

(1)

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

WRIT PETITION NO. 6758 OF 2013

Shekhar Champalal Desarda,
age 46 years occupation agriculture and business
R/o 28, Venkateshnagar, Jalna road, Aurangabad.

...PETITIONER

VERSUS

1. State of Maharashtra
Through : The Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai – 32.
2. The Collector, Aurangabad.
3. The Tahsildar, Aurangabad.
4. The Talathi for Mauje Mitmita
Taluka and District Aurangabad
C/o Office of the Tahsildar, Aurangabad.
5. Smt. Naznibegum (DIED),
Through: Legal representatives:
 - 5-A. Faruki Ashtaq Altafouddin,
age major occupation labourer
 - 5-B. Faruki Gazi Altafouddin,
age major occupation labourer
 - 5-C. Faruki Ejaj Altafouddin,
age major occupation labourer
 - 5-D. Faruki Majaj Altafouddin,
age major occupation labourer

(2)

5-E. Faruki Nasrat Begum Altafouddin,
age major occupation labourer

All R/o Azam Colony, Roshan Gate,
Aurangabad Taluka and Dist. Aurangabad.

...RESPONDENTS

Shri Ramesh R. Mantri, Advocate for petitioner.

Shri V.M. Kagne, Asstt. Govt. Pleader for Resps. No. 1 to 4.

CORAM : R.D. Dhanuka, J.

DATE : 14th August, 2017

ORAL JUDGMENT

By this petition filed under section 226 and 227 of the Constitution, petitioner seeks declaration that order dated 05/03/2012 passed by this Court in Writ Petition No. 2597 of 1993 is obtained by fraud upon this Court by the respondents and also seeks a Writ of Certiorari challenging the revenue entry No. 7141 dated 19th July 2010 and revenue entry No. 8584 dated 17th May 2012 passed by the respondents and order bearing entry No. 8584 dated 17th May 2012 directing deletion of the name of the petitioner from land block No. 307 to the extent of 2H.02R and seeks restoration of entry No. 7141

(3)

in the name of the petitioner in respect of said area.

2. None appeared for respondents No. 5-A to 5E though served.

3. It is the case of the State Government that the land Gat No. 307 situated at village Mitmita Taluka and District Aurangabad, admeasuring about 15 acres, which was Gairan land, as per order of the Collector dated 10th January 1989, was allotted to Joseph Basco Tajras, Smt. Nazni begum Altafoddin and Smt. Halima begum Gous Mohammad Khan for cultivation. In the process, the Collector passed order on 02nd November 1991 for repossession of the land on the ground that the legal representatives of original allottee were not cultivating the said land. The name of the original allottee was deleted from the revenue record by the Government. Said order was confirmed upto the stage of proceedings before the learned Commissioner, Aurangabad. The legal representatives of the original allottee thereafter filed Writ Petition No. 2597 of 1993 before this Court. By an order dated 5th March 2012, this Court dismissed the said Writ Petition, upholding order of the learned Collector. In the said order, this Court observed that panchnama drawn on 24th February 2012 shows that the land is barren and not cultivated. This

(4)

Court accordingly held that since the land was given for specific purpose and the same was not cultivated, no error has been found in the order passed by the authority forfeiting the land and seeking to take the vacant possession.

4. On perusing the order passed by this Court, it appears that respondents No.1 to 4 have passed an order thereby deleting name of petitioner from the revenue record. Being aggrieved by the said action on the part of respondent No.1, the petitioner filed this petition.

5. Learned Counsel for the petitioner invited my attention to the documents alleged to have been executed between the petitioner and legal representatives of original plaintiff and the receipt of payment of Rs. 11,10,000/- made by the petitioner to the Government. He also invited my attention to several orders passed by this Court in said Writ Petition directing the Government to place on record the true and correct position about the land in question. He submits that the original allottee has transferred the said land by sale deed in favour of the petitioner only after obtaining requisite permission from the respondents and after payment of *Nazrana* amount to the Government. He submits that the Government should

(5)

not have deleted name of the petitioner from the revenue entry.

6. Mr Kagne, learned Assistant Government Pleader on behalf of respondents No.1 to 4, on the other hand, submits that the Collector has also passed order of resumption on 2nd November 1991 and the name of original allottee was deleted from the revenue record. Such action on the part of the Government was upheld upto the stage of the Commissioner, Aurangabad. He submits that the Writ Petition filed by the legal representatives of the original allottee in this Court also came to be dismissed. He submits that the claim of the petitioner could be only against legal representatives of the original allottee. He submits that since the original allottee also has no right in the land in view of the order passed by the learned Collector, no right or interest can be created by the legal representatives of the original allottee in favour of the petitioner. He submits that name of the petitioner is deleted in view of the order passed by this Court in Writ Petition No. 2597 of 1993.

7. A perusal of the prayers sought by the petitioner in this petition indicate that he has prayed for a declaration that order dated 5th March 2012 passed by this Court in Writ Petition No. 2597 of 1993 is obtained by fraud by the respondents. Subsequent action taken by

(6)

respondents No.1 to 4 is based on the order of this Court in Writ Petition No. 2597 of 1993. In view of these facts in hand, in my view, it would be appropriate if the petitioner applies for modification/review of the order passed by this Court in Writ Petition No. 2597 of 1993 on 5th March 2012 and to seek appropriate direction.

8. It is made clear that this Court has not expressed any view on merits of the matter.

9. The petition is disposed of in aforesaid terms.

10. Interim relief granted by this Court on 27th August 2013 to continue for a period of four weeks from today, to enable the petitioner to apply for modification of the order passed by this Court in the Writ Petition.

(R.D. DHANUKA, J.)

pjm