

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

WRIT PETITION NO.3644 OF 2014

1. Mohd Yakub Mohd Haider Patel (died)
per his Lrs
 - 1-A Mohd Ismail s/o Yakub Patel,
age 79 years, occupation Pensioner,
Residing at Bhagya Nagar, Osmanabad.
 - 1-B Nawab s/o Yakub Patel,
age 60 years, occupation Agriculture,
Residing at above address.
 - 1-C Ahmed s/o Yakub Patel,
age 45 years, occupation and
residence as above.
 - 1-D Akbar s/o Yakub Patel,
age 45 years, occupation and
residence as above.
2. Iftikaroodin s/o Khiyamoddin Sayyad (died)
per Lrs:
 - 2-A Sayyed w/o Anees Jahera,
age 55 years, occupation household,
Residing at Bhagya Nagar, Osmanabad.
 - 2-B Sayyed Azharuddin s/o Iftikaroodin,
age 38 years, occupation and
residence as above.
 - 2-C Sayyad Mazhurrudin s/o Iftikaroodin,
age 30 years, occupation and
residence as above.
- 3 Abdul Karim Khan Dulhekhan Pathan,
age 68 years, occupation Pensioner,
Residing as above. ...Petitioners

Versus

1. The State of Maharashtra,
through the Secretary to the Government,
Revenue and Forest Department,
Mantralaya, Mumbai.

2. The Principal Secretary and Officer on Special Duty (Appeals), Government of Maharashtra, Revenue and Forest Department, having its office located at Industrial Assurance Building, 1st Floor, G.T. Road, Churchgate, Mumbai-400020.
- 3 The Deputy Director of Land Records, Marathwada Region, Aurangabad, having its office located besides Panchayat Samiti, Aurangabad.
- 4 Superintendent of Land Records, Osmanabad, having its office located at Collector Office, Osmanabad.
- 5 Abdul Gani Shah Mohd Qureshi (died) per his Lrs:
 - 5-A Abdul Karim s/o Abdul Gani, age 35 years, occupation trade, Residing at Gandhi Nagar, Osmanabad.
 - 5-B Abdul Hamid s/o Abdul Gani, age 32 years, occupation and Residence as above.
 - 5-C Abdul Alim Abdul Gani Qureshi, age 30 years, occupation and residence as above.
 - 5-D Samad s/o Abdul Gani, age 24 years, occupation and residence as above.
 - 5-E Ahmed s/o Abdul Gani, age 25 years, occupation and, Residence as above.
 - 5-F Shakila wd/o Abdul Gani, age 60 years, occupation Household, residing at above address.
 - 5-G Noor Jaha d/o Abdul Gani, age 37 years, occupation and Residence as above.

5-H Nazma d/o Abdul Gani,
age 32 years, occupation and
residence as above.

5-I Naseem d/o Abdul Gani,
age 30 years, occupation and
residence as above.

5-J Parveen d/o Abdul Gani,
age 28 years, occupation and
residence as above.

5-K Afreen d/o Abdul Gani,
age 26 years, occupation and
residence as above.

...Respondents

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Mr. Hemant S. Surve, Advocate for the Petitioners.

Mr. S.K. Tambe, AGP for Respondent Nos.1 to 4.

Mr. P.R. Patil h/f Mr. M.A. Thorbole, Advocate for Respondent
Nos.5-A to 5-K.

...

CORAM : ROHIT B. DEO, J.
DATED : 31th JANUARY, 2020.

ORAL JUDGMENT:-

. Rule. Rule made returnable forthwith.

2. Heard finally with consent of the parties.

3. The petitioner is aggrieved by the order dated 03.01.2014 rendered by the Principal Secretary cum Officer on Special Duty (Appeals), whereby the order dated 30.01.2012 rendered by the Deputy Director of Land Records, Aurangabad, is confirmed and the revision preferred by the petitioners is rejected. In view of the order which I propose to pass, only bare facts need be noted.

4. Respondent 5 was the owner of survey no. 145/A ad-measuring 5.20 acre. In 1969, after converting the user of the said land to non-agriculture, respondent no.5 carved out five plots and sold the same to the petitioners by registered sale deeds. The petitioners contend that alienation was completed in 1978 and after 29 years i.e. in the year 2010, the respondent 5 came up with a case that area admeasuring 481 sq.mtrs in excess of the area covered by the sale deeds is recorded in the revenue record.

5. The petitioners contend that without preferring an application for condonation of delay, respondent 5 moved an application before the Superintendent of Land Records, Osmanabad seeking correction of the revenue record on the premise that the revenue record does not confirm with the sale deeds. Vide order dated 31.03.2010, the Superintendent of Land Records directed the Deputy Superintendent of Land Records to conduct a fresh measurement. The petitioners challenged the said order before the Deputy Director, Land Records, Aurangabad. In the interregnum, on 30.03.2011 the Deputy Superintendent of Land Records measured the land complying with the directions issued by the Superintendent of Land Records.

