

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 1660 OF 2014

1. Shankar s/o Bhimrao Karale
age 46 years, occ. Agril
 2. Sanjay s/o Bhimrao Karale
age 38 years, occ. Agril
- Both r/o Teachers colony, Loha
Tq. Loha, Dist. Nanded

.. PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Principle Secretary
Revenue Department
Mantralaya, Mumbai 32.
2. The Divisional Commissioner
Aurangabad Division,
Aurangabad.
3. The District Collector,
Nanded, Tq. & Dist. Nanded.
4. The Sub-Divisional Officer
Loha, Tq. Loha, Dist. Nanded
5. The Tahsildar
Loha, Tq. Loha
Dist. Nanded
6. Vitthal s/o Sambhaji Pawar
age major, occ. Agri;
r/o Pangari, Tq. Loha
Dist. Nanded.

.. RESPONDENTS

Mr. V.D. Salunke, advocate holding for Mr. V.B. Dhage, advocate for petitioner.

Mr. A.P. Basarkar, AGP for respondents no. 1 to 5.

Mrs. M.A. Kulkarni, advocate for respondent no. 6.

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CORAM : S. B. SHUKRE, J.

DATE : 24th FEBRUARY, 2017.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the respective parties.

2. The grievance of the petitioners is about exceeding the jurisdiction by the learned Tahsildar as well as learned Commissioner and, determining as well as granting something never asked for by respondent no. 6 in his application dated 27th February, 1996, filed about 27 years after the sanction of mutation entry no. 105 in respect of land survey no. 2D (now gat no. 106) taken in the year 1969-1970 in the name of the petitioners.

3. The land bearing survey no. 2D admeasuring 3 acres 13 gunthas was purchased by father of petitioners, Bhimrao, on 17th April, 1969 by registered sale-deed. An application was made for mutating the entry regarding ownership of land in the revenue record in the name of father of the petitioners. That application was granted and mutation entry no. 105 came to be recorded in the name of father of the petitioners. This land is now owned by petitioners. Thus, petitioners are the owners of land bearing survey no. 2D admeasuring 3 acres 13 gunthas.

4. Respondent no. 6 made an application on 27th February, 1996 to the Tahsildar, Loha, Dist. Nanded, for correction of mutation entry no. 105 by showing the piece of land bearing survey no. 2D admeasuring 3 acres and 13 gunthas in the name of petitioners and, the remaining area of this land in the name of respondent no. 6.

5. The learned Tahsildar, by his order passed on 14th October, 1996, allowed the application and directed that name of respondent no. 6 also be shown as owner against the land bearing survey no. 2D shown in mutation entry no. 105. Petitioners filed appeal before the learned Sub-Divisional Officer, Loha, being Appeal no. 80R/MUT-Loha/75/96. The learned Sub-Divisional Officer allowed this appeal and quashed and set aside the order of the learned Tahsildar and closed the case. Respondent no. 6 then filed appeal before the Additional Collector being case no. 97/HB/Desk-1/ROP-Appeal/18 which was dismissed by the learned Additional Collector on 10th March, 1998. Respondent no. 6 then knocked at the doors of the Additional Commissioner, Aurangabad, invoking his powers of revision under section 257 of the Maharashtra Land Revenue Code, 1966. The learned Additional Commissioner, Aurangabad, was of the opinion that as the dispute pertained to correctness of the record of rights, as it stood before the consolidation, there was no question for asking respondent no. 6 to file appeal before the competent authority challenging the consolidation claim and, thus, allowed the revision application by his order passed on 22nd October, 2001. The learned Additional Commissioner thus confirmed the order passed by the learned Tahsildar, Loha. Petitioners filed second revision application before the Honourable Minister but, it was rejected by the Honourable Minister by his order passed on 17th October, 2013. Now, petitioners are before this Court challenging the legality and correctness of orders dated 17th October, 2013, 22nd October, 2001 and, 14th October, 1996 respectively passed by the Honourable Minister, learned Additional

Commissioner and learned Tahsildar.

6. As stated earlier, what lies at the center of the controversy is the mutation entry no. 105. It is the contention of respondent no. 6 that this entry shows area of the land owned and possessed by petitioners to be more than 1 H 33 R or 3 acres 13 gunthas and that, rest of the land out of survey no. 2D admeasuring 2 H 21 R should be shown as owned by respondent no. 6. Thus, respondent no. 6 has no objection to the extent of area of 3 acres 13 gunthas of the land bearing survey no. 2D to be shown as owned by petitioners. This is the gist of application dated 27th February, 1996 filed by respondent no. 6 regarding correction of mutation entry no. 105.

7. In the above background, it would be necessary to closely examine mutation entry no. 105. Upon examination of this entry, one would find at once that this entry shows area of land bearing survey no. 2D as owned by petitioners to be 3 acres 13 gunthas and nothing more. So, the very grievance of respondent no. 6 itself has been addressed as well as answered in his favour by mutation entry no. 105. If this is so, the application deserves to be rejected. But, unfortunately, this basic nature of the grievance having not been properly considered by the learned Tahsildar as well as learned Additional Commissioner and the Honourable Minister, erroneous orders have been passed by the authorities. There was absolutely no need for the authorities to make any interference with mutation entry no. 105 as it stood in the revenue record before the orders were passed. Therefore, I find great substance in the petition and , it

deserves to be allowed.

8. In the result, writ petition is allowed with cost. Impugned orders passed by the learned Tahsildar, Additional Commissioner and the Honourable Minister are hereby quashed and set aside. Application dated 27th February, 1996, stands rejected. There is no need to make any correction in the area of mutation entry no. 105. It has been correctly shown as per the claim of petitioners and, so far as this claim of petitioners is concerned, respondent no. 6 has no grievance. If respondent no. 6 has any other grievance, he is at liberty to resort to appropriate remedy, subject to law of limitation, if any. Rule made absolute in above terms.

(S. B. SHUKRE)
JUDGE

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