

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 157 OF 2016

Sulakanbai Bajirao Patil
& others

Petitioners

Versus

Gayabai w/o Girdhar Bhil
& others

Respondents

Mr. P.F. Patni, Advocate for the petitioners.
Mrs. M.A. Deshpande, AGP for respondent no. 3.
Mr. D.B.Doke, Advocate for respondent no. 2

CORAM : M.S. KARNIK, J.
DATE : 19th August, 2019.

PER COURT :

1. By filing this petition under Article 227 of the Constitution of India, the petitioners have challenged the order passed by the Additional Commissioner, Nasik, thereby setting aside order passed by the Additional Collector, Jalgaon, dated 29.09.2012 and upholding the order passed by the Sub-Divisional Officer, Pachora, cancelling the mutation entry no. 2389.

2. It is the case of the petitioners that based on certificates under Sections 32F and 32M of the Bombay Tenancy and Agricultural Lands Act, mutation entry no. 2389 was recorded in favour of the petitioners. Petitioners, who are the original tenants, claim to be the owners of the property by virtue of certificates under sections 32F and 32M and accordingly, mutation entry no.

2389 was recorded in their favour.

3. Said mutation entry came to be challenged by the respondents claiming that they are the tribal and hence the land belonging to the tribal could not have been transferred to the petitioners. It is the submission of learned counsel for the respondents that claim of ownership by petitioners is not tenable in view of provisions of Maharashtra Restoration of Lands to Scheduled Tribe Act, 1974 (hereinafter referred to as 'the Act of 1974'). The Sub-Divisional Officer, Pachora, cancelled the mutation entry holding that such a transfer was not permissible in view of provisions of the Act of 1974.

4. The Additional Collector, in an appeal filed by the petitioners, was of the opinion that the mutation entry is based on the certificates issued under Section 32G and 32M of the Bombay Tenancy and Agricultural Lands Act and, if mutation entry is recorded on the basis of such certificates, such mutation entry does not warrant cancellation.

5. The Additional Divisional Commissioner, Nasik, in an appeal filed by the respondents, allowed the appeal and by the impugned order has confirmed the order passed by the Sub-Divisional Officer cancelling the mutation entry.

6. I have gone through the impugned order. From the record it is seen that the mutation entry is based on the certificates issued under Sections 32G and 32M of the Bombay Tenancy and Agricultural Lands Act. Even the Additional Divisional

Commissioner has recorded that the petitioners have filed a suit for injunction being Regular Civil Suit No. 23/2009 which is pending. It is further held that the mutation entry would be subject to the outcome of the said suit. In the operative portion of the order, the Additional Divisional Commissioner has observed that necessary action be taken by the Collector under the provisions of the Act of 1974 within a period of three months which again should be subject to the final outcome of the pending suit.

7. In my opinion, the order passed by the Additional Divisional Commissioner calls for interference. Mutation entry is based on certificate issued under Sections 32G and 32M of the Bombay Tenancy and Agricultural Lands Act. No doubt, proceeding can be initiated under the provisions of the Act of 1974 for restoration of land belonging to the tribal. However, till appropriate orders are passed either in the proceeding which may be initiated under the provisions of the Act of 1974 or till final decision in Regular Civil Suit No. 23/2009, there was no occasion for the Additional Divisional Commissioner, to cancel the mutation entry already recorded.

8. In this view of the matter, the impugned order is set aside. The order passed by the Collector is restored. It is clarified that as per the directions of the Additional Divisional Commissioner, the Collector to initiate proceeding under the provisions of the Act of 1974. However, while doing so, the Collector will obviously apply his mind to see as to whether such proceeding is required to be initiated in accordance with the provisions of the Act of 1974. All contentions including the question of limitation are kept open.

9. Writ petition is allowed in above terms.

(M.S. KARNIK, J.)

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