

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5107 OF 2012

Mohammad Nawaz s/o Sardaroddin
Age : 61 yrs. Occ. Inamdar of Dargha
Sayyed Sadat, Village Shiradhon,
Tq. Kandhar, Dist. Nanded.

VERSUS

1. The State of Maharashtra,
Through its Secretary of
Revenue Department, Mantralaya Mumbai.
2. The Additional Commissioner
Aurangabad Division, Aurangabad.
3. The Additional Collector,
Nanded.
4. The Sub-Divisional Officer,
Nanded.
5. The Tahsildar,
Kandhar, Tq. Kandhar, Dist. Nanded.
6. Shaikh Maheboob s/o Mohd. Ibrahim,
Age : 51 yrs, Occu. Agri.
R/o Shiradhon, Tq. Kandhar
Dist. Nanded.

Mr. S. L. Bhapkar, Advocate for Petitioner
Mr. S. G. Karlekar, AGP for Respondent State
Mr. Madhur Golegaonkar h/f Mr. A. S. Golegaonkar, Advocate for Respondent.
No. 6

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CORAM : K.K. SONAWANE, J.

DATE : 17TH JANUARY, 2017.

ORAL JUDGMENT :

1] Rule. Rule made returnable forthwith. Matter is taken up for final hearing at the instance of the learned counsel for both sides.

2] It has been contended that the father of the petitioner, namely, Mohammad Nawaz s/o. Sardaroddin was an Inamdar and co-sharer of the service Inam land Gat No. 39 to the extent of 2 Acres 15 Guntha i.e. Suit land of Dargah Hazruddin Syed Sadat of village Shiradhon. According to petitioner, suit land was allotted by the Nizam in favour of father of the petitioner for services of Dargah Sayyaed Sadat of village Shiradhon, being a Muntkhab. After demise of the father, petitioner being an legal heir and successor of deceased Inamdar, has a legal right to get the share in the contentious suit property. Therefore, he submitted an application to the talathi to mutate his name in the cultivation column of 7 x 12 extract for the period 2003-04. The concerned Talathi of village Shiradhon carried out the enquiry and drawn conclusion that the petitioner is in occupation of the contentious suit land Gat No. 39. Therefore, his name was mutated in the cultivation column of 7 x 12 extract of the said land for the year 2003-04.

3] The respondent No.6 Shaikh Mehboob s/o. Shaikh Ibrahim approached to the Tahsildar Kandhar and ventilated the grievances about the validity of the mutation entry of the petitioner in the cultivation column of the 7 x12 extract for the period 2003-04 of the suit land. The learned Tahsildar, after hearing both sides, allowed the application of the respondent No.6 and revoked the mutation entry of the petitioner being occupant of the suit land. The petitioner approached to the S.D.O. Nanded to redress his

grievance but his efforts did not evoke result. The S.D.O. Nanded also turned down the contentions put forth on behalf of petitioner and rejected the ROR Appeal No. 23/2010 by order dated 9.10.2006. The petitioner being dissatisfied with the order of S.D.O. rushed to the Additional Collector, Nanded. But, the concerned additional Collector, Nanded also rejected his ROR appeal and upheld the order of revenue authorities directing to delete the name of petitioner from 7 x 12 extract. Eventually, petitioner knocked the doors of Additional Commissioner, Aurangabad for justice by filing Revision Petition under Section 256 of the Maharashtra Land Revenue code. The Commissioner also, after hearing the petitioner and respondent turned down the contentions of the petitioner and dismissed the revision petition. However, by resorting to remedy under Article 226 of the Constitution of India, petitioner preferred the present petition with prayer to quash and set aside the impugned orders passed by the Revenue personnels directing to delete the name of the petitioner from the cultivation column of 7 x 12 extracts of suit land for the period 2003 - 2004. In response to notice, respondent appeared and vociferously opposed the contentions put forth on behalf petitioner of and requested to reject the petition.