6. The appeal preferred by the petitioners came to

be dismissed by the Deputy Director of Land Records vide order dated 30.01.2012. The order makes an interesting reading. It appears, that the contentions raised by the petitioners did not receive the consideration which a quasi judicial authority was expected to bestow. The Deputy Director of Land Records was apparently influenced by the fact that in the absence of an interim order, the measurement was done and the Deputy Director of Land Records, therefore, assumed that the appeal is rendered infructuous, which is apparent from perusal of paragraph 1 of the operative order which reads thus:

" १) अपीलदार यांचे अपील हे जिल्हा अधिक्षक भूमी अभिलेख बीड यांनी वाद मिळकतीविषयी फेरचौकशी करणे बाबत दिनांक ३० . ०३. २०११ चे आदेशाचे नाराजीने सादर केले असून प्रस्तुत प्रकरणात उप - अधिक्षक भूमी अभिलेख उस्मानाबाद यांनी सदर आदेशान्वये दिनांक ३० . ०३. २०११ रोजी वाद मिळकतीची मोजणी करून अहवाल सादर केला असल्याने प्रस्तुत प्रकरण हे आज रोजी व्यपगत (infructuous) झाले असल्याने निकाली ठेवणेत येत आहे. "

7. The petitioners contend, and not without justification, that while their appeal was held infructuous, the Appellate Authority in essence upheld the findings of the Superintendent of Land Records and the correctness of the

measurement done on 30.03.2011. The learned counsel for the petitioners invited my attention to paragraphs 2 and 3 of the operative order which read thus.

" २) प्रस्तुत प्रकरणात उप- अधिक्षक भूमी अभिलेख उस्मानाबाद यांनी दिनांक ३०. ०३. २०११ चे मोजणीचे चौकशी अहवालानुसार विहित कार्यपद्धतीचा अवलंब करून अपिलार्थीचे नोंदणीकृत खरेदीपेक्षा जास्तीचे क्षेत्र प्रस्तुत प्रतिवादी म्हणजेच मूळ मालकाचे नावे नोंदविणे बाबत नियमानुसार कार्यवाही करणे बाबत आदेश देणेत येत आहेत.

३) अपिलार्थी यांनी वाद मिळकती विषयीचा त्यांचे नोंदणीकृत खरेदीखता पेक्षा आखीव पत्रिकेवरील जास्तीचे क्षेत्राचा मालकी हक्क सक्षम दिवाणी न्यायालयातून सिद्ध करून घ्यावा. "

8. Dissatisfied with the order of the Deputy Director of Land Records, the petitioners preferred an appeal which is dismissed by the order impugned. The Appellate Authority noted the factual matrix and then recorded the submissions. However, the Appellate Authority has not considered the submissions and at any rate the ultimate conclusion is not supported with reasons. The only consideration appears in the concluding paragraph which reads thus:

" माझ्या समोर झालेले मौखिक व लेखी युक्तिवाद विविध स्तरावर झालेले निर्णय व सादर झालेली कागदपत्रे याचे अवलोकन केले. सदर प्रकरणाबाबत विविध

स्तरावर झालेले निर्णय तसेच अर्जदार व जाबदार यांनी दिलेला लेखीयुक्तीवाद व माझ्या समोर सादर झालेली कागदपत्रे यांचे अवलोकन केले . वादातील मिळकतीबाबत अपर आयुक्त, नाशिक यांचे आदेशात कोणताही फेरबदल करण्याची आवश्यकता दिसून येत नसल्याने खालील प्रमाणे आदेश देण्यात येत आहेत. ”

9. I am satisfied that the Appellate Authority virtually abdicated its quasi judicial function. It is true that the Appellate Authority passed a confirmatory order. However, even a confirmatory order, particularly a confirmatory order in appeal cannot be unreasoned. The only observation is that on perusal of the record it is not necessary to interfere with the order impugned. The non-application of mind is further apparent from the fact that the Appellate Authority refers to the order impugned before it as passed by the Additional Commissioner, Nashik, while the order is passed by the Deputy Director of Land Records.

10. The order impugned is manifestly erroneous and is, therefore, quashed and set aside.

11. The matter is remitted to respondent 1 for De novo consideration and passing reasoned order after hearing the parties. The respondent no.1 shall do the needful within 90 days of the communication of this order.

12. Rule is made absolute in the aforesaid terms.

(ROHIT B. DEO, J.)

Mujaheed//