

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 4809 OF 2004

Divakar S/o Trimbak Bhalerao
(Since died through L.Rs.)
Nitin S/o Divakar Bhalerao
Age: 35 Years, Ocuu: Private Service,
R/o Vitthal Mandir Kasba, Juna
Jalana, Dist Jalana.

....Petitioner.

Versus

1. The State of Maharashtra
2. The Deputy Director of Land Records,
Aurangabad Region, Aurangabad.
3. The Regional Special Officer,
Departmental Enquiries for Nagpur &
Aurangabad Region, At Nagpur.

....Respondents

Mr. A.S. Kale h/f. Mr. S.B. Talekar, Advocate for Petitioner.
Mr. A.S. Shinde, AGP for Respondent/State.

**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.**

DATED : June 21, 2017.

ORAL JUDGMENT : [PER T.V. NALAWADE, J.]

. The proceeding is filed mainly to challenge the order of compulsory retirement made against the petitioner by his Disciplinary Authority. The other reliefs are consequential reliefs. Both the sides are heard.

2. The petitioner was working as Surveyor in the office of

Consolidation II, Jalna district at Aurangabad. He was a member of committee constituted for implementation of consolidation scheme in respect of lands of village Mohol. Complaint applications were received regarding illegal changes of the record from some persons. One Shri. Ratanlal, owner of Survey No. 21 had contended that he was owner of this land and there was record in his name also prior to starting of consolidation scheme, but by using the consolidation scheme, false record of ownership was created in favour of third person like Motiram Punjaji. Similar complaints were received from owners of Survey Nos. 31, 37 and 39. Preliminary enquiry was made and it was noticed that the ownership was changed during the implementation of consolidation scheme and false record of ownership was created in the names of other persons like tenants. There was no record to confer ownership and there was no order of competent authority under the Maharashtra Land Revenue Code or Tenancy Law on the basis of which the ownership record could have been changed while giving different numbers to aforesaid survey numbers during the implementation of consolidation scheme.

3. The other two members of the committee which were implementing the scheme for this village were Nimtanadar – U.P. Bagul and Assistant Consolidation Officer – Shri. B.H. Jasud. As per the duties involved, the surveyor was to visit the field and make enquiry with the persons in possession of lands and others, record

the statements and prepare the record for implementation of consolidation scheme. Nimtandar being the superior officer to surveyor was expected to verify the things and Assistant Consolidation Officer ('ACO' for short) was the head of the committee and he was expected to approve the record prepared by the surveyor. The record was to be ultimately finalised by Deputy Directors of Land Records, but the petitioner/surveyor was a man, who was to work in the field and he was to do the measurement and make spot enquiry. There was specific allegation in the departmental enquiry against the petitioner that when he or the committee had no power to change the record of ownership, when only numbers were to be changed, they changed the names of the owners in all the aforesaid cases and they apparently, did it intentionally for illegal gratification. The show cause notices were issued against the three members of the committee and after considering the say given by the present petitioner, Departmental Enquiry was started against him. In the same DE, the other two members were shown as co-delinquents. Only Nimtandar and present petitioner appeared before the Enquiry Officer and contested the proceeding.

4. The petitioner took the defence that the tenants had given statements that they were in possession of these lands for about 18-20 years and as they had given applications, such change was made. The petitioner blamed ACO by contending that ACO had

given him instruction to make such change. He took defence that on the record of consolidation prepared by him, Nimtandar and ACO had put their signatures and it shows that they had practically verified the things and so, he cannot be blamed for creation of such record.

5. ACO did not contest the enquiry and ultimately, he came to be dismissed from the service after accepting the report given by Enquiry Officer. It is held against him that the act was intentional and for illegal gratification, false record was created behind the back of the owners. On Nimtandar penalty of stopping of two increments permanently is imposed. Present petitioner is compulsorily retired when the Enquiry Officer had given opinion that the case of the present petitioner is fit for removal from service.

