

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2969 OF 2017
(Vitthal s/o Nana Kokane Vs. The State of Maharashtra and others)

Mr.K.N.Shermale, Advocate for the petitioner.
Mr.N.T.Bhagat, AGP for respondent Nos. 1 to 3.
Mr.A.M.Karad, Advocate for respondent No.4.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 17/12/2018

PER COURT :

1. While issuing notice, this Court (Coram : S.B.Shukre, J.) has passed an order on 03/03/2017, which reads as under :-

“1. Heard learned counsel for the petitioner. He submits that, the impugned order has been passed without jurisdiction. He also submits that, though notice was issued to the petitioner by the T.I.L.R., heaving was not granted to him by the D.I.L.R. who passed the impugned order.

2. Issue notice to respondents for final disposal returnable on 17th March, 2017. Learned A.G.P. waives service for respondent Nos. 1 to 3.

3. Meanwhile, parties are directed to maintain status quo as of today, as regards the subject property till next date.

4. Authenticated copy be provided to the learned counsel for the petitioner.”

2. Pursuant to the above, though this matter was part heard

before a Co-ordinate Bench on 14/02/2018, as the petitioner had sought an adjournment, the matter got adjourned and subsequently by the change of assignment, it was treated as de-part heard.

3. I have considered the contentions of the learned Advocates for the petitioner, respondent No.4 and the learned AGP on behalf of respondent Nos. 1, 2 and 3.

4. The grievance of the petitioner as was considered by this Court on 03/03/2017 was that he was not heard by the D.I.L.R. who has passed the impugned order and on account of the said submission, this Court had granted protection to the petitioner.

5. Mr.Karad, learned advocate appearing on behalf of the contesting respondent No.4 has drawn my attention to the roznama placed on record from page No.66 onwards. It clearly indicates not only the presence of the petitioner before the Deputy Supdt. of Land Record, Sangamner, but it also demonstrates that his submissions were also recorded. His request for adjournments were also entertained and after several rounds of hearing, the order was passed.

6. The above fact situation would therefore indicate that the ground raised by the petitioner of violation of principles of natural justice, which had impressed this Court on 03/03/2017, is a vexatious ground. This Court had believed the contention of the petitioner and had granted status-quo to be maintained with regard to the subject property. Since this ground is fallacious, the ad-interim protection, granted earlier, would not continue.

7. The petitioner has also raised another ground in the memo of the petition at clause No.6 vide which it was contended that the Settlement Commissioner is the authority to make the correction in the consolidation scheme and such order passed by respondent No.2 District Supdt. of Land Records is unsustainable.

8. In so far as the measurements are concerned, which are on record, it is obvious that the petitioner and respondent No.4 were landless persons and the Government had allotted 1 hectre 20 R to each of such landless persons in the gat numbers mentioned in the records. The Government had impartially demarcated 1 hectre 20 R to each of such landless persons and it was the scheme of the Government that none of them would be entitled to anything more than 1 hectre 20 R.

9. The scheme was formalized in 1985. Respondent No.4 had raised an issue in 2013 after getting the knowledge that she was allotted only 93 R land instead of 1 hectre and 20 R and as such considering the original map as well as the measurement as per the *vahivat*, her share stood reduced by 27 R. The sketch map placed on record indicates that there are 3 landlords in between the land of the petitioner in Gat No.45 and the land of respondent No.4 in Gat No.42. Learned Advocate for respondent No.4 points out that all other landlords were heard by the concerned authority alongwith the petitioner and the correction will have to be done by re-adjusting these lands since the petitioner has been erroneously allotted at least 35R excess land as per the *vahivat* and 44 R excess land as per the sketch map.

10. The issue is that the District Supdt. of Land Records has passed the first order on 14/07/2016 at page No.31. The issue raised is that though there is no limitation prescribed for correcting clerical or arithmetical mistake in the scheme under Section 31A, of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, whether the order passed by the D.S.L.R. would

be sustainable ?

