IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1230 OF 1998

Smt. Hausabai Shahurao Argade,
Aged 48 years, Occ. Household
and Agriculture, r/o Shingnapur,
Tq. Kopargaon, Dist. Ahmednagar. ..Petitioner

Versus

1. The State of Maharashtra
Through the Secretary to the
Government of Maharastra in
Revenue Department, Mantralaya,
Mumbai.

2. The Collector, Ahmednagar.

3. The Sub-Divisional Officer,
Sangamner,Dist. Ahmednagar.

4. The Revenue Circle Inspector,
Sangamner, Dist. Ahmednagar.

5. The Talathi,
Sajja Dhandarphal (Bk.),
Tq. Sangamner, Dist. Ahmednagar.

6. Mohan Bajaba Gorde
Aged 60 years, Occ. Agriculture
R/o Sukewadi, Tq. Sangamner,
District Ahmednagar. ..Respondents

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Advocate for Petitioner : Shri Choudhari S.S.
AGP for Respondents 1 to 5 : Shri Badakh V.S.
Respondent 6 : Abated vide order dated 28.6.2004.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 30, 2018

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ORAL JUDGMENT:-

1. I have considered the strenuous submissions of Shri Choudhari, learned Advocate for the petitioner and the learned AGP on behalf of respondent Nos.1 to 5. The Writ Petition stood abated as against respondent No.6.

2. The contention of the petitioner is primarily based on two issues. Firstly, whether the revenue entries resulting into mutation entry No.10541 of village Dhandarphal by the Talathi can be subject matter of revisional jurisdiction of the Sub Divisional Officer under Section 257 (1) of the Maharashtra Land Revenue Code ("Code") and secondly, whether the petitioner was not heard by the Sub Divisional Officer, while passing the impugned order dated 30.12.1997.

3. After considering the submissions of the learned Advocates and on going through Section 257(1) and Schedule 'E' under Section 247 of the Code, it is obvious that the authorities mentioned in sub-section (1) can call for and examine the records of any enquiry or proceedings in their respective departments, so as to assess the legality and/or propriety of any decision and cause scrutiny for the purpose of satisfying the concerned revenue authority as regards the

regularity of the proceedings by the subordinate revenue officer. As such, the Sub Divisional Officer, who is normally a Deputy Collector in this State (Read : Judgment dated 13.10.2017 in Writ Petition No. 7839 of 2017 - Kashiram Asaram Ghadge and others Vs. Ramdas Bhanudas Pund and another along with other Writ Petitions), the said authority would, therefore, have the power to cause such a revision in the matter.

4. Shri Choudhari has, however, canvassed that any such authority exercising revisional jurisdiction, either suo motu or at the behest of any aggrieved party, cannot himself pass such an order in any matter in which a formal enquiry has been held and he has to submit the record with his opinion to the Collector, who can then pass an order on behalf of the State. This contention is left open to be considered in the light of the orders and directions that I would be issuing, keeping in view, the second proviso below Section 257.

5. In so far as a right of hearing is concerned, Shri Choudhari is right in contending that no such revenue officer, acting on behalf of the State, can vary or reverse any order affecting the rights of the private individuals / persons without giving them an opportunity of hearing in the light of the first proviso below Section 257.

6. Considering the above, the petitioner partly succeeds in this matter. The Writ Petition is, therefore, partly allowed and the impugned order passed by respondent No.3, dated 30.12.1997 is quashed and set aside and the Revision Application No.34 of 1997 is restored to the file of respondent No.3 for causing a rehearing in the matter.

7. The petitioner agrees to appear before respondent No.3 on 9.2.2018 at 11.00 am. Formal notice to the petitioner, therefore, need not be issued. Respondent No.3, however, shall consider that one of the respondents to this matter, namely, Mohan Bajaba Gorde has passed away and hence, if found necessary, respondent No.3 shall issue notices to the legal heirs of deceased Mohan in this matter.

8. The third respondent shall decide the said proceedings after hearing all the parties concerned, as expeditiously as possible and preferably on/or before 31.5.2018. Needless to state, whether respondent No.3 himself will pass an order or whether the report is to be furnished to the authority above the Sub Divisional Officer under Section 257, is left open for respondent No.3 to consider. All contentions of the litigating sides are, therefore, kept open, except the issue with regard to the jurisdiction of the Sub Divisional Officer

in invoking his powers under Section 257(1), since that issue has been settled in this judgment.

9. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)
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