IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4065/2018

Shri Kodaleshwar Sansthan, a registered Charitable Trust through its Managing Truestee/President Shri Shrikant Balkisan Rathi

Vs.

The Additional Commissioner, Amravati Division, Amravati and others.

Office notes Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Shri A.J.Gilda, Advocate for petitioner.
Shri V.A.Thakre, Assistant Government Pleader for respondent nos. 1 to 3.
Shri J.B.Kasat, Advocate for respondent no.4.

CORAM : A.S.CHANDURKAR, J.
DATED : July 23, 2019.

In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard at length.

The challenge raised in the present writ petition is to the order dated 12.04.2018 passed by the Additional Commissioner thereby dismissing the revision application that was preferred by the petitioner-Trust and maintaining the earlier orders passed by the Revenue Authorities.

The facts in brief are that it is the case of the petitioner-Trust that it has interest in land admeasuring 0.15 R from Survey No.341/2 of Mouza-Bhatkuli and that land has been shown in Schedule - I of the Public Trust Register. Mutation Entry No.215 dated 11.05.1993 was taken to indicate that rights were created in favour of the Trust by virtue of a relinquishment deed dated 25.09.1992. According to the Trust, the respondent no.4 sought to challenge the said mutation entry only in the year 2009 by filing an appeal under Section 247 of the Maharashtra Land Revenue Code, 1966 (for short, 'the Code'). The appeal filed by the respondent no.4 on 03.11.2009 came to be allowed by the Sub-Divisional Officer on 28.10.2010. The said order was thereafter challenged by filing further appeal before the Additional Collector. The Additional Collector on 23.03.2011 dismissed the said appeal and confirmed the earlier order. Thereafter the petitioner approached the Additional Commissioner invoking revisional jurisdiction under Section 257 of the Code. On 12.04.2018, the Additional Commissioner was pleased to reject the said revision application. Further it was noticed by the Additional Commissioner that Mutation Entry No.1408 had been taken without following any due procedure and during the pendency of the present proceedings. He therefore directed that the said mutation entry be also cancelled. Being aggrieved by the order 12.04.2018, the petitioner has challenged the same in the present writ petition.

Shri A.J.Gilda, learned counsel for the petitioner submitted that the Revenue Authorities were not justified in entertaining the proceedings at the behest of the respondent no.4. Mutation Entry No.215 had been taken on 11.05.1993 and that mutation entry was challenged after a lapse of almost sixteen years. In the appeal preferred on 03.11.2009 there was no reason given for filing the proceedings belatedly. Moreover, there was no application filed for condoning the delay. The Sub-Divisional Officer accepted the contentions of the respondent no.4 and entertained the said belated appeal. This aspect was further agitated before the Additional Collector and thereafter before the Additional Commissioner. However the same has not been taken into consideration in the proper perspective. It was submitted that even if it was assumed that there was no period of limitation prescribed for challenging the mutation entry, the appeal ought to have been filed within a reasonable period. He further submitted that unless the delay was condoned, the matter could not have been examined on merits. There was no jurisdiction to do so and in that regard, he placed reliance upon the decisions in ***Sayeda Akhtar Vs. Abdul Ahad, (2003) 7 SCC 52, State Bank of India Vs. M/s. B.S.Agricultural Indusries (I) AIR 2009 SC 2210, Sidappa Rama Patil Vs. Sattur Laxman Kole deceased by his heirs Laxman Sattu Kole and others, 2004 (4) Mh.L.J. 119,*** and ***Ballumal A. Jaisingh Vs. M/s. J.J.Builders and others, (2003) 3 Mh.L.J. 238.*** On this count, it was submitted that the impugned orders were liable to be set aside. It was then submitted that the Additional Commissioner while dealing with Mutation Entry No.1408 proceeded to exercise suo motu powers, but such powers were exercised without putting the parties on notice. According to the learned counsel, though the Additional Commissioner had jurisdiction to exercise suo motu powers, by exercising that power without giving due notice to the parties had vitiated to exercise of such power. In that regard, he referred to the decision in ***Girijashankar s/o Baladin Jaiswal and others Vs. State of Maharashtra and others, 2018(1) Mh.L.J.615.*** He also referred to the observations in paragraph 74 of the decision in ***Church of North India Vs. Lavajibhai Ratanjibhai and others AIR 2005 SC 2544,*** in that regard. It was thus submitted that the impugned orders were liable to be set aside.

