

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

Writ Petition No.6051 of 2018
Laxmanrao Kevle Vs. State of Maharashtra Through Secretary, Revenue
Department, Mantralaya, Mumbai
With
Contempt Petition No.53 of 2019 in Writ Petition No.6051 of 2018
Laxmanrao Kevle Vs. Smita Belmare and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.R. Deshpande, Advocate for petitioner
Mrs. Mrunal Naik, AGP for respondents No.1 to 4.
Mr. N.B. Kalwaghe, Advocate for respondents No.5 to 14.

CORAM : MANISH PITALE, J.

DATED : NOVEMBER 04, 2019

By this writ petition, the petitioner has challenged orders passed by the Sub Divisional Officer, Additional Collector, Additional Commissioner and finally by the Minister, whereby appeals filed by the petitioner concerning mutation entry have been dismissed.

2. The undisputed facts in the present case are that the predecessor of the petitioner i.e. his father was owner and in possession of certain land in district Amravati in respect of which proceedings under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, were undertaken. On 27/10/1976, the land was declared surplus by the Collector, Amravati, which was challenged by the predecessor of the petitioner before the Additional

Commissioner and Minister and the said proceedings stood dismissed. Thereafter, challenge was raised before this Court. The order of Tahsildar was set aside and matter was remanded to the said Authority for fresh enquiry. After enquiry the land that was declared surplus was maintained and appeal was dismissed by the Divisional Commissioner by order dated 12/4/1993. The said order was challenged and ultimately, the challenge stood negated by dismissal of the L.P.A.No.63/1995, by order dated 02/04/1998, passed by Division Bench of this Court.

3. Thereafter, on 01/4/2015, order was passed by the Tahsildar regarding correction of mutation entry bearing No.754, whereby mutation entry stood corrected. This was made subject matter of challenge in appeal filed by the petitioner before the Sub Divisional Officer. One of the grounds that arose in the appeal was that the petitioner was never put to notice before correction of the mutation entry. The said contention was rejected by the Sub Divisional Officer, holding that issuance of such notice was not necessary to the petitioner as the correction was being made in terms of the earlier round of litigation concerning the declaration of land as surplus under the provisions of the aforesaid Act.

4. The challenge raised by way of appeals by the petitioner before the Additional Collector, Additional Commissioner and Minister of Revenue Department, were

all dismissed. The petitioner has filed this writ petition challenging the said orders.

5. The learned counsel appearing for the petitioner raised two fold contentions before this Court. Firstly, it was contended that the petitioner ought to have issued notice before the order passed by the Tahsildar making correction in the mutation entry and secondly, that there was nothing to show that the State Authorities had taken actual possession of the surplus land, as a result of which it could not be said that the said land had vested in the State and resultantly the allotment of such land to the respondents No.5 to 14 was also rendered unsustainable.

6. The learned AGP appearing on behalf of the State Authorities submitted that there was no question of issuance of fresh notice to the petitioner during correction of mutation entry, because the petitioner was clearly aware of the proceedings concerning declaration of surplus land under the provisions of the said Act and, therefore, there was no substance in the contentions. It was further submitted that the actual possession of the land in question had been taken as far back as on 27/02/1988, by way of execution of *panchanama* in the presence of *panchas* after due notice to the predecessor of the petitioner and, therefore, there was no substance in the second contention raised on behalf of the petitioner.

7. The learned counsel appearing for the respondents No.5 to 14 submitted that since the State Authorities had taken actual possession as far back as in the year 1988 and possession thereafter was handed over to the said respondents on 30/08/2018, pursuant to the dismissal of appeal of the petitioner by the Minister, there was no substance in the present writ petition and it deserved to be dismissed.

8. Having heard the learned counsel for rival parties and upon perusal of the record, it needs to be examined whether the petitioner is justified in raising the grievance regarding the manner in which the land in question was handed over by the State Authorities to respondents No.5 to 14.

9. As regards the first contention raised on behalf of the petitioner pertaining to failure on the part of the Tahsildar to issue notice to the petitioner before the correction of mutation entry, it is evident from the chronology of events that the petitioner and his predecessor were very much party to the earlier round of litigation concerning the proceedings under the aforesaid Act. Therefore, he could not claim ignorance regarding declaration of such land as surplus and the fact that the correction in the mutation entry was only a consequence of said land of litigation. Since the correction itself was carried out in consonance with orders passed in the earlier round of litigation, there was no question of any separate notice

being served on the respondents as an affected party before such correction was made. Hence, there is no substance in the said contention of the petitioner.

10. As regards the second contention raised regarding actual physical possession being taken by the State Authorities, much emphasis is placed by the learned counsel appearing for the petitioner on certain 7/12 extracts to contend that the name of the petitioner was shown in such extracts, thereby showing that he was in possession of the property in question. It was further claimed that in terms of law laid down by the Hon'ble Supreme Court in the cases of **Prahlad Singh and Others Vs. Union of India and others (2011) 5 Supreme Court Cases 386** and **Raghubir Singh Sehrawat Vs. State of Haryana and others (2012) 1 Supreme Court Cases 792**, since actual physical possession of the land was never taken by the State Authorities in the present case, the land never vested in the said authorities and, therefore, there was no question of the same being handed over to the respondents No.5 to 14.

11. A perusal of the material placed on record on behalf of the respondent No.3 shows that in order to take actual physical possession of the surplus land, proceedings were undertaken wherein specific direction was given by the Tahsildar to the concerned sub-ordinate authorities to issue notice to the predecessor of the petitioner and to take possession of the land in question in the presence of *panchas*. This direction was carried out by the concerned

authority by execution of *panchanama* dated 27/02/1988, in the presence of two panchas. The said proceedings have been placed on record on behalf of the respondent No.3. The said documents clearly show that the requirement as laid down by the Hon'ble Supreme Court in the aforesaid two cases stood satisfied in the present case as there was sufficient material to show that the actual physical possession was taken by the concerned authority way back on 27/2/1988 itself. Therefore, there is no substance in the contention raised on behalf of the petitioner by relying upon said judgments. An attempt to show defects in the manner in which possession was sought to be taken way back in 1988, cannot be entertained in the present writ petition. Similarly, the contention that because the 7/12 extracts continued to show the name of the predecessor of the petitioner concerning the said surplus land would also not come to the aid of the petitioner, since the concerned authorities have taken actual physical possession in the year 1988.

12. In view of the above, there is no substance in the second contention raised on behalf of the petitioner.

13. Accordingly, it is found that there is no substance in the present writ petition and accordingly, it is dismissed.

14. In view of dismissal of writ petition, it is found that there is no substance in the contempt petition and accordingly, it is also dismissed.

JUDGE

MP Deshpande