

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

WRIT PETITION NO. 12743 OF 2016

1. Kamlakar s/o Ananda Patare
Age 45 years, occ. Service
r/o B.I.T. Chal, Building No. 3
Room No. 274, Majhgaon
Mumbai
2. Smt. Manisha w/o Babpusaheb Tambe
age 43 years, occ. Household
r/o Goregaon, Tq. Parner
Dist. Ahmednagar

.. PETITIONERS

VERSUS

1. The Additional Commissioner (Revenue)
Nashik Division, Nashik
2. The Additional Collector
Ahmednagar.
3. The Sub-Divisional Officer
Parner, Ahmednagar
4. The Tahsildar,
Parner, Dist. Ahmednagar
5. Sidharth Ambu Patare
Age 45 years, occ. Agril
6. Bhivsen Ambu Patare
age 43 years, occ. Agril
7. Manisha Ananda Patare
age 40 years, occ. Household
8. Sudhir Ambu Patare } Deleted vide Court order
age 42 years, occ. Service } dt. 09.01.2017.

All above r/o Goregaon
Tq. Parner, Nehru Nagar
Pimpri, Pune 18.

.. RESPONDENTS

Mr. N.V. Gaware, advocate for petitioner.
Mr. A.B. Basarkar, AGP for the State.
Mr. D.R. Jethliya, advocate for respondents 5 to 7.

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CORAM : S. B. SHUKRE, J.
DATE : 31st JANUARY, 2017.

ORAL JUDGMENT :

1. Heard.
2. Rule. Rule made returnable forthwith.
3. Heard finally with the consent of learned counsel for the respective parties.
4. There is a preliminary objection raised by learned counsel for the contesting respondents i.e. respondents 5, 6 and 7, to the maintainability of this petition. Relying upon the decision of the Honourable Apex Court in the case of Gurudassing Nawoosing Panjwani Vs. State of Maharashtra and others reported in **2015(6) Mh.L.J. 915**, learned counsel for the contesting respondents submits that effective alternate remedy under section 257 of the Maharashtra Land Revenue Code is available and therefore, this petition is not maintainable.
5. According to learned counsel for petitioners, the issue raised by this petition relates to violation of fundamental right of petitioners and therefore, this petition falls within the exception carved out by the Honourable Apex Court to the bar of maintainability by virtue of availability of alternate remedy. For this submission, he places reliance upon the case of Executive

Engineer, Southern Electricity Supply Company of Orissa Ltd. and another Vs. Sri Seetaram Rice Mill reported in **2012(3) Mh.L.J. 536.**

6. Learned AGP for respondents 1 to 4 submits that alternate remedy is available.

7. No doubt, the Honourable Apex Court in the case of Gurudassing (Supra) has held that the entire scheme of the Maharashtra Land Revenue code indicates that the provisions contained in sections 257 and 259 provide that second revision for challenging the order passed by the inferior revenue officer is maintainable before the superior revenue officer or authority and, following this law, it would have to be said that even in the present case, such alternate remedy would be available. But, the matter does not end here. As submitted by learned counsel for petitioners, one of the main planks of challenge in this petition is that the Additional Commissioner while passing the impugned order dated 21st October, 2016, did not apply his mind to the decision given by the civil Court as well as this Court in various proceedings confirming legality and validity of the sale-deed executed by petitioner no. 1 in favour of petitioner no. 2, which confers right upon petitioner no. 2 to get recorded mutation entry in her name and, these orders were appropriately considered by the learned Additional Collector.

8. Perusal of the impugned order would show that for the reasons best known to the learned Additional Commissioner, the order passed by this

Court on 21st March, 2011 in Writ Petition No. 1307/2011, findings recorded by the Civil Court in its judgment and order dated 31st July, 2014 in Regular Civil Suit no. 156/2012, findings recorded by another Civil Court in its order passed below Exh. 5 on 8th August, 2012 in Regular Civil Suit No. 482/2011 and also, compromise decree dated 10th January, 2009 recorded in Regular Civil Suit no. 9/2009 have not been considered by the Additional Commissioner, although these findings and conclusions had a material impact upon the right of the parties to claim ownership of the disputed property. After all the issue of ownership lies at the base of granting an application for mutation of revenue entry and therefore, it was absolutely essential for the learned Additional Commissioner to have applied his mind to these material aspects of the case, which he has not done. It is the fundamental policy of the Indian law that every judicial authority or any authority invested with quasi judicial powers exercises the authority by passing a reasoned order. This has been held to be intrinsic part of the fundamental policy of Indian law as well as a material of facet of fundamental right of fair hearing. If there is any violation of the fundamental policy of Indian law as well as the principle of natural justice, writ petition filed under Article 226 and 227 of the Constitution of India would certainly be maintainable as it would fall within the exceptions enumerated by the Honourable Apex Court in the case of Sri Seetaram (Supra). Therefore, I am of the view that this petition is maintainable.

9. Now having held that the petition is maintainable and also having recorded reasons for the same, it can be seen that for these very reasons,

interference in the impugned order would be justified. Accordingly, I find that the impugned order needs to be quashed and set aside and it is quashed and set aside.

10. The matter is remitted back to respondent no. 1 for a fresh decision in accordance with law, which shall be rendered after giving reasonable opportunity of hearing to the contesting parties, as expeditiously as possible and, in any case, within three months from the date of appearance of the parties. Parties shall appear before respondent no. 3 on 15th February, 2017. Needless to mention that respondent no. 3 shall not be influenced by the observations made in this order. All the contentions, issues are kept open.

11. Rule made absolute in above terms. No costs.

(S. B. SHUKRE)
JUDGE

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