Shri J.B.Kasat, learned counsel for the respondent no.4 on the other hand supported the impugned orders. He submitted that the respondent no.4 had purchased the field in question on 30.10.1974 under the provisions of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short, 'the said Act'). On that basis mutation entries were duly taken. After the sale deed was executed the original owner had no jurisdiction or title to execute the relinquishment deed in respect of 15 R land in favour of the petitioner-Trust. The said relinquishment deed was unregistered and it carried no legal weightage. Mutation Entry No.215 had been taken without notice to the respondent no.4 and hence after getting knowledge of the same the proceedings under Section 247 of the Code were immediately filed. Moreover, the trustees did not remain present before the Sub Divisional Officer even though they were duly noticed in the appeal. Since the respondent no.4 was the owner of the field in question, there was no justification for taking the said mutation entry in respect of 15 R land. The Additional Commissioner after noticing all these aspects rightly refused to interfere with the order passed by the Sub-Divisional Officer. It was then submitted that the trustees on 11.01.2018 had filed a pursis before the Additional Commissioner in which it had stated that the Trust did not desire to prosecute the revision in question. This pursis was rightly not accepted by the Additional Commissioner by giving sufficient reasons. Moreover the question of converting 15 R land for non agriculture use in the year 1976 was also without any authority of law in the light of the fact that the respondent no.4 had obtained title to the said land on 30.10.1974. It was thus submitted that there was no reason whatsoever made out by the petitioners to interfere with the impugned orders.

I have heard the learned counsel for the parties and with their assistance I have perused the documents placed on record. It can be seen that initially in proceedings under the said Act, the original land owner Bhikamchand Rathi had made an application in the year 1964-65 for selling 1 H 22 R land before the Additional Tahsildar. Such permission was granted and under the provisions of Section 43 of the said Act, the Additional Tahsildar permitted the original owner – Bhikamchand Rathi to execute a sale deed on 31.10.1974 in favour of father of the respondent no.4- Ramcharan. On that basis sale deed was executed and mutation entries in favour of Ramcharan were taken. After the death of Ramcharan the names of his legal heirs were entered into record of rights as per Mutation Entry No.159 on 14.10.1993. After this entry was certified, it appears that the original owner Bhikamchand Rathi on 11.05.1993 sought to execute a relinquishment deed in respect of 15 R land from land admeasuring 1 H 22 R that had been sold to the father of the respondent no.4. This relinquishment deed was unregistered and it is on that basis that Mutation Entry No.215 came to be taken on 11.05.1993 and was certified on 25.05.1993. This mutation entry was challenged by the respondent no.4 by filing an appeal. Noticing this aspect the Sub-Divisional Officer allowed the said Appeal. The Additional Collector while dismissing the appeal preferred by the petitioner-Trust observed that having sold land admeasuring 1 H 22 R to the father of the respondent no.4, the original owner Bhikamchand Rathi had no title in that land so as to relinquish the area admeasuring 15 R in favour of the Trust. This finding has been thereafter affirmed by the Additional Commissioner in exercise of revisional power.

