists on the basis of probabilities inferred from such circumstances. There is no quarrel with this proposition. The point is whether such case of “real likelihood of bias” is made out in the facts of the present case. Having regard to the materials placed on record by the Petitioners, it cannot be said that a case of “real likelihood of bias” is made out in the present case. Besides, as I have noted above, there is a separate petition filed in respect of the alleged bias, praying for directions against the reviewing authority not to hear the review application. As I have noted above, there is no interim order or direction in that petition to the reviewing

1 (2013) 3 SCC 1

2 (2011) 14 SCC 770

authority. This Court in a petition under Article 226 is not expected to examine these issues of fact and grant relief under Article 226 on the basis of such examination.

5 Coming now to the maintainability of the review application, it is to be seen that the basis of the reviewing authority entertaining the review application was that there was no adequate notice to Respondent No.6 (applicant in the review application). In the first place, the notice of hearing to be conducted on 2 September 2014 was issued by the department just a day prior thereto, namely, 1 September 2014. Secondly, there is no service report anywhere on record that the notice was duly served on the applicant. The applicant was not present at the hearing of the review. It appears that no advocate on his behalf had even entered his appearance in the matter. The order under review before the reviewing authority indicated that some advocate (without even naming him) appeared on behalf of the applicant. The order, however, acknowledges that the advocate did not sign on the roznama. In these facts, the applicant himself (Respondent No.6 to the present petition) has filed an affidavit stating that no notice was received by the applicant of the hearing of the review application scheduled on 2 September 2014. Neither the applicant nor any of its staff members received any notice of the hearing and accordingly, neither the applicant nor its advocate was present on 2 September 2014 for the hearing of the review application. On these facts, if the reviewing authority has drawn a conclusion that there was no adequate notice of the hearing of the review application and that, therefore, the case of the applicant went unheard, it cannot be said that the conclusion is either perverse or is such as would be interfered with by this court in its jurisdiction under Article 226. Learned Counsel for the Petitioners relies on an additional affidavit filed by the Petitioners, which produces a copy of a letter addressed by the Information Officer & Talathi of Vile Parle that the notice of hearing to be held on 2 September 2014 was received by the Talathi, Vile Parle from the office of Tahasildar, Andheri at 7 O'Clock in the evening of 1 September 2014 and that the notice was immediately served on the concerned party. A notice served after 7.00 p.m., on a day prior to the hearing, can hardly be called an adequate notice. In any event, as I have noted above,

even for this alleged notice, admittedly, there is no service report on record. In the premises, the order of the reviewing authority cannot be faulted on the ground that there was no ground for review. Non-service of an adequate prior notice of hearing on the affected party is a sufficient ground for the reviewing authority to review its order under Section 258 of the MLR Code.

6 Coming now to the merits of the order, it is abundantly clear that the subject matter of dispute before the lower authorities in the subject dispute was the mutation entry effected in favour of Shamsuddin in the column of Crop Survey and not the mutation entry executed in favour of Respondent No.6 herein on 11 April 2011. In an inquiry at the instance of the legal heirs and successors of the land holder, whose name appears in the record of rights, against a third party, who is wrongly shown under the column of 'Crop Survey', putative owners of the property, on the basis of documents executed in their favour by the land owner, have hardly any locus. Besides, the inquiry did not in any way pertain to the inter se rights as between Respondent No.6, who claimed under a mutation entry executed in his favour, and the Petitioners, who disputed such entry and wanted a mutation entry to be executed in their favour. Such inquiry is completely foreign to the subject matter, which was before the revisional authority when it passed its order dated 9 September 2014, which was in review before the reviewing authority. In the premises, the impugned order passed on review by the reviewing authority is perfectly valid and cannot be found fault with.

7 In the premises, there is no merit in the writ petition and the same is dismissed. No order as to costs.

(S.C. Gupte, J.)