

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

WRIT PETITION NO. 8526 OF 2019

**MAHADEV BABU UDAGE
VERSUS
ABHAY KUMAR RAJARAMPANTH DESHMUKH AND OTHERS**

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Advocate for the Petitioner : Shri Shaikh Shoyab
Advocate for Respondent No.1 : Shri R. T. Nagargoje
Advocate for Respondent No. 2 : Shri V. D. Salunke
AGP for Respondent Nos. 3 and 4 : Shri S. P.Tiwari

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 05th AUGUST, 2019.

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PER COURT :

1. The petitioner is aggrieved by the order dated 13/08/2018 passed by the learned Maharashtra Revenue Tribunal, by which, proceeding No. 55/B/2003/Osmanabad has been allowed. It has been concluded that the review order passed by the Deputy Collector Land Reforms Osmanabad dated 19/08/2003 allowing Review Application No. 2003/Tenancy/A/294, setting aside it's earlier order passed in the proceedings, is unsustainable as the Deputy Collector, Land Reforms did not have the power under law to review his own order on merits.

2. I have heard the learned Advocates for the respective sides.

3. The petitioner has nowhere pleaded in the memo of the petition as to how the Deputy Collector Land Reforms could review his own order on merits without there being any power flowing from any enactment.

4. It is settled law that when it comes to a review on the merits of the order, no Court or authority can exercise such a power without there being an express provision in the enactment. It is only in the case of procedural deformities that a review could be ordered to undo a procedural lapse.

5. The learned Advocate for the petitioner has placed reliance upon the judgment of the Honourable Apex Court in the matter of *A. V. Papayya Sastry and others Vs. Government of A. P. and others*, (2007) 4 SCC 221 and especially paragraph 39 to contend that a fraud would vitiate the entire action and any such order passed, would be non-existent and non-est.

6. I am in respectful agreement with the view expressed in *A.V. Papayya (surpa)*. However, any order passed by the authority or the Court can be reviewed on its merits if the enactment from which the powers of the Court or authority flow, permits such a Court or authority to review its own order on its merits. In the absence of such powers, an authority or Court cannot review its order.

7. In this backdrop, the impugned order passed by the learned MRT can neither be termed as being perverse, nor erroneous. The petition, being devoid of merit is, therefore, dismissed.

8. The learned Advocate for the petitioner submits that he would assail the original order dated 23/05/2003 passed by the Deputy Collector Land Reforms, on its merits, before the appropriate forum as may be permissible in law. He prays that the time spent by the petitioner before the learned MRT till the passing of this order, may be considered as a ground for condonation of delay. He further submits that the learned

MRT is presently not available at Aurangabad owing to the retirement of the learned Member.

9. In view of the above, the petitioner would be at liberty to take recourse to a remedy as may be permissible in law. On the issue of delay, the time spent by the petitioner in litigation after the passing of the order dated 23/05/2003, shall be considered as a ground for condonation of delay. The petitioner is at liberty to place on record an attested copy of the order dated 23/05/2003, while challenging the said order.

(RAVINDRA V. GHUGE, J.)

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