4] The learned counsel for the petitioner submitted that the impugned orders passed by the revenue personnel are arbitrary, illegal and not within the purview of law. The revenue personnel did not appreciate that the enquiry was conducted by the Talathi, pursuant to which he mutated the name of the petitioner in the cultivation column after verification of possession of the petitioner over the suit land. It is also not

considered that the petitioner is paying Wakf Fund to the Wakf authority for occupation of the suit land. It has been submitted that the petitioner has filed civil Litigation R.C.S. No. 99 of 2006 against the co-sharers of land Gut No. 39 of Dargah Sayyed Sadat. The Suit was filed for declaration of the right of petitioner being the legal heirs and successors of deceased Muntkhab i.e. father Sardaruddin Jamaluddin. The suit came to be settled amicably and it was decreed in terms of compromise petition. According to learned counsel, Mutawalli of the Dargah who are co-sharers of the suit land Gut No. 39 agreed about the right & possession of petitioner. The legal heirs and successors of original Mutawalli Shaikh Jilani admitted the physical possession of the petitioner over the suit land. The petitioner also rendering services to the Dargah. He is entitled to get 10% share in the suit land. But the concerned revenue authority did not appreciate the circumstances and refused to mutate the name of the petitioner in the cultivation column of suit land. Therefore, the learned counsel prayed to allow the petition and set aside and quash the impugned order passed by the revenue personnels, directing to delete the name of the petitioner from the 7 x 12 extract of the suit land Gat No. 39, located at village Shiradhon.

5] Learned AGP and the learned counsel appearing for respondent No.6, raised objection to the arguments propounded on behalf of the petitioner and attempted to canvass that the entry of the petitioner's name in the 7 x12 extract over the suit land by the concerned Talathi was without following due procedure. The learned Tahsildar has correctly appreciated

the circumstances and passed the order to delete the name of petitioner from cultivation column of 7 x 12 extract of the suit land. Rest of the revenue authorities also upheld the finding arrived at by the Tahsildar. There are no documents produced on record on behalf of petitioner to show that he is in occupation of the contentious suit land. Respondent No.6 was not party to the civil litigation initiated by the petitioner against the alleged co-sharers of the property of Dargah. Therefore, the compromise decree passed in R.C.S. No. 99 of 2006, is not binding on respondent No.6. The learned counsel for respondent No.6 prayed not to nod in favour of the petitioner and dismiss the petition.

6] I have given anxious consideration to the arguments advanced on behalf of both sides, perused the documents produced on record. Admittedly, Talathi of the village Shiradhon get mutated the name of the petitioner in the cultivation column of Gat No. 39 of village Shiradhon for the year 2003-04. But, the concerned Tahsildar in ROR proceeding observed that the Talathi did not follow the procedure meant for mutation entry in the cultivation column of 7 x 12 extract under the MLR Code. The other revenue personnel from Nanded, as well as the Additional Commissioner, Aurangabad division upheld the findings expressed by the concerned Tahsildar, Kandhar for deleting the name of the petitioner from 7 x 12 extract of suit land. There are no any documents available on record to point out that the concerned Talathi, after following due procedure prescribed for mutation entry in the 7 x 12 extract, proceeded to take entry of petitioners name in the cultivation column of contentious land for the year 2003-04.

7] The petitioner relied upon the compromise decree passed by; the Civil Court in the R.C.S. No. 99 of 2006 and asserted that in view of compromise decree, he is entitled for 10% share in the contentious suit land. It is to be noted that the petitioner initiated R.C.S. No. 90 of 2006 against one Abdul Kadir s/o. Mohd Maulana and Nizamoddin s/o. Ahmed Saheb. But, the respondent No.6 was not the necessary party to the suit, nor he was impleaded in the array of defendant. Therefore, whatever compromise decree passed by the Civil Court in the proceeding, of RCS No. 90/2006 would not have any binding force on the respondent No.6. In contrast, the respondent No.6 categorically denied the possession of the petitioner over the suit land during particular year 2003-2004.

8] At this juncture, it is worth to mention that the mutation entry in the cultivation column of 7 x 12 extract by revenue authority is only meant for fiscal purposes and nothing more than it. In case the petitioner has a legal right, title or interest in the contentious suit property belonging to Dargah, it is incumbent for him to get his legal right settled from the appropriate forum as envisaged under law. But, it would be preposterous at this stage to appreciate the contention of petitioner for his possession over suit land, without any legal & valid right based on documentary evidence in his favour. It would be reiterated that there are no documents produced on record on behalf of petitioner, to substantiate his possession being co-sharer over the suit property, as well as his entitlement to get his name mutated in mcultivation column of suit land. Therefore, I do not find any merit in the

contentions put forth on behalf of petitioner. There is no perversity or illegality found in the impugned order passed by the respective revenue authorities. In contrast, concerned revenue authorities have appreciated all the circumstances on record in its proper perspective. There is no propriety to cause any interference in the impugned order of the revenue authority at the behest of the petitioner by exercising inherent powers under Article 226 of the Constitution of India.

9] In the result, petition being devoid of merit, deserves to be dismissed. In the above premises, the writ petition stands dismissed. Rule is discharged. No orders as to costs.

[K.K.SONAWANE]
JUDGE

grt/-