11. The learned AGP points out a circular dated 05/02/2000 by which the powers of the Settlement Commissioner u/s 31A were delegated to the Deputy Director, Land Record and they are further delegated to the D.S.L.R. Pursuant to the circular dated 05/02/2000, the Government issued a further circular on 31/08/2001 u/s 34 by which powers of the Settlement Commissioner were to be exercised by delegation of authority by the Deputy Director of Land Records.

12. This issue arose for consideration before this Court in WP No.4107/2007 in between Madhavrao Bhausaheb Lamkhade and others Vs. Alka Ashok Gaikwad and others decided on 23/07/2008 by which this Court considered a similar case of the Dist. Supdt. of Land Records passing an order with regard to the correction of the consolidation scheme. This Court concluded in paragraph Nos.6 and 7 as under :-

“6. It is to be examined as to whether the order passed by the Superintendent of Land Records on 16/11/2004 can be termed as final order determining the issue raised before the consolidation authorities. It is more than clear that the powers

conferred on Settlement Commissioner in view of Section 34 of the Act are required to be exercised by the Deputy Director of Land Records in view of the circular issued by the State Government on 31-8-2001. In this view of the matter, order passed by the Superintendent of Land Records, Ahmednagar on 16-11-2004 cannot be termed as final order determining the controversy involved in the matter. The tenore of the order, on perusal of para no.2 of the operative portion appears to be that it is merely a proposal to be submitted to the Deputy Director and the appropriate authority conferred with the powers of Settlement Commissioner shall have to render decision on receipt of the proposal. Thus, the order passed by the Superintendent of Land Records, Nasik on 16-11-2004 cannot be treated as final order settling the controversy between the parties. Once the proceeding before the Superintendent of Land Records is branded as proposal and once it is accepted that no finality is attached to the said proceeding, it would be for the Deputy Director to apply his mind and after following the procedure prescribed under section 32(1) of the Act read with other relevant provisions contained in the Act, to take a final decision in that regard. Needless to mention that it would be open for the Deputy Director to either accept the proposal of the Superintendent of Land Records dt. 16-11-2004 or to call for fresh proposal by directing denovo enquiry.

7. In view of the observations made above that the proceeding before the District Superintendent of Land Records shall have to be treated as merely a proposal tendered to the Deputy Director for rendering decision in accordance with

section 32(1) of the Act, the further challenge raised to the said proceeding treating it as final order shall have to be quashed on the ground that those proceedings of appeal and revision were not maintainable. Orders which are impugned in this petition issued by the Deputy Director as well as the State Government are therefore required to be set aside holding that the proceedings of appeal and revision were not entertainable as the order impugned before the appellate and revisional authority cannot be treated to be a final order.”

13. This Court then concluded that the order passed by the D.S.L.R. shall not be treated as a final order and it shall only be treated as a proposal to be forwarded to the Deputy Director, Land Records who shall take a final decision in respect of the application tendered by the original applicant. In the instant case as well, the D.S.L.R. has taken a final decision by his order dated 14/07/2016 and this, therefore, will have to be considered as a proposal to the Deputy Supdt. of Land Records, Ahmednagar who shall pass final orders after considering the record and by following the due procedure.

14. Needless to state, since no landless person is entitled to hold even an inch of land more than 1 hectre 20 R, whoever is found to have been occupying and possessing any land more than 1 hectre 20

R, will have to surrender the said portion to the State Government since continuing to possess excess land would amount to an abuse of the beneficial and laudable scheme of the State Government by which landless persons are given a new lease of life.

15. In view of the above, this petition partly succeeds. The impugned order dated 14/07/2016 shall be deemed to be a proposal by the D.S.L.R. which shall be placed before the Deputy Director of Land Records, Nasik for passing appropriate orders by following the appropriate procedure. Needless to state, the observations in the foregoing paragraph that these landless persons shall not be entitled to hold any land more than 1 hectre 20 R, shall be kept in mind by the said authority while passing the following order. These observations are meant to bind all the parties to this litigation and surely to the petitioner.

(Ravindra V.Ghuge, J.)