6. In the present matter, everything is a matter of record and only after proof of the complaint and consideration of the record, it is possible to infer that the record of ownership was changed by the present petitioner and he had created record in favour of the persons, who were not owners. There was the grievance of the owners that notices were not given to them for making this change. It is not disputed that there was no order of Tenancy Court or revenue authority in favour tenants confirming ownership on the tenants.

7. It is argued for the petitioner that as against Nimtandar, there is penalty of stopping of only two increments and so, the penalty imposed on the petitioner is not proportionate and principle of parity is not observed. In view of this submission, it needs to be observed that it is the petitioner, who was expected to take the measurement, who was expected to make enquiry with the persons, who were in possession and also adjacent owners and who was expected to consider the revenue record like Khatabook. Admittedly, in revenue record the complainant and others were shown as owners before implementation of consolidation scheme and by deleting their names, the names of persons, who were contending that they are in possession, were entered in ownership column and accordingly, certificate was issued. Only the possession of a person cannot make him owner and if the record is to be changed, that needs to be changed by competent authority after making due enquiry. In view of the present facts, it can be said that there was no room to change the record of ownership as only numbers were to be changed. In view of these circumstances, it cannot be presumed that the petitioner did not know that he had no power to make such change in the record though the petitioner has contended that due to influence of ACO he did it. But there is no material to support such contention.

8. Nimtandar is superior officer to the petitioner, but his duty involves supervision over the things done by the petitioner. In view of these circumstances, the probability that Nimtandar believed and trusted the present petitioner and he had not carefully verified the record cannot be ruled out. However, same thing cannot be said against the petitioner and ACO. As against ACO, present petitioner has made allegations of aforesaid nature and ACO was virtually absconding when DE was started. Thus, the role of Nimtandar was of supervising in nature and possibility of negligence was there. In view of such possibility, the penalty of stopping two increments is imposed on him. So, it cannot be said that the allegations and material as against the present petitioner were of same nature. In view of these circumstances, it cannot be said that the principle of parity was not observed by the Disciplinary Authority.

9. The defence taken by the petitioner that the tenants were in possession for about 18-20 years and as the applications were made by the tenants, the record was changed, has no force. It is already observed that only authority created under the tenancy law can confer ownership on tenants if it is possible under tenancy law. It can be said that the petitioner tried to take lame defence of aforesaid nature.

10. On the basis of enquiry, the Enquiry Officer and

Disciplinary Authority formed opinion that the matter involved corrupt practice. In view of the aforesaid circumstances, there is no room to infer any other thing. Even when as against the petitioner penalty of removal from service was suggested by the Enquiry Officer, lenient view is taken and he is compulsorily retired. Thus, atleast to some extent, he will be getting the pension and lenient view is already taken in his favour. The Enquiry Officer and the Disciplinary Authority have formed the opinion that such record was intentionally created. On this point also, there is no other probability created.

11. It was submitted by the learned counsel for the petitioner that the owners could have taken objections as the proposed draft was published in newspaper and even in the concerned village. This defence cannot be considered. If the owners were not in possession and if the notices were not given to them, they were not supposed to guess that such record was being created against them. Even if such record was created due to mistake, the owners would not have lost their rights and this aspect cannot be ignored. However, due to the act of the petitioner, he created complications against owners and owners were dragged in legal battle and they must have spent on litigation for getting corrected the entries. Considering the harassment, which the owners are required to face due to such acts of the officers and as

such tendency is increasing day by day, no lenient view can be taken in favour of person like present petitioner. Only way to curb such tendency is to remove such persons from service.

12. The learned counsel for the petitioner placed reliance on some observations made in the case reported as **(2013) 3 SCC 73 [Rajendra Yadav Vs. State of M.P.]** in support of his contention that the penalty is not proportionate. Peculiar facts of the present matter are already quoted and they show that the case as against Nimtandar – Shri. Bagul was not similar to the allegations made as against the petitioner and the material available as against the petitioner is different. Thus, the observations made in the case cited supra are of no help to the petitioner. It is already observed that lenient view is taken in favour of the petitioner and so, it is not possible to interfere in the order of penalty made against the petitioner. In the result, the petition stands dismissed. Rule stands discharged.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]

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