

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

WRIT PETITION NO. 7357 OF 2019

**BALASAHEB SHIVAJI PAWAR
VERSUS
MURLIDHAR SHRIDHAR LAHANE AND OTHERS**

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Advocate for the Petitioner : Shri V. D. Salunke
Advocate for Respondent Nos. 1 and 2 : Shri A. A. Nimbalkar
AGP for the Respondents – State : Shri N. T. Bhagat

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 9th SEPTEMBER, 2019.

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PER COURT :

1. The petitioner is aggrieved by the order dated 05/02/2019 passed by the Principal, Secretary and Special Executive Officer, Revenue and Forest Department, Maharashtra.

2. I have considered the strenuous submissions of the learned Advocates for the petitioner, respondent Nos. 1 and 2 and the learned AGP on behalf of respondent Nos. 3 to 7.

3. The petitioner had applied to the appropriate authority in 1998 seeking entry of his name in the cultivation column in

land Gat No. 657 admeasuring 9 Acres situated at village Daskhed, Taluka Patoda, District Beed. After carrying out the inspection of the said land and upon recording the statement of the panchas as well as a few adjoining land owners, the name of the petitioner Balasaheb Shivaji Pawar was entered in the cultivation column of Gav Namuna 7-B by the Tahsildar on 13/10/1998, by order dated 30/08/2000 passed by the Tahsildar.

4. The respondents preferred an appeal under Section 247 of the MLR Code before the SDO Beed. By order dated 18/09/2001, the appeal was allowed.

5. The petitioner being aggrieved by the order of the SDO, approached the Additional Collector, Beed in a second appeal under Section 247 of the MLR Code. The Additional Collector allowed the petitioner's appeal by order dated 14/03/2003 and sustained the order of the Tahsildar.

6. The respondents preferred a revision petition under Section 257 of the MLR Code before the Deputy Commissioner.

By order dated 02/11/2012, the said revision was allowed, the orders in favour of the petitioner Balasaheb were set aside and the order of the SDO dated 18/09/2001 was sustained.

7. The petitioner then approached the Principal Secretary by preferring an appeal under Section 249 (2) of the MLR Code. By the impugned order dated 05/02/2019, the Principal Secretary dismissed the appeal filed by the petitioner.

8. The issue is as regards the entry sought by the petitioner Balasaheb in the cultivation column of the land, purportedly belonging to respondent No.1 Murlidhar, for the cultivation period 1998-1999. The contention of the petitioner is that the Circle Inspector considered the grievance of the petitioner, a spot inspection was conducted, statement of some adjacent land owners were recorded and as the respondent Murlidhar Shridhar did not make any specific submission and did not submit any written say, he had allowed the application filed by Balasaheb concluding that the name of Balasaheb would be entered in the cultivation column for the year 1998-1999 in land Gat No. 657 belonging to Murlidhar Shridhar and Bhaskar

Murlidhar.

9. It is further strenuously contended by the petitioner that the entire procedure as is laid down in law, was followed by the Circle Inspector. A report was submitted to the Tahsildar on 13/10/1998. After hearing all the parties and upon being satisfied that a proper procedure was followed, the Tahsildar passed an order on 30/08/2000 allowing the application of Balasaheb.

10. The learned Advocate appearing on behalf of respondent Nos. 1 and 2 points out from the pleadings of the petitioner set out in paragraph 1 of the memo of the petition which reads as under :-

"The land in the dispute is Gat No. 657 admeasuring around of 9 acres situated at village Daskhed, Tq- Patoda, Dist. Beed (hereinafter refer to as "the subject land"). The Petitioner states that said land was belonging to one Mr. Ganpati Bhakre. The Petitioner had negotiated and decided to purchase the said land at the consideration of Rs.8,000/-. The Petitioner maternal grandfather late Shri Dgdoba Kokate was owner of the land bearing Survey Nos. 336 and 329 at village

Daskhed, Taluka – Patoda, Dist. Beed (hereinafter referred to as "the said land") and the same were sold by late Shri Dagdoba Kokate and the amount received towards the sale of the said land bearing survey no. 336, 329 were kept with Respondent No.1 being brother-in-law of father of the Petitioner. Hence the Petitioner had requested Respondent No.1 to deal with Mr. Ganpati Bhakre on his behalf for making payment of the subject land etc. The Petitioner state that the Petitioner and his father were illiterate, taking advantage of the same, Respondent No. 1 got sale deed dated 10/11/1971 executed in his favour. The Petitioner state that the Petitioner is in actual possession of half of the area subject land since more than 20 years and cultivating the same till today. The Petitioner state that in the year 1998 Petitioner had applied to the Talathi who is maintaining the record related to the land to record his name in cultivation column of the subject land".

11. He, therefore, submits that the petitioner has taken an improbable stand that though respondent No.1 Murlidhar had purchased the land through a registered sale deed on 10/11/1971 from Ganpati Bhakare, such land was purchased in favour of the petitioner Balasaheb as Balasaheb desired that Murlidhar should carry out such a purchase transaction out of

the sale proceeds of an earlier transaction between Dagduba Kokate and Shivaji V. Kokate. The petitioner has claimed that respondent No.1 accepted money from him to purchase the land and therefore the petitioner would have a right to enter the cultivation column in 1998.

12. I find from the cultivation column that the land only to the extent of 0.40 R. was shown to be idle/uncultivated/Padik from 1978 till 1987. Agricultural activities by harvesting several types of crops in the remaining portion of the land which is about 9 acres, appears from 1978 onwards. From 1987-1988, it was again said to be Padik only to the extent of 0.11 R. and cultivation of various crops appears in the remaining large portion of the land.

13. It is obvious from the record that the petitioner sought entry of his name in the cultivation column only for the cultivation year 1998-1999. I find from the record that from the year 1998-1999, the name of Vijaykumar and Ramesh, who are the sons of Murlidhar, are shown to be cultivating the said land and there is no portion of the land as being Padik.

14. I find from the present proceeding that there are several disputed questions which beg for an answer. However, such disputed questions cannot be dealt with by this Court in its supervisory jurisdiction or Writ of Certiorari. The issue as to why would Balasaheb want Murlidhar to enter into a purchase sale transaction with Ganpati Bhakare so as to purchase the land purportedly for Balasaheb. Then the issue would be that if Murlidhar purchased the land from Ganpati Bhakare on 10/11/1971, why would the petitioner claim an entry in the cultivation column only in 1998.

15. In the absence of any convincing reason to these issues, I find that the authority below has rightly declined to rely on the statements made by a few agriculturists in the neighbourhood and more so in the absence of any revenue record or document.

16. It is often said that "humans may lie but documents would not lie" and "documents would speak louder than words". In the above backdrop, I do not find that the

impugned order passed by the Principal Secretary could be termed as being perverse or erroneous in the absence of any revenue record or any sale deed or document in favour of the petitioner Balasaheb.

17. As such, this petition, being devoid of merit is, therefore, dismissed. However, in the event, the petitioner desires to seek crystalization of any right that he claims to have with regard to the suit property at issue, he would be at liberty to take recourse to a remedy as may be permissible in law.

(RAVINDRA V. GHUGE, J.)

shp/-