

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2382 OF 1994

1. Kalawatibai w/o Manikrao Patil,
Age-50 years, Occu-Household,
R/o Harangul (Bk),
Tq. And Dist.Latur
2. Rajkumar Manikrao Patil (died),
Through LR's,
2A- Savita w/o Rajkumar Patil,
Age-45 years, Occu-Household,
2B- Risha d/o Rajkumar Patil,
Age-19 years, Occu-Education,
2C- Nikita Rajkumar Patil,
Age-12 years, Occu-Education,
2D- Vikrant Rajkumar Patil,
Age-8 years, Occu-Education,

Applicant Nos. 2C and 2D are under
the guardianship of their mother
i.e. applicant No.2A,

All are r/o Harangul,
Tal. And Dist.Latur.
3. Vijaykumar Manikrao Patil,
Age-28 years, Occu-Agriculturist,
R/o as above,
4. Vilas Manikrao Patil,
Age-24 years, Occu-Agriculturist,
R/o as above,
5. Lilabai d/o Manikrao Patil,
Age-20 years, Occu-Household,
R/o as above,

6. Shilabai Rajendra Mahajan,
Age-26 years, Occu-Household,
(Daughter) R/oAusa, Tq.Ausa,
Dist.Latur

– PETITIONERS

VERSUS

1. Fakruddin Kha Juddin (died)
Through LR's,
- 1/a Shaikh Chandsab s/o Fakroddin,
Age-65 years, Occu-Agriculturist,
R/o Harangul (B),
Tq. And Dist.Latur,
- 1/b Shaikh Mahenab s/o Fakroddin,
Age-60 years, Occu-Agriculturist,
R/o Harangul (B),
Tq. And Dist.Latur,
- 1/c Nawade Najmunbi d/o Fakroddin,
Age-50 years, Occu-Agriculturist,
R/o Harangul (B),
Tq. And Dist.Latur,
- 1/d Shaikh Yasuf s/o Fakroddin,
Age-40 years, Occu-Agriculturist,
R/o Harangul (B),
Tq. And Dist.Latur,
2. Shaikh Lal Mahatabkhan, **(Abated)**
Age-Major, Occu-Agriculturist,
R/o as above.
3. Divisional Commissioner (Revenue),
Division Aurangabad

– RESPONDENTS

Mr.S.S.Halkude, Advocate for the petitioners.
Mr.N.T.Bhagat, Advocate for respondent No.3

(CORAM : Ravindra V.Ghuge, J.)

DATE : 15/06/2017

ORAL JUDGMENT :

1. Leave to add Divisional Commissioner as respondent No.3. Addition be carried out forthwith. Notice to respondent No.3 is waived by the learned AGP.
2. None appears for respondent Nos. 1(1 to 4) and respondent Nos. 1(a) and 1(b). The petition is abated as against respondent No.2 vide order dated 24/11/2003.
3. The petitioner has put forth prayer clause 'B', 'C' and 'D' as under :-

"[b] By issuing appropriate writ or order the judgment and order dated 26/12/1978, 11/07/1991 passed by Assistant Collector, Latur and Collector, Latur in case No.1977/ROR/A/57 and 1988GBA/8 respectively and order dated 24/11/1992 and 06/01/1994 passed by the learned Additional Commissioner in case 1991/Rev./R-71 and review petition respectively may quashed and set aside.

[c] The judgment and order dated 09/06/1973 passed by the Tahsildar Kandhar sanctioning mutation entry no.319 may be confirmed.

[d] Pending hearing and final disposal this writ petition the judgments dated 26/12/1978, 11/07/1991 passed by Assistant Collector, Latur and Collector, Latur in case No.1977/ROR/A/57

and 1988 GBA/8 respectively and orders dated 24/11/1992 and 06/01/1994 passed by the learned Additional Commissioner in 1991/Rev/R-71 and in Review Petition respectively may be stayed.”

4. While admitting this petition on 17/08/1994, this Court had granted prayer clause ‘D’ as an interim relief. Consequentially, the petitioners are in possession of the land at issue.

5. I have considered the strenuous submissions of Mr.Halkude and have gone through the record available with his assistance.

6. Issue is as regards the validity of the mutation entry No.319 that was carried out on 09/06/1970 in favour of the husband of petitioner No.1 and father of petitioner Nos.2 to 6.

7. The disputed portion of the land admeasures 5 acres 35 guntha in Survey No.3.

8. The deceased Manikrao claims to have purchased the land in Survey No.3 by sale deed dated 22/02/1968 from respondent No.2 Shaikh Lal Mahtab Khan, now deceased. Based on the said sale deed, the mutation entry was carried out on 09/06/1970 by the

Tahsildar. Respondent No.1 Fakruddin Khajuddin, now deceased and represented by LR's 1/a to 1/d, objected to the mutation entry on the ground that the said land is a service *inam* land and he is one of the shareholders in the same. The Assistant Collector, Latur by judgment dated 26/12/1978, allowed the appeal of deceased Fakruddin and set aside the mutation entry No.319 and concluded that the land was clearly an *inam* land and set aside the order of the Circle Inspector and cancelled the mutation entry.

