

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

WRIT PETITION NO.7153 OF 2019

Suryakant Dattatraya Kulkarni and ors.

..Petitioners

Versus

The State of Maharashtra and ors.

..Respondents

Mr D.P. Palodkar, Advocate for petitioners

Mr S.G. Karlekar, A.G.P. for respondents no.1 and 2

Mr A.V. Patil Indrale, Advocate for respondents no.2 to 4

**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 3.2.2020

ORAL ORDER :

1. Mr Palodkar, learned Advocate for petitioner submits that the sale deed is executed in favour of respondent no.3. At the time of execution of sale deed, mistake was committed with regard to nature of land. The land of the petitioner is *Bagayat* whereas in the sale deed, only 60 R land was mentioned as irrigated land. According to Mr Palodkar, the competent authority (respondent no.2) has also issued a communication to the Deputy Collector – respondent no.3 that the entire land of the petitioner is required to be considered as *Bagayat* land. Respondents are not abiding by the said communication.

2. Learned Advocate Mr Patil for respondents no.2 to 4 submits that the communication relied by the petitioner dated 5.4.2018 is not issued by the office of respondent no.2 and if the same is issued, it stands cancelled. No such panchnama referred to in the said letter, is on record of respondents.

3. It appears to be case of disputed questions of facts. If there is a mistake in the sale deed, the petitioner can move for rectification of the document – sale deed.

4. Considering the stand taken by the petitioner and respondents no.2 and 3, it would be appropriate for the petitioner to approach the Civil Court for rectification of the instrument. Naturally, in such a case, the bar under Section 64 would not arise as more particularly, when the acquisition is by private negotiations and not as per the provisions of Highways Act.

5. It is for the petitioner to take the plea of the benefit under Section 14 of the Limitation Act about prosecuting the proceedings bonafide and in good faith in wrong forum, which plea the Court would consider on its own merits.

6. With the above observations, Writ Petition is disposed of. No costs.

(SHRIKANT D. KULKARNI, J.)

(S.V. GANGAPURWALA, J.)

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