

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11614 OF 2018

WITH

WRIT PETITION NO.11655 OF 2018

(Raghunath s/o Gyanoba Kadam, died through LR's and others
Vs.Ashok s/o Vishambhar Trimukhe and another)

Mrs.M.D.Thube-Mhase, Advocate for the petitioners.
Mr.S.S.Thombre, Advocate for respondent Nos. 1 and 2.
Mr.S.R.Yadav, AGP for respondent Nos. 3 and 4.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 18/03/2019

PER COURT :

1. I have briefly heard the learned Advocate for the petitioners, the learned AGP and Mr.Thombre, learned Advocate appearing for the individual respondents.

2. This Court (Coram : N.M.Jamdar, J.) has passed a specific order on 18/12/2018 recording that if there is no consolidation scheme for the area in question, a detailed inquiry and an opportunity to lead evidence may not be of any relevance in so far as the petitioners are concerned.

3. I find that the report of the Deputy Director, Land Records,

Aurangabad dated 22/01/2018 is already subject matter of the second writ petition. In the first petition, the same order is assailed on the ground that the appeal filed by the petitioners was not entertained.

4. Issue is as regards whether there is a consolidation scheme and if the area in relation to these petitions is under a consolidation scheme. The said aspect can be looked into in view of the grievance of the petitioners that they were not heard when the order dated 22/01/2018 was passed.

5. As such **WP No.11614/2018** need not be kept pending and stands disposed off.

6. The issue in the second petition is that the petitioners had approached the Trial Court seeking cancellation of the sale deed since the suit land is covered by the consolidation scheme. The report dated 06/06/2017 of the District Supdt.of Land Records, Latur, was submitted without hearing the petitioners. Hence, the petitioners filed application Exh.119 seeking a direction that they be heard by the Deputy D.L.R. The Trial Court has rejected the application Exh.119.

7. Needless to state, if it is concluded that the report dated 06/06/2017 is with regard to the land of the petitioners covered by the Consolidation scheme, then it could not have been prepared without hearing the petitioners. A hearing will have to be caused and for which the impugned order of the Trial Court dated 05/02/2018 will have to be set aside. However, if the said land is not covered by any consolidation scheme, there would be no necessity of hearing the petitioners.

8. In the light of this position, the learned AGP, while dealing with the first petition, has made a statement that the report dated 06/06/2017 indicates that the land of the petitioners is not covered by the consolidation scheme in view of the record produced in the first petition at page No.56 and which is at page no.55 in this petition. The District Supdt. of Land Records is not a party to the present proceeding since it arises out of Spl.Civil Suit No.77/2012.

9. As such, for the assistance of this Court, the petitioner is directed to array the District Supdt. of Land Records, Latur as respondent No.3. Learned AGP causes an appearance on behalf of the added respondent.

10. Learned Advocate for the petitioners submits that the report of the third respondent dated 06/06/2017, though indicates that the lands of the petitioners in Survey No.20 are excluded from the consolidation scheme, it is stated on instructions that the report is incorrect and does not reflect the correct picture. It is asserted that the petitioners' land is covered under the consolidation scheme.

11. Considering the said controversy, learned AGP prays for time to file an affidavit in reply rather than relying upon oral instructions. He submits that the affidavit in reply would be filed to place the fact situation on record and in the event the said information turns out to be different from the statement made on instructions, the learned AGP may be excused as such a statement was made purely on instructions.

12. At this juncture, the learned Advocate for the petitioners prays for leave to file an additional affidavit.

13. As such, the petitioners shall file an additional affidavit in WP No.11655/2018 on or before 29/03/2019 with proper pagination. Copy would be supplied to the litigating sides. The copy of the writ petition would also be served on the learned AGP.

14. Pursuant to the above, the added respondent No.3 shall file an affidavit in reply on or before 22/04/2019.

15. WP No.11615/2018 be listed for urgent admissions on 26/04/2019.

(Ravindra V.Ghuge, J.)