

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

WRIT PETITION NO.5170 OF 2020

1. Sahebrao s/o Manikrao Patil,
Age: 61 Yrs,
2. Jijabai w/o Sheshrao Patil
Age: 48 Yrs
3. Gajanan Sheshrao Patil
Age: 22 Yrs
4. Yogesh sheshrao Patil
Age: 18 Yrs
5. Sandeep Sahebrao Patil
Age: 41 Yrs
6. Pruthviraj S/o Sahebrao Patil
Age: 34 Yrs
7. Sheshrao Manikrao Patil
Age: 55 Yrs
8. Taibai Gnaneshwar Patil
Age: 50 Yrs
9. Kaparsingh Singh Bindesingh Patil
Age: 71 Yrs

All Occupation: Agriculture
All Resident of Hiwarkheda Ta. Wa.
Tq. Jamner, Dist. Jalgaon

... Petitioners

Versus

1. State of Maharashtra
Revenue State Minister
Through the Principal Secretary,
Department of Revenue,
Mantralaya.
2. Sub Divisional Officer,
JDCC Bank Colony, Shahunagar,
Jalgaon, Maharashtra 425 001
3. Additional Collector,
Mahabal Rd, New Joshi Colony,
Prabhat Colony, Jalgaon,
Maharashtra 425 001
4. Additional Commissioner Revenue,

Nashik Division,
Government Colony, Nashik,
Maharashtra 422101

5. Talathi, Shengola,
Talathi Office, Shengola,
Tq. Jamner, Dist. Jalgaon

[Respondent no 1 to 5 are the state and
its officers the copy for the same be
served on the office of GP]

6. Santosh Bindesingh Patil
Age: 75 Yrs, Occu: Agriculture
R/o: Hiwarkheda Ta. Wa.
Tq. Jamner, Dist. Jalgaon

... Respondents

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Advocate for Petitioners : Mr. V. D. Sonawane
AGP for Respondents No.1 to 5 – State : Mr. P. G. Borade
Advocate for Respondent No. 6 : Mr. M. M. Parghane

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 25th NOVEMBER, 2021
PRONOUNCED ON : 10th DECEMBER, 2021

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with
the consent of the parties.

2. This petition challenges the order dated 13-02-2019 passed
by respondent No.1 in R.T.S. No.3218/Pr.Kr.165/J-6A.

3. Facts in brief leading to this petition are as follows:-

Deceased Manikrao Udaysingh Patil was tenant of suit land
old Survey No.74 and current Gat No.148 owned by Late. Dwarkabai
Pandharinath Patil. Mutation Entry No.624 was sanctioned in the year

1955, thereby recording deceased Manikrao as tenant of the suit land. Upon death of Manikrao on 23-03-1989 the names of the petitioners and other legal heirs of Manikrao were entered in the revenue record and the petitioner No.1 was shown as Karta of Joint Hindu Family vide Mutation Entry No.218. Dwarkabai Pandharinath Patil expired on 22-02-1993 and she had only daughter namely Vijayabai Bhargav Desai whose name was entered in the mutation register vide M.E. No.323. Vijayabai, daughter of Late Dwarkabai executed sale certificate u/S. 32(M) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'the Act, 1948') in favour of the petitioner Sahebrao Manikrao Patil on 10-07-1997.

4. Respondent No.6 challenged M.E. No.218 before respondent No.2, which was allowed and M.E. No.218 was cancelled. The name of respondent No.6 was directed to be entered in the revenue record of the suit land.

5. The petitioners challenged the order passed by respondent No.2 before the Additional Collector, Jalgaon, who allowed the appeal mainly on the ground that M.E. No.218 was certified in the year 1989 and after 23 years revision application was filed by respondent No.6. Respondent No.6 unsuccessfully challenged the order passed by the Additional Collector, Jalgaon, before the Additional Commissioner,

Nashik. Respondent No.6, thereafter, approached the Hon'ble Minister by filing proceeding u/S.257 of the Maharashtra Land Revenue Code, 1966, which was allowed. This order is impugned in the present petition.

6. Heard the learned advocate for the petitioners, learned advocate for respondent No.6 and the learned Assistant Government Pleader for respondent Nos. 1 to 5 – State.

7. The learned advocate for petitioners assailed the impugned order submitting that the Hon'ble Minister failed to consider inordinate delay of 23 years in filing proceedings, so also, the sale certificate issued in favour of the petitioners. The impugned order is passed by ignoring M.E. Nos. 326, 327 and 686. He further submitted that respondent No.6 has already preferred Regular Civil Suit No.132/2017 for partition and separate possession of the suit land, and other properties. (By relying on the affidavit filed by the real brother of respondent No.6) By pointing out admission of respondent No.6 in paragraph 4 of the revision memo filed before the Hon'ble Minister he submitted that this admission is also ignored by the Hon'ble Minister at the time of passing the impugned order. According to him, the application filed by respondent No.6 was hopelessly time barred and ought to have rejected at the threshold. In support of his submissions he relied in **Santoshkumar Shivgonda Patil**

and Others Vs. Balasaheb Tukaram Shevale and Others, reported in **2009 (9) SCC 352**.

