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

WRIT PETITION NO.7601 OF 2012

1. Smt. Sushila Jagannathrao Kulkarni,
Age: 80 years, Occ: Household,
R/o. Plot No.18, Sanmitra
Colony, Aurangabad.
2. Dr. Arun Jagannath Kulkarni,
Age: 58 years, Occ: Medical
Practitioner, R/o. Sanjivan
Hospital, Tukum, Chandrapur,
Taluka and Dist. Chandrapur.
3. Dr. Jayshree Jagannathrao Kulkarni,
Age: 52 years, Occ: Service,
R/o. Plot No.18, Sanmitra Colony,
Aurangabad. ..PETITIONERS

VERSUS

1. The State of Maharashtra,
(Through Department of Revenue,
Mantralaya, Mumbai 400 032)
2. Settlement Commissioner and
Director of Land Records,
Maharashtra State, Pune.
3. Deputy Director of Land Records,
Aurangabad.
4. The Superintendent of Land Records,
Aurangabad.
5. Nirman Bharati Landmarks Pvt Ltd.,
Pune, Through it's Director
Shri Ranjit Ashok Darak,
Age: Major, Occ: Business,
R/o. 104, Parmar Chambers,
Sadhu Vasvani Road,

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Pune 411 001.

6. Sanmitra Co-op Housing Society
Limited, Aurangabad
Through it's Secretary,
Shri Ajay Bhagwantrao Deshmukh,
Age: Major, Occ: Business,
R/o. Sanmitra Colony,
Aurangabad. ..RESPONDENTS

WITH

CIVIL APPLICATION NO.12103 OF 2017
CIVIL APPLICATION NO.12104 OF 2017
IN
WRIT PETITION NO.7601 OF 2012

The State of Maharashtra
Through Revenue Department,
Mantralaya, Mumbai & ors ..APPLICANTS

VERSUS

Smt. Sushila Jagannathrao
Kulkarni, Age: 80 years,
Occ: Household, R/o. Plot No.18,
Sanmitra Colony, Aurangabad
& ors ..RESPONDENTS

Mr D.P. Palodkar, Advocate for petitioners;
Mr A.P. Basarkar, A.G.P. for respondent Nos.1 to 4;
Mr A.S. Bajaj, Advocate for respondent No.5;
Mr S.R. Deshpande, Advocate for respondent No.6

CORAM : NITIN W. SAMBRE, J.**DATE : 25th SEPTEMBER, 2017**

ORAL ORDER :

This Court on 7th June, 2017 passed conditional order directing respondent Nos. 3,4 and 5 to file affidavit, failing which, costs of Rs.5000/- was to be saddled.

2. Since the affidavit was filed within time stipulated in the said order, respondent No. 3 has tendered his explanation and also paid costs without any resistance.

3. When confronted with concerned A.G.P. on the communication of order of this Court, the fact remains that from the record of the office of the Government Pleader, it could be gathered, neither a proper communication nor said order was communicated to respondent Nos. 3,4 and 5.

4. Perused the affidavit filed respondent Nos. 3 and 4, who have tendered their unconditional apology and also taken corrective measures by

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nominating appropriate Officer viz., Head Clerk in each of the office of District Superintendent of Land Records within the jurisdiction of this Court alongwith their names, contact Number, e-mail I.D. etc.

5. This Court appreciates efforts taken by respondent No. 3 in nominating Nodal Officers so as to deal with the things not only in High Court but also in subordinate Courts.

6. The explanation for not filing affidavit within stipulated time, tendered by respondent Nos. 3 and 4 is accepted.

7. Costs, if any, paid by these respondents, be returned to them forthwith.

8. The petition questions the order dated 21st June, 2007 passed by Superintendent of Land Records, Aurangabad and order dated 30th September, 2011 whereby aforesaid order was confirmed by

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Deputy Director of Land Records, Aurangabad.

9. Factual position as reflected from the record is as under :

The petitioners, legal heirs of one Jagannath Kulkarni, who claim to be owner of Plot No.18 out of Sanmitra Housing Co-operative Society Limitd i.e. respondent No.6 to the present petition. It is claimed that in 1960, said plot came to be allotted to present petitioners.

10. In the year 1971, City Survey was carried out of Aurangabad city, in which, said plot No.18 was given CTS No.17840 and area of the said plot was provided in the city survey as 403 Sq. Mtrs.

