

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION NO. 11502 OF 2016

WITH WP/1253/2016

WITH WP/1254/2016

WITH WP/1255/2016

WITH WP/1256/2016

WITH WP/1257/2016

WITH WP/1258/2016

WITH WP/1259/2016

WITH WP/1260/2016

WITH WP/1261/2016

WITH WP/1262/2016

WITH WP/1263/2016

WITH WP/1264/2016

WITH WP/1265/2016

WITH CA/9982/2017 IN WP/1265/2016

WITH WP/1266/2016

WITH WP/1267/2016

WITH WP/1268/2016

WITH WP/1269/2016

WITH WP/2220/2016

WITH WP/2236/2016

WITH WP/1563/2016

WITH WP/1590/2016

WITH WP/1591/ 2016

WITH WP 2418/ 2016

WITH WP 2419/ 2016

WITH WP/2421/ 2016

WITH WP 2422/ 2016

WITH WP/2424/ 2016

WITH WP/2425/ 2016

MOHAMMAD RAFIQ MOHAMMAD HAROON AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocates for Petitioners : Mr. Arvind Deshmukh, Mr. P.P. Mandlik
& Mr. P.N. Kalani

AGP for Respondents No.1 to 5:Mr. N.T. Bhagat

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CORAM : **RAVINDRA V. GHUGE, J**

(Date : 2nd August, 2017.)

PER COURT :-

1 In all these matters, the identically situated petitioners have challenged the order passed by the District superintendent of Land Records, Parbhani (DSLRL) in their respective cases. Their specific case numbers have been set out in the prayer clause in the memo of the petitions.

2 For the sake of clarity and reference, the prayer put forth by these petitioners, by way of a specimen, is reproduced as under:-

" The Judgment & order dated 3.12.2015 passed by the District Superintendent of Land Records, Parbhani in case No.BHU/SNO2//appeal/SR/74/2015 be quashed and set aside."

3. The substantive prayers put-forth in all these petitions are, by & large, similar to the one reproduced

above. In effect, all these petitioners desire that the impugned order passed by the DSLR be set aside as specific objections as regards the scope of interference under section 258 of the Maharashtra Land Revenue Code (MLRC) and the delay of about 35 years in indirectly reopening the entire enquiry into the rights and entitlement of the petitioners, have been discarded and have not been dealt with, by the DSLR.

4 The learned Advocates for the petitioners and the learned AGP on behalf of the State have put forth strenuous submissions. The learned AGP placed reliance on the affidavit in reply dated 23.6.2016 (filed in WP No.1268/16 by one Mr. Ravindra Mankali Narmala, Dy. Superintendent of Land Records, Parbhani). However, considering the order that I intend to pass, in the light of the vital issues having not been dealt with by the DSLR, I am not required to advert to their entire submissions.

5 Suffice it to say that, the petitioners claim to have been occupying the premises i.e. the land at issue, for more than 100 years. Never had the Wakf board or any other individual or authority claimed a title to the said land, which is now occupied by the petitioners. The revenue entries

with regard to these petitioners were taken in 1981 after following the due procedure laid down under the Maharashtra Land Revenue Code(MLRC).

6 All the learned Advocates for the petitioners have submitted that they have the documents with regard to their revenue entries pertaining to their rights/shares in the land at issue and this aspect cannot be disputed because such revenue entries have been settled after the revenue authorities have followed the due procedure laid down under the MLRC.

7 The petitioners further submit that, each of them has purchased the land at issue to the extent of their share by executing a sale-deed. That was the basis of the enquiry conducted by the revenue authorities, leading to the correction of the revenue records which are still intact for the past more than 25 years.

8 Grievance, which is specifically narrated in the petition paper book is that a local MLA had exerted pressure on the revenue authorities, as these petitioners were not able to fulfill his demands. The revenue authorities, upon receipt of the letter from the MLA alleging

that the land occupied by these petitioners is the land belonging to the Wakf board, suddenly swung into action and have reopened an issue which they could not have directly so done, without following the due procedure and without considering the aspect of delay of 35 years.

9 The petitioners point out from one such order passed dated 3.12.2015 in Appeal SR No.74/15 that, the specific contentions raised by the petitioners were reproduced verbatim from the second paragraph of the impugned order. Without considering the said objections, the DSLR has issued specific directions to the Deputy Superintendent of Land Records to go into the rights of the petitioners under section 258 of the MLR Code, 1966 and pass an order as to whether the land belongs to the petitioner or to the Wakf board.

10 Upon perusing the impugned order thread bare, I find that specific objections were raised by these petitioners, which can be summarized as follows:-

- (a) Section 258 of the MLR Code does not give any power to the revenue authorities to cause a roving enquiry into the title of a person, who is possessing the property record card (PR Card)/city survey.

(b) Section 258 permits rectification of a clerical mistake and does not permit re-opening of the issue by which the revenue authorities can endeavor to decide the title of a party.

(c) The District Superintendent of Land Records cannot *suo moto* initiate an enquiry under section 148 to 154 of the MLRC under the guise of exercising his powers under section 258 of the MLR Code.

(d) When the City Survey records were crystallized in 1981, a proceeding at the behest of the local MLA cannot be initiated by the revenue authorities under section 258, after a passage of 33 years.

(e) Unless the above aspects are scrutinized and dealt with, the proceedings cannot be said to be maintainable.

