**<u>IN THE HIGH COURT OF JUDICATURE AT BOMBAY</u>**
**<u>BENCH AT AURANGABAD</u>**

**WRIT PETITION NO.3355 OF 2019**

Suresh s/o Pandit Chavan,
Age : 51 years, Occu. Agri.,
R/o Dindegaon, Taluka Tuljapur,
District Osmanabad **PETITIONER**

**VERSUS**

1. Tukaram s/o Pandurng Panchal,
Age : Major, Occu. Agri.,
R/o Dindegaon, Taluka Tuljapur,
District Osmanabad

2. The State of Maharashtra,
through Revenue Department,
Mantralaya, Mumbai **RESPONDENTS**

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Mr. P.S. Chavan, Advocate for the petitioner
Mr. S.N. Patne, Advocate for respondent No.1
Mr. K.B. Jadhavar, A.G.P. for respondent No.2/State

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**CORAM : MANGESH S. PATIL, J.**

**DATE : 26.08.2021**

**<u>ORAL JUDGMENT</u> :**

Heard.

2. Rule. The Rule is made returnable forthwith. Mr. S.N. Patne, learned Advocate waives service for respondent No.1 and the learned A.G.P. waives for respondent No.2. With the consent of the learned Advocates for the parties and the learned A.G.P., the petition is heard

finally at the stage of admission.

3. By way of this petition, the petitioner is challenging the order dated 28.08.2018, passed by the learned Minister in a proceeding under Section 257 of the Maharashtra Land Revenue Code, 1966.

4. The facts leading to the filing of the Writ Petition may be summarized as under.

. The father of the petitioner purchased land block No.105, admeasuring 1 Hectare 19 Ares under a registered sale-deed dated 05.04.1978. Mutation Entry No.8 was certified pursuant to such sale-deed. In the year 2008, respondent No.1 submitted an application to the revenue authorities for mutating his name to the extent of 33 Ares of land from block No.105. Accordingly, Mutation Entry No.329 was certified in favour of respondent No.1. The petitioner and his family challenged that Mutation Entry No.329. The learned Sub-Divisional Officer allowed their appeal on 12.07.2010 and cancelled Mutation Entry No.329. Respondent No.1 preferred an appeal, but it was dismissed by the Collector and the decision of the learned Sub-Divisional Officer cancelling the mutation reached finality. Accordingly, by Mutation Entry No.384, the land was again mutated in the name of the petitioner.

5. Respondent No.1 again made an attempt and applied to the Tahsildar for once again making correction in the revenue record to the

extent of 33 Ares of land block No.105 on 14.08.2012. The learned Tahsildar made a proposal to the Sub-Divisional Officer for correcting the revenue record. By the order dated 28.02.2014, the learned Sub-Divisional Officer directed the Tahsildar to correct the revenue record. The petitioner's appeal against that order was dismissed on 30.08.2014. He preferred a Revision before the Additional Commissioner and by the order dated 12.04.2017, the Revision was allowed and the order of the Additional Collector dated 30.08.2014 was set aside. Respondent No.1 challenged the order of the Additional Commissioner before the State Government and by the impugned order, the learned Minister allowed the appeal and restored the order of the learned Sub-Divisional Officer. Hence, this Writ Petition.

6. I have heard the learned Advocate for the petitioner, the learned Advocate for respondent No.1 and the learned A.G.P.

7. True it is that the revenue entries are only meant for fiscal purposes and do not create or destroy a title to an immovable property. Therefore, it was always open for the revenue authorities to enquire into and correct the revenue record independently.

8. However, the facts in the matter in hand are peculiar. Apart from the decisions taken by the revenue authorities from time to time, it also transpires that the petitioner had filed Regular Civil Suit No.227 of 2009 against respondent No.1 and his family members asserting his exclusive right,

title and possession over the three lands bearing Gut Nos.105, 106 and 107. Respondent No.1 contested that suit and by the judgment and order dated 07.11.2009, it was decreed in favour of the petitioner. True it is that it was not a suit for declaration of title and was only a suit for perpetual injunction. However, a dispute as regards the disputed portion of 33 Ares from land Gut No.105 was also raised by respondent No.1 and the co-defendants in that suit and their contention was turned down. Respondent No.1 and the co-defendants never challenged that judgment and decree.

9. Conversely, it also transpires that even respondent No.1 filed a separate suit bearing Regular Civil Suit No.239 of 2009 against the petitioner and his family members. However, that was dismissed in default on 04.10.2011 and since thereafter, respondent No.1 never attempted to get his rights determined from any Civil Court.

10. The net result of the aforementioned happenings can easily be appreciated. Whatever conflicting rights were being claimed by the parties, those got crystalized in view of aforementioned facts and circumstances, firstly, in the form of finality to the decree passed in favour of the petitioner and secondly, dismissal of the suit of respondent No.1. Needless to state that by operation of the principle of *res judicata*, no further proceeding on behalf of respondent No.1 claiming title to the disputed 33 Ares portion from land Gut No.105 is possible.

11. If such is the state-of-affairs, the impugned orders by the Sub-Divisional Officer and the one passed by the learned Minister confirming those would clearly undermine the consequences of the decisions by the Civil Court. Perhaps, in order to avoid any such situation, the learned Minister in the very impugned order, has taken precaution to declare that the order passed by him would be subject to the decisions of the Civil Courts and those would even be binding on the revenue authorities. If such is the state-of-affairs, there was no reason why the learned Sub-Divisional Officer and the learned Minister, inspite of the decision of the Civil Court having been brought to their notices, have turned a blind eye to the consequence of such decision by the Civil Court reaching finality and failure of respondent No.1 to get his suit decided on merits and allowing it to be dismissed in default.

12. Be that as it may, taking overall stock of the facts and circumstances, there was no reason for the revenue authorities to proceed to once again make an attempt to change the revenue record right in the teeth of the decision of the Civil Court.

13. The Writ Petition is allowed. The impugned order is quashed and set aside. The Rule is made absolute.

**[MANGESH S. PATIL]**
**JUDGE**