11. The adjoining land owner Nirman Bharati Landmark Pvt. Ltd., Pune i.e. respondent No.5 to the present petition noticed that respondent No.6 society has encroached upon the land of said respondent No.5 and as such, took out appropriate

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proceedings before the said revenue authorities for correction of area. The Superintendent of Land Records, Aurangabad, while dealing with the claim of respondent No.5, noted that Plot Nos. 83 to 91 situated at Silekhana, Aurangabad are owned by them, whereas adjoining land Plot No.81 owned by respondent No.6 society. It is claimed that in P.R. Card of Plot No.89, respondent No.6 illegally added area of Plot No.83 viz., CTS No.17837 to 17842, accordingly, prayed for area of correction. It is claimed that when earlier area correction was carried out, neither any notice or appropriate proceedings were taken out against their predecessor in title. It is claimed that area correction was carried out by the then Superintendent of Land Records without any authority of law.

12. Taking cognizance of such application, Superintendent of Land Records, Aurangabad, issued notice to respondent Nos. 5 and 6, so also Jagannath Kulkarni, who claimed to be owner of Plot

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No.18. It is claimed that Jagannath Kulkarni died way back and legal heirs are pursuing the said matter. Needless to say that legal heirs have never mutated their name being owner of Plot No.18 at the place of Jagannath Kulkarni as his legal representatives.

13. On the aforesaid application, the Superintendent of Land Records, Aurangabad noticed concerned parties who were recorded as owner on its record and after conducting appropriate enquiry proceeded to adjudicate the claim thereby ordering correction in area of Plot No.18 being CTS No. 17840, 96.01 sq. mtrs., from 402 sq. mtrs., alongwith other adjoining C.T.S. Number. The said order was further confirmed of Deputy Director of Land Records, Aurangabad at the behest of respondent No.6 society, in an appeal, in which, present petitioners were intervenors by the order impugned dated 30th September, 2011. As such, this petition.

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14. Mr. Palodkar, learned Counsel for the petitioners would urge that reasonable period within which the application for area correction should have been moved is three years. According to him, after 1971 city survey, as such, application in any case should have been moved before 1975 and not in 2007. He submits that the application of respondent No. 5 to that effect for correction of area of the plot, that too, after period of more than 35 years is not maintainable.

So as to substantiate the said claim, he would draw support from the judgment of Apex Court in the matter of ***Santoshkumar Shivgonda Patil and others vs Balasaheb Tukaram Shevale and others*** reported in ***2009(9) SCC 352***.

15. His next submission is that though original plot holder has expired, notice was not served on the petitioners, his legal heirs and order passed is in contravention of the principle of natural justice.

16. Per contra, learned A.G.P. supports the order. According to him, neither the petitioners nor respondent No. 6 have produced their title deed to the property being Plot No.18 depicting area of 402 sq. mtrs. He would then urge that notices were duly issued to the persons in whose name mutation is carried, however, the petitioners have chosen not to appear. He submits that after death of original owner Jagannath Kulkarni, the petitioners have not carried out any change in record so as to get their name mutated for obvious reason that they do not have title over the suit property for 402 sq. mtrs. area. He would urge that at the behest of respondent No.6 society, in whose shoes, present petitioners are claiming to be entered into having purchased the property from said society, has already initiated suit, which is pending before the competent civil court and as such the petition lacks merit and liable to be dismissed.

17. Learned A.G.P. would then rely upon the

affidavit of authorities particularly Circular dated 23rd March, 1995 wherein correction in area was carried out by certain officers without any competency and authority was proceeded again and appropriate order of correction of record is required to be passed by competent authority. According to him, the father of petitioners Jagannath Kulkarni in connivance with respondent No.6-society, from whom he claimed to have purchased the property by practicing fraud, increased the area of the plot without any title or lawful authority. He submits that presuming what has been claimed by the petitioners that correction cannot be carried out after a reasonable period, however, such limitation is not applicable to the cases where fraud is noticed. According to him, as a consequence of fraud, the plot area on the paper got increased, whereas actual area on the field remained same. If fraudulent entry of area is permitted to be continued in favour of the petitioners, the petitioners will be getting benefit of their own wrong thereby causing

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prejudice to the individual, who have valid title to the property.

18. He further submits that original record is produced before the Court for its inspection so as to demonstrate the issuance of notice on respondent authorities and also to ascertain from the original record, area of respective C.T.S. Numbers.

