IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9333 OF 2017

Lankabai w/o. Nivrutti Dhole, .. Petitioner
Age.75 years, Occ. Agri & Household,
R/o. Nalwandi, Tq. Patoda,
District Beed.

VERSUS

1. The State of Maharashtra .. Respondents
   Through : Secretary,
   Revenue & Forest Department,
   Mantralaya, Mumbai – 32.

2. The State Minister [Revenue]
   Mantralaya, Mumbai – 32.

3. The Divisional Deputy Commissioner,
   [EGS], Aurangabad.

4. The Additional Collector, Beed,
   District Beed.

5. The Sub Divisional Officer, Beed,
   District Beed.

6. The Tahsildar,
   Beed, District Beed.

7. Bajirao Bapurao Raut,
   Deceased through LRs -

   7a] Janabai Bajirao Raut,
   Age.70 years, Occ.Agri & Household,

7b] Dhuraji s/o. Bajirao Raut,
Age. 35 years, Occ. Agri.,

7c] Shrirang Bajirao Raut,
Age. 32 years, Occ. Agri.,

7a] & 7b] R/o. Nalwandi,
Tq. Patoda, District Beed.

8. Sarjerao Bapurao Raut,
Age. 70 years, Occ. Agri.,
R/o. Nalwandi, Tq. Patoda,
District Beed.

9. Bansi Bapurao Raut,
Age. 60 years, Occ. Agri.,
R/o. As above.

Mr.N.L.Jadhav, Advocate for the petitioner.
Mr.R.D.Sanap, AGP for respondent/State.
Mr.V.B.Patil, Advocate for respondent Nos.7a to 7c,8 & 9.

CORAM : N.J.JAMADAR, J.
RESERVED ON : 11.03.2021
PRONOUNCED ON : 08.04.2021

J U D G M E N T :-

01. Rule. Rule made returnable forthwith and, with the consent of the learned Counsels for the parties, heard finally at the stage of admission.

02. The challenge in this petition is to the

judgment and order dated 19th April, 2017, passed by the Minister [Revenue], in अपील-4315/प्र.क. 136/ज-7 अ, preferred by respondent Nos.7 to 9 herein, under section 249[2] of the Maharashtra Land Revenue Code, 1966 [the Code], whereby the Minister was persuaded to allow the appeal by setting aside the judgment and order passed by the Divisional Commissioner, Aurangabad, in Revision No.ROR/REV-01/2000-B dated 30th September, 2014, which, in turn, had set aside the judgment and order passed by the Additional Collector, Beed, in Appeal No.99/CD/appeal/Kavi-22 dated 4th December, 1999, preferred by respondent Nos.7 to 9, whereby the appeal was allowed and the judgment and order passed by the first appellate authority, in Appeal No.99/जमा/कावी/409 dated 28th May, 1999, was quashed and set aside, under which the first appellate authority had ordered that Mutation Entry No.936 dated 24th July, 1995 effected in the name of respondent Nos.7 to 9, in respect of the agricultural land bearing Survey No.36, admeasuring 5 Acres 25 Gunthas, situated at Mouje Nalwandi [the suit land] be cancelled. Resultantly, said Mutation Entry No.936 in the name of respondent Nos.7 to 9 stood restored by the impugned order.

03. The petition arises in the backdrop of the following facts:-

a] Late Nivrutti Bhosale was the original holder of the suit land. The petitioner – Lankabai claimed to be the sole surviving heir of Nivrutti. The petitioner applied to the Talathi to mutate her name to the suit land. By Mutation Entry No.926 dated 3rd July, 1995, the name of the petitioner came to be mutated to the record of rights of the suit land. The petitioner claims that respondent Nos.7 to 9 had no right, title and interest in the suit land. Yet, vide Mutation Entry No.936 dated 24th July, 1995, the names of the respondents were mutated to the suit land by cancelling Mutation Entry No.926, on the basis of alleged deed of partition, which had no legal sanctity. The petitioner thus preferred an appeal being Appeal No.99/जमा/कावी/409 before the Sub-Divisional Officer, Beed.