9. Thereafter, respondent No.1 filed RCS No.381/1975 for seeking recovery of the possession of the suit land from Manikrao alleging that the suit land is *inam* land.

10. RCS No.381/1975 was dismissed by the learned Trial Court on 12/03/1981. A specific issue No.4 was framed as to whether Fakruddin proves that Survey No.3 admeasuring 5 acres and 35 gunthas claimed by Manikrao is a service *inam* land of the *dargah*. The conclusion was that it was a *khalsa* land and not a service *inam* land. This judgment of dismissing the suit and concluding as above, has not been challenged by Fakruddin or any of his legal heirs till today, as per the submission of Mr.Halkude. He states that the said conclusion about his land being *khalsa* land has attained finality.

11. Manikrao therefore approached the Deputy Collector, Land Reforms by instituting his case on 30/06/1984 and praying for an inquiry. The said authority also concluded by judgment dated 21/01/1987 that the said land is a *khalsa* land and could not have been attached due to default in rendering service to any *dargah*. The decision of the Additional Collector dated 28/08/1984 on the application of Manikrao seeking an enquiry u/s 2-A of the Hyderabad Abolition of Inams and Cash Grants Act, 1954 was set aside.

12. In the meanwhile, Manikrao had preferred an appeal against the judgment of the Assistant Collector, Latur dated 26/12/1978. Manikrao did not place on record before the Collector the judgment of the Trial Court dated 12/03/1981 by which the land at issue was already held by the Civil Court to be *khalsa* land and not a service *inam* land. The Collector, Latur, by order dated 11/07/1991, concluded that the said land is service *inam* land and hence Shaikh Lal Mahtab Khan could not have sold the land to Manikrao in 1968 on the basis of the sale deed dated 22/02/1968. In my view, had the judgment of the Civil Court being shown to the Collector, Latur, his order dated 11/07/1991 would have been different based on the conclusions of the Civil Court.

13. The petitioners, after passing away of Manikrao, approached the Divisional Commissioner, Aurangabad, who has been added as respondent No.3 under the orders of this Court passed today, by filing Revision Appeal No.1991/REV/R-71 for challenging the order of the Collector dated 11/07/1991. By order dated 24/11/1992, respondent No.3 dismissed the revision of the petitioners u/s 251 of the Maharashtra Land Revenue Code, 1966 on the ground that the Advocate for the petitioners was absent and concurrent findings are challenged. The restoration application filed by the petitioners was rejected by him on 06/01/1994 on the ground that the revision was not dismissed in default, but in the light of the concurrent decision of the Collector and the S.D.O.

14. The learned AGP has strenuously supported the impugned orders and has contended that this Court cannot exercise its limited jurisdiction when concurrent findings are on record.

15. Considering the above, I find that Revision Appeal No. 1991/REV/R-71 deserves to be remitted to respondent No.3 since the judgment of the Trial Court dated 12/03/1981 concluding that the land at issue is a *khalsa* land, was neither brought to the notice of the Collector, Latur, nor respondent No.3. This aspect needs to be

brought to the notice of respondent No.3 since it has confirmed the order of the Additional Collector dated 26/12/1978 and the order of the Collector dated 11/07/1991 wherein the land is held to be a service *inam* land. These conclusions by the Revenue Authorities cannot be sustained, *prima facie*, in the face of a judgment of the Civil Court, which has attained finality.

16. This petition is, therefore, partly allowed. The impugned orders dated 06/01/1994 and 24/12/1992 passed by respondent No.3 are quashed and set aside. Revision No.1991/REV/R-71 is restored to the file of respondent No.3. Learned AGP submits that the revision would be considered either by the Divisional Commissioner or Additional Commissioner as per the jurisdiction as on date.

17. The petitioners shall appear before the concerned authority on 07/07/2017 at 3.00 p.m. The said authority shall then issue notices to the remaining litigating sides. After recording the appearance of the parties, the petitioners shall submit an application for amendment to the revision and will add the legal heirs of deceased Fakhruddin Khajuddin and Shaikh Lal Mahtab Khan. Respondent No.3 would then consider the said application and after addition of the parties, would issue notices to the said respondents. Needless to

state, the said proceedings shall be considered by the said Authority afresh in the light of the contentions of the litigating sides and keeping in view the judgment of the Civil Court dated 12/03/1981 in RCS No.381/1975.

18. Rule is made partly absolute in the above terms.

19. Since the petitioners' possession of the property at issue has been protected during the litigation, the same protection shall continue during the pendency of the proceedings before respondent No.3 Authority and further for 6 weeks thereafter, if any adverse order is passed against the petitioners.

(Ravindra V.Ghuge, J.)