19. Respondent No.5 adopted the submissions of learned A.G.P. and submits that petition is liable to be dismissed, whereas respondent No.6 supported the claim of the present petitioners.

20. Considered rival submissions and perused original record including that of outward register qua issuance of notice to Jagannath Kulkarni on the proceedings taken out for correction of area resulting into passing of the impugned order.

21. It is apparent from record that neither petitioners nor respondent No.6 through whom father

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of petitioners claimed to have purchased property have produced their title deeds either before this Court or before authority below so as to demonstrate that the petitioners are owning 402 sq. mtrs. of land and not 96.01 sq. mtrs. In absence title deed, it is really difficult to appreciate the claim of petitioners that they have title to the suit property to the extent of 402 sq. mtrs.

22. In the aforesaid background, non production of title deed, this Court proceeded to analyze the documents which are produced on record by the petitioners and contents of the affidavit of the respondent. The petitioners alongwith the petition have produced on record certain payment receipts issued by the respondent No.6-society towards alleged consideration of the suit property. Apart from it, no title deed is produced on record. Said documents could not be termed to be title document in favour of the petitioners and cannot be considered to ascertain the area of plot of the petitioners.

23. It is also not disputed by the petitioners that at the behest of respondent No.6-society through whom they are claiming title, civil suit being Regular Civil Suit No. 417 of 2007 is already pending, which also include property of the petitioners.

24. It is to be noted that from perusal of the original record before this Court in relation to alleged correction in the area carried out during city survey of 1971, no notice was served on the predecessor in title of respondent No.5, at least no such inference could be drawn from the record. It is case of respondent Nos. 1 to 4 authorities that corrections carried out at the behest of the petitioners or their father Jagannath Kulkarni or respondent No.6-society are without any title. Such corrections are ordered by officer, who has no such authority in law to do so and as such, said act is completely illegal. From the above, it could be inferred that late Jagannath Kulkarni, respondent

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No.6-Society in connivance with, officers of authority has practiced fraud in increasing the area of the suit plot thereby jeopardizing the interest of adjoining land owners, who have better title to the same.

25. The respondents then have not only stopped to the extent of noticing fraud but have taken corrective measures. I am informed that the concerned officer also proceeded against departmental enquiry who unauthorizedly carried out correction in record in illegal manner.

26. In the backdrop of aforesaid observations, what is required to be noted is, the petitioners had tried to take benefit of their own wrong and instead of establishing their right through civil suit initiated by the respondent No.6, before authority viz., respondent Nos. 1 to 4 have initiated present proceedings. The petitioners have not carried out corrections in the mutation entry, particularly substituting their name to the land of

late Jagannath being legal heirs. This prompted the authority to believe that Jagannath Kulkarni was alive and notice was issued in the name of Jagannath Kulkarni as is apparent from original record produced by the authorities. There is presumption in favour of authorities, of performing official act qua issuance of notice and it was expected of the petitioners to respond to the said notice. The petitioners have chosen to remain absent and as such, authority proceeded to pass the order impugned, which was confirmed in appeal.

27. In the aforesaid background, the claim put forth by the petitioners that correction in the area of plot has to be carried out within reasonable period does not found to be a reasonable submission. A support is sought to be drawn from the judgment of Apex Court in the **Santoshkumar Shivgonda Patil and others vs Balasaheb Tukaram Shevale and others** reported in **2009(9) SCC 352**, particularly paragraphs 10 to 12 thereof to substantiate the above proposition.

Perusal of the judgment of the Apex Court depicts that proceedings for correction, if any, is to be carried out, in absence of statutory limitation, within reasonable period. However, the said judgment is not dealing with the issue of fraud. In the present case, what is noticed is, revenue authority, who has increased area of the petitioners' property, from which the petitioners and respondent No.6 are benefited, have no authority to do so, particularly in absence of any title of the petitioners to the same. Such fraud has been noticed not only in relation to the petitioners' property, but also adjoining other property of respondent No.6. As fraud vitiates everything, it cannot be held that the order of respondent – authority in carrying out correction is beyond limitation.

28. For the aforesaid reasons, the petition is dismissed.

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29. It shall be open for the petitioners to get it's claim adjudicated, if it so desire in Regular Civil Suit No. 417 of 2007 initiated by respondent No. 6, in accordance with law.

30. Pending civil applications stand disposed of.

(NITIN W. SAMBRE, J.)

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