b] Respondent Nos. 7 to 9 claimed that the petitioner herein had instituted a suit in the Civil Court, being RCS No.39 of 1992. In the said suit, a settlement was arrived at between the parties out of the Court. The petitioner filed a pursis and withdrew the said suit. In-fact, the names of respondent Nos.7 to 9 were mutated to the suit land, pursuant to Mutation Entry No.635. The deceased respondent No.7-Bajirao Bapu has been shown to be in cultivation of the suit land since the year 1953-54. The mutation of the name of the petitioner in the year 1995 was thus unsustainable.

c] The Sub-Divisional Officer was persuaded to allow the appeal holding that there was no material in justification of initial Mutation Entry No.635 in the name of respondent No.7. Nor there was any instrument on the strength of which Mutation Entry No.936, in the name of respondent Nos.7 to 9 was certified. The alleged deed of partition was not registered. Nor there was any relationship between the petitioners and respondent Nos.7 to 9, so as to warrant partition of the suit land amongst them. Thus, the Mutation Entry No.936 dated 24th July, 1995 was ordered to be cancelled.

d] Respondent Nos.7 to 9 assailed the aforesaid judgment and order passed by the Sub-Divisional Officer before the Collector, Beed, in Appeal No. 99/CD/appeal/Kavi-22. By the judgment and order dated 4th December, 1999, the Additional Collector, Beed was persuaded to allow the appeal and set aside the order passed by the Sub-Divisional Officer, holding, inter alia, that the respondent Nos.7 to 9 – appellants therein were shown to have been in cultivation of the suit-land since long on the basis of earnest note executed by the original holder Nivrutti. And in Suit No.39 of 1992, a compromise was arrived at between the parties and pursuant thereto the plaintiff – petitioner herein had withdrawn the suit on 15th December, 1992. It was, thus, imperative for the parties to get the title to the suit-land adjudicated by the Civil Court and, therefore, the appeal deserved to be allowed.

e] The petitioner carried the matter in revision before the Divisional Commissioner. In Revision No. ROR/REV-01/2000-B, by order dated 30th September, 2014, the Deputy Commissioner, Aurangabad Division allowed the revision and set aside the judgment and order dated 4th December, 1999, passed by the second appellate authority and restored the order passed by the Sub-Divisional Officer, Beed, cancelling the Mutation Entry No.936, in the name of respondent Nos.7 to 9, certified by the Tahsildar. The Revisional Authority was of the view that respondent Nos.7 to 9 had taken inconsistent stands as regards the proprietary title over the suit land. The ownership of the suit land was never transferred to respondent Nos.7 to 9 under any instrument.

f] Being aggrieved by the order passed by the Deputy Commissioner, in revision, whereunder the order passed by the second appellate authority was varied. Respondent Nos.7 to 9 preferred appeal under section 249(2) of the Code before the State Government. By the impugned judgment and order dated 19th April, 2017, the Minister [Revenue] was persuaded to allow the appeal and restore the order passed by the second appellate authority upholding the certification of Mutation Entry No. 936 in the name of respondent Nos. 7 to 9. The Minister was of the view that the said Mutation Entry No.936 was certified by the Talathi, on the strength of the order passed by the Civil Court in RCS No.39 of 1992, preferred by the petitioner herein. In the opinion of the Minister, the revenue authorities transgressed their jurisdiction in recording a view contrary to the decision of the Civil Court.

g] Being aggrieved by and dissatisfied with the impugned judgment and order passed by the Minister

[Revenue], the petitioner has invoked the writ jurisdiction of this Court.

04. An affidavit-in-reply is filed on behalf of respondent Nos.7 to 9. It is contended that the original holder Nivrutti had inducted respondent No.7 into the suit land on the basis of an earnest note. Though the transaction could not be concluded during the lifetime of Nivrutti, yet, since 1954, the respondent No.7 has been in cultivation of the suit land. Thus, the name of respondent No.7 came to be mutated to the record of rights of the suit land. The petitioner had made unsuccessful endeavours to record her name in the record of rights. Eventually, in collusion with the concerned Talathi, the petitioner got her name mutated vide M.E. No.926. In RCS No.39 of 1992, the petitioner had specifically sought delivery of possession of the suit land apart from the declaration of title thereto. Pursuant to the compromise arrived at between the parties, under which the petitioner received a sum of

Rs.12,000/-from the respondent Nos.7 to 9, the petitioner voluntarily withdrew the said suit. The terms of settlement were also incorporated in the form of a settlement-cum-partition deed. Thus, the names of respondent Nos.7 to 9 were again lawfully mutated to the suit land vide Mutation Entry No.936.