He further submitted that on 31-07-2020 this Court granted status quo in the present petition. On the same day respondent No.6 was successful in getting M.E. No.1151 sanctioned in his favour. The said mutation entry mentions that notice was issued on the same day, approval was granted and the entry was also certified on the same day i.e. on 31-07-2020. This was, in spite of the fact that the petitioner had intimated revenue authorities that he is challenging the order passed by the Hon'ble Minister before this Court. He, therefore, submitted the impugned order is liable to be quashed and set aside.

8. The learned advocate for respondent No.6 submitted that the suit land is ancestral property. Out of the four ancestral properties three properties were partitioned and the suit land was remained to be partitioned. Hence, the order impugned in the petition is rightly passed by the Hon'ble Minister. He, therefore, supported the impugned order and submitted that there is no substance in the petition and the same may be dismissed.

9. The learned Assistant Government Pleader adopted the arguments of respondent No.6 and supported the impugned order.

10. In reply, the learned advocate for petitioners submitted that since the suit land is a tenancy land, and not an ancestral property, hence, there is no question of its partition.

11. Heard the learned advocate for the petitioners, learned advocate for respondent No.6 and the learned Assistant Government Pleader for respondent Nos. 1 to 5 – State at length. Perused the record.

12. Record reveals that Dwarkabai was landlord of the suit land and Manikrao – father of the petitioners was the tenant. Since 1955 name of Manikrao was entered in the revenue record as tenant of the suit land. After the death of Manikrao name of the petitioners and other legal heirs of Manikrao was entered in the revenue record of the suit land by M.E. No.218 and petitioner No.1 is shown to be Joint Hindu Family Karta. On the death of landlord Dwarkabai name of her daughter Vijayabai Bhargav Desai was entered in the revenue record of the suit land. Vijayabai executed a sale certificate u/S. 32(M) of the Act, 1948 of the suit land in favour of the petitioners. Pursuant to the sale certificate name of the present petitioners were entered in the revenue record of the suit land.

13. In view of the sale certificate executed in favour of the petitioners, M.E. No.218 has lost its efficacy. Since the suit land was tenanted land, it cannot be said to be ancestral land as is being claimed

by respondent No.6.

14. In view of the above facts respondent No.2 was not justified in entertaining and allowing proceedings filed by respondent No.6 after 23 years. The Additional Collector was just right in allowing the appeal filed by the petitioners and setting aside order passed by the Sub Divisional Officer.

15. The Hon'ble Minister while allowing the revision has erroneously recorded finding that respondent No.6 has share in the suit land and his name was not mentioned at the time of taking M.E. No.218. The delay of more than 23 years in filing proceeding before Sub Divisional Officer, the sale certificate issued in favour of the petitioners and the fact that the suit land was tenanted land and the same cannot be claimed to be as an ancestral property, are ignored by the Hon'ble Minister while passing the impugned order. The impugned order is, therefore, vitiated due to non-application of mind and the same is unsustainable.

16. Respondent No.6 has already filed R.C.S. No.132/2017 for partition and separate possession of the suit land. He may prosecute the said suit and the decision of the Civil Court will be binding on the parties.

17. The ratio in **Santoshkumar Shivgonda Patil and Others** (supra) supports the case of the petitioner that since respondent No.6 has not filed proceedings challenging M.E. No.218 within reasonable time the same ought to have been dismissed on the ground of delay. In this ruling the Hon'ble Apex Court held that:-

“If a statute does not prescribe the time limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. Ordinarily, reasonable period within which power of revision may be exercised would be three years u/S 257 of the Maharashtra Land Revenue Code, subject to the exceptional circumstances. Exercise of revisional power after a lapse of 17 years was held to be not within a reasonable time.”

18. In view of the aforestated reasons, following order is passed:-

ORDER

- (I) Writ Petition No. 5170 of 2020 is allowed.
- (II) The impugned order dated 13-02-2019 passed by respondent No.1 in R.T.S. No.3218/Pr.Kr.165/J-6A, is hereby quashed and set aside.
- (III) Rule is made absolute in the above terms with no order as to costs.
- (IV) Needless to mention that the observations made in the present judgment shall not influence the learned Civil Judge Junior Division, Jamner, while deciding R.C.S. No.132/2017.

(NITIN B. SURYAWANSHI, J.)