In the aforesaid factual backround, it can be noticed that the title to the property admeasuring 1 H 22 R was acquired by the father of the respondent no.4 by virtue of the sale-deed dated 30.10.1974 executed in his favour by the original owner, Bhikamchand Rathi. After his death the names of his legal heirs were duly mutated. However, without any notice to the respondent no.4 Mutation Entry No.215 came to be taken. In the appeal preferred by the respondent no.4 on 03.11.2009, he had stated that on getting knowledge of this mutation entry, he filed the said appeal. The learned counsel for the petitioner sought to contend that the appeal in question ought to have been filed within three years from the date of the mutation entry dated 11.05.1993 or at-least within reasonable period. In that regard, he referred to decisions in *State Bank of India, Sayeda Akhtar and Ballumal Jaisingh* (supra) to submit that without considering the aspect of delay and in absence of any application for condoning the delay, the said aspect was not liable to be entertained. However when the facts of the present case are examined, it becomes clear that the original owner Bhikamchand Rathi having sold 1 H 22 R land to the father of the respondent no.4 after obtaining due permission, he had no right, title or interest in that land to thereafter execute relinquishment deed on 25.09.1992 for a portion of the same land in favour of the Trust. The Trust had also relied upon the unregistered relinquishment deed to claim title in itself. When it is obvious that said relinquishment deed could not have conferred any title in favour of the Trust, the mutation entry taken on that basis would be void ab-initio. For challenging the said mutation entry it was stated by the respondent no.4 that on getting knowledge of the same the appeal came to be filed. It is pertinent to note that the Trust through its trustees despite being noticed in the appeal before the Sub-Divisional Officer did not choose to contest the same. The Sub-Divisional Officer therefore proceeded without reply of the Trust and adjudicated the appeal. Having failed to raise this objection at the initial stage, the petitioner cannot be permitted to raise the same thereafter. Though it is true that absence of such objection would not by itself clothe the Authority with jurisdiction, the fact that the Trust intended to rely upon the aspect of the appeal being filed beyond reasonable period was a matter to be agitated before the first Authority. Be that as it may, it is found that since Mutation Entry No.215 itself was taken without due notice to the respondent no.4 and without the Trust having any title to the said property, it was rightly set aside by entertaining the appeal preferred by the respondent no.4. Even today, there is no document of title in respect of 15 R land with the petitioner-Trust except the unregistered relinquishment deed. Hence the ratio of the decisions relied upon by the learned counsel for the petitioner do not support the said contention.

A grievance was also raised on behalf of the petitioner to the suo motu exercise of power by the Additional Commissioner while setting aside Mutation Entry No.1408. By that mutation entry taken in the year 1977, the same land to the extent of 15 R is shown to be converted for non-agriculture use and for public worship. This entry was also taken after 30.10.1974 when the father of the respondent no.4 had acquired title to the said land. When the Additional Commissioner was seized of the entire matter and he found that the title of land admeasuring 1 H 22 R remained with the respondent no.4, the question of 15 R land from that property could not have been relinquished by the owner or have been converted for non-agriculture use. Thus on the same premise that the Trust had no title to 15 R land the said mutation entry has been cancelled. It was urged on behalf of the petitioner by relying upon the decision in *Girijashankar Baladin Jaiswal* (supra) that the petitioner should have put at notice before exercising of such suo motu power. In the facts of the present case, when Mutation Entry No.215 itself is found to be without any authority of law in view of the fact that there was no title with the Trust in respect of 15 R land, Mutation Entry No.1408 indicating conversion to non-agriculture use for the same land is obviously without any jurisdiction. It is also to be noted that this mutation entry has been referred to by the trustees themselves in the pursis dated 11.01.2018 filed by them. Perhaps realising the aspect that there was no legal document of title in its favour, the trustees had filed a pursis before the Additional Commissioner intending not to pursue the appeal. That pursis was not accepted by the Additional Commissioner by giving cogent reasons and he rightly directed the Additional Collector to inspect the relevant records in that regard. Even otherwise, a mutation entry merely has presumptive value and is not the source of the title. The Trust is always free to establish its right and title to the above property if any in accordance with law. Hence, the exercise of suo motu powers by the Additional Commissioner after noticing the aforesaid aspects of the matter cannot be faulted. The decision relied upon does not help the cause of the Trust in these facts. In that view of the matter, I am not inclined to entertain the challenge of the truestees in that regard.

In the light of the aforesaid decision, it is found that there is no case made out to interfere with the impugned orders. The writ petition is therefore dismissed with no orders as to costs. The Additional Commissioner shall ensure proper compliance of the directions issued by him to the Additional Collector in respect of Mutation Entry No.1408.

At this stage, the learned counsel for the petitioner prays that the interim order passed earlier be continued for sometime. The order of status-quo as operating shall continue to operate for a period of eight weeks from today and shall cease to operate automatically on the expiry of that period.

JUDGE

Andurkar.