05. By way of an additional affidavit, respondent Nos.7 to 9 have further contended that the petitioner has now instituted another suit being RCS No.318 of 2018 along with one Gahininath, the co-plaintiff. The plaintiffs therein have admitted the possession of respondent Nos.7 to 9 over the suit land and have prayed for declaration of title over the suit land and recovery of possession thereof. Thus, as a substantive suit is instituted by the petitioner, the instant petition has become infructuous.

06. In the backdrop of aforesaid pleadings, I have heard Mr. Jadhav, learned Counsel for the petitioner, Mr. V.B. Patil, learned Counsel for respondent Nos.7a to 7c,

8 & 9 and Mr.Sanap, learned AGP for the respondent/State.

07. Mr.Jadhav, learned Counsel for the petitioner took a slew of exceptions to the impugned judgment and order. At the outset, it was submitted that the impugned judgment and order has been passed in breach of fundamental principles of judicial process. The Minister had heard the matter and closed it for order on 2nd June, 2015. However, the impugned judgment came to be delivered on 19th April, 2017; almost after two years of the conclusion of hearing. This delay in the delivery of judgment vitiated the proceedings before the Minister [Revenue], urged Mr. Jadhav, learned Counsel for the petitioner. Secondly, the Minister as well as the second appellate authority have totally misconstrued the nature of the alleged compromise arrived at between the petitioner and respondent Nos.7 to 9 in RCS No.39 of 1992. At the highest, the said suit was withdrawn by the petitioner. Thus, the authorities could not have recorded the finding that the certification of Mutation

Entry No.936 was in pursuance of the order passed by the Civil Court in RCS No.39 of 1992. The Minister committed a grave error in interfering with the well reasoned order of the Divisional Commissioner, in Revision, as it was noted that the stand of respondent No.7 to 9 wavered from one end to another. Lastly, in any event, there was no document to vouch for the proprietary title of the respondent Nos.7 to 9 over the suit land. In contrast, the fact that the plaintiff is heir of deceased Nivrutti is incontestable. In these circumstances, the Minister could not have exercised the appellate jurisdiction, urged the learned Counsel for the petitioner.

08. In opposition to this, Mr.V.B. Patil, learned Counsel for respondent Nos.7a to 7c, 8 & 9 would urge that the Minister [Revenue] was justified in correcting an error into which the Divisional Commissioner had fallen. Indisputably, the petitioner had instituted RCS No.36 of 1992 and in the said suit, the petitioner voluntarily tendered pursis and sought withdrawal of the

suit on the count that the dispute is settled out of the Court. No fault can be found with certification of Mutation Entry No.936 of 1995 as it was effected on the basis of the order passed by the Civil Court in the said suit. The Minister [Revenue], thus, correctly exercised the jurisdiction and directed the authorities to correct the record of right in conformity with the order of the Civil Court. Alternatively, as the petitioner and Gahininath, the co-plaintiff, have instituted a substantive suit for declaration of title and recovery of possession and injunction, no case is made out for exercise of extra-ordinary jurisdiction.

09. The challenge to the impugned order on the count of delay in delivery of the judgment appears to carry some substance. From the perusal of the impugned order, it becomes evident that the appeal was heard on 02.06.2015. However, the judgment came to be delivered on 19.04.2017. There is an interval of about 22 months between the hearing of arguments and delivery of

judgment. Such an inordinate delay in the delivery of judgment has the propensity to vitiate the credibility of the judicial process. The authorities are expected to deliver the judgment within a reasonable time of the conclusion of the arguments, though no specific time frame has been stipulated under the governing provisions and rules.