11 The District Superintendent of Land Records has reproduced the entire pleading of the petitioners inclusive of the above summarized points and by the impugned order, without considering the vital aspects, has directed the Deputy Superintendent of Land Record to conduct an enquiry under section 258 of the MLR code.

12 The grave apprehension of the petitioners and which may not be misplaced, is that, the Deputy superintendent of Land Records will not dare to go against the diktat of the District Superintendent of Land Records and more so, when the letter of the MLA is on the record.

13 The Additional Collector, Pabhani by communication dated 19.1.2015 has directed the Tahsildar, Parbhani that, he should cause an enquiry into survey No.2, as well as the constructed portion in that survey, in the light of the letter of the Member of the Legislative Assembly Mr. Durani Abdul Khan Latif Khan Ahemad alias Baba Jani, dated 29.12.2014. The said communication also indicates that, the Additional Collector, Parbhani has directed the Tahsildar to stop all the construction work in survey No.2 and hand over the possession of the entire survey No.2 to the Wakf board.

14 I find this to be unreasonable and draconian as the Additional Collector, Parbhani has virtually exhibited supreme power of a revenue authority, as if he is above the law. The properties of the petitioners in survey No.2, if at all are in the possession of the petitioners from their ancestors for 50 years or 100 years as is being claimed, they cannot

be taken away from them by the stroke of a pen at the whims of the Additional Collector, Parbhani. I express my displeasure at the manner in which the Additional Collector, Parbhani has worded his letter dated 19.1.2015 and has issued directions to the Tahsildar, Parbhani.

15 It is pointed out from Writ petition No.1253/2016 that about 15 years ago, one Mr. Abdul Aziz Mohomad Salim, Secretary, Vyapari Society had initiated Appeal SR No.244/03 before the District Superintendent of Land Records, Parbhani. Claim was made that some of the portion admeasuring four acres and 35 gunthas in survey No.2 was a Wakf property and was given on 99 years lease to several individuals. The order of the DSLR dated 22.5.2013 placed on record indicates that the said Appeal was dismissed and the contention that the property belongs to the Wakf board was rejected.

16 This Court (Coram: Shri S.B. Shukre, J) has noted in the order dated 17.3.2017 in Writ Petition No.8859/2016, 6767/2016 and a bunch of writ petitions, in the matter of **Mohammad Yusuf Haji versus State of Maharashtra and others**, that the Wakf board can initiate steps or proceedings to lay a claim on any property as being Wakf

property, only before the Wakf tribunal. In the instant cases, the Wakf board is not even before the DSLR and there is no claim or proceedings initiated by the Wakf Board in so far as survey No.2 being a Wakf property is concerned.

17 Prima facie, considering the factors which emerge from these petitions, it is quite obvious that the revenue authorities have given a go-bye to the procedure that is required to be followed under the MLR code and seem to have short-circuited the procedure in their haste to declare that survey No.2 is a wakf property. The invisible thrust or force behind such actions of the revenue authorities, in all probabilities would find its roots in the letter dated 29.12.2014 issued by the local MLA.

18 Considering the above, all these petitions are partly allowed.

19 The impugned orders set out in the prayer clause in the petitions dated 29.9.2015, 19.11.2015, 30.11.2015, 3.12.2015 and 21.12.2015 are quashed and set aside. All these appeals which have been *suo motu* moved by the DSLR, Parbhani owing to the direction of the Collector, Parbhani dated 25.1.2015, shall be considered afresh by

the respondent No.1, DSLR under the following directions:-

- (a) Whether the said proceedings are for reopening the claims of the petitioner to the lands and the constructions erected thereon in survey No.2 ?
- (b) If yes, whether the respondent No.1 can initiate such an action under section 141 to 148 of MLR Code ?
- (c) Whether the DSLR intends to restrict the matters only to rectify clerical mistake under section 258 of the MLR Code ?
- (d) Whether section 258 of the MLR Code does not give any power to the revenue authorities to cause a roving enquiry into the title of person, who is possessing the property record card (PR Card)/city survey ?
- (e) Whether section 28 permits rectification of clerical mistakes and does not permit reopening of the issue by which the revenue authorities can endeavor to decide the title of a party ?
- (f) Whether the District Superintendent of Land Records cannot *suo motu* initiate an enquiry under section 148 to 154 of the MLRC under the guise of exercising his powers under section 258 of the MLR Code ?
- (g) When the City Survey records were crystallized in 1981, whether proceedings at the behest of the local MLA can be initiated by the revenue authorities under section 258, after a passage of 33 years.

20 While considering the above issues, it is made clear that the DSLR shall be conscious of the fact that, the right or title or interest of any litigating side vis-a-vis a land or immovable property cannot be decided by a roving enquiry under section 258 of the MLR code

21 Since the petitioners are agreeable to appear before respondent No.1 at 11 a.m. on 1.9.2017, in these matters, formal notice need not be issued by respondent No.1 to these petitioners. It is also made clear that respondent No.1 shall deal with each of the issues as directed above and shall pass a reasoned order. Needless to state, it is expected that neither respondent No.1, nor the revenue authorities like the Tahsildar and the District Collector, Parbhani, shall be influenced by any pressure being exerted by any person. The litigating sides are at liberty to submit their written notes of submissions along with copies of the Judgments to be cited.

(RAVINDRA V. GHUGE , J)