10. A useful reference in this context can be made to a judgment of the Division Bench in the case of **Balwantrai Harilal Parekh since deceased through legal heirs and another Vs. State of Maharashtra and others, 2019(1)Bom.C.R.407**, wherein this Court had adverted to the procedural guidelines in the matter of disposal of the proceedings by quasi judicial authorities. The directions given by the learned Single Judge in the case of **Savitri Chandrakesh Pal Vs. State of Maharashtra and Others, 2010 (Supp.) Bom.C.R.482** were approved by the Division Bench. As regards passing of the order by quasi judicial authority and the time frame, the following

directions were issued by the learned Single Judge :-

> "(14) A speaking order shall be passed by the authority hearing the matter as early as possible after the hearing is concluded and, as far as possible, within a period of four to eight weeks from the conclusion of the hearing, on the basis of the record before it as well as the submissions made at the hearing. The order must contain reasons in support of the order."

11. In the case at hand, there seems to be an inordinate delay. Having regard to the history of litigation, this Court does not find it expedient to remit the matter back to the Minister [Revenue] for afresh hearing and decision, on the count that the impugned judgment has been delivered after a considerable delay. In my considered view, the matter can be considered on the merits as the Minister [Revenue] has committed an error in law which would warrant the exercise of writ jurisdiction by this Court.

12. To begin with, uncontroverted facts. It is incontrovertible that late Nivrutti Dhole was the holder of the suit land. By and large, the relationship between the petitioner and Nivrutti is not in dispute. The

respondent Nos.7 to 9 claimed to have entered into possession of the suit land, on the strength of an agreement for sale, which was reduced into writing in the form of earnest note as back as 1954. Indisputably, the name of deceased respondent No.7-Bajirao came to be mutated to the cultivator's column of the suit land in the year 1953-54. The Mutation Entry No.926, whereby the name of the petitioner came to be mutated to the said suit land was certified on 3rd July, 1995; whereas the Mutation Entry No.936, which was the subject matter of challenge before the authorities, was certified on 24th July, 1995. Apparently, the said Mutation Entry No.936 has been certified on the basis of the settlement-cum-partition deed.

13. The genesis of the said settlement is in the suit which was instituted by the petitioner against respondent Nos.7 to 9, being RCS No.39 of 1992. It was instituted by the petitioner for recovery of possession of the suit land, on the basis of title. It was, inter

alia, alleged that the suit land was inherited by the petitioner and Sau. Sumalbai, her sister from late Nivrutti. Respondent Nos.7 to 9 - defendant Nos.1 to 3 had dispossessed the plaintiff from the suit land on 10th April, 1988, on the basis of the false entries made in the revenue record. In the said suit, the plaintiff/ petitioner filed pursis on 15th December, 1992 to the effect that an out of Court settlement was arrived at between the petitioner and respondent Nos.7 to 9, under which the petitioner had received a sum of Rs.12,000/- and, therefore, the petitioner was not desirous of prosecuting the said suit. The learned Civil Judge recorded the said pursis, and the suit was disposed of as withdrawn, in terms thereof.

14. It would be contextually relevant to note that the settlement-cum-partition deed appears to have been executed between the petitioner and respondent Nos.7 to 9, on a stamp paper of Rs.5/- denomination, purchased in the year 1994. Thus, those documents were pressed into

service on behalf of respondent Nos.7 to 9 to seek mutation of their names to the record of rights of the suit land.

15. The Sub-Divisional Officer was of the view that the said settlement-cum-partition deed was not registered. Moreover, there was no question of partition as the respondent Nos.7 to 9 had no pre-existing interest in the suit land. Nor they were co-sharers with the petitioner. The Divisional Commissioner concurred with the Sub-Divisional Officer and disagreed with the Additional Collector, as it was noted that the respondent Nos.7 to 9 endeavoured to lay claim over the suit land on multiple counts, namely, they came in possession of the suit land on the basis of earnest note, they paid consideration to the petitioner and, thus, the suit was compromised between the petitioner and respondent Nos.7 to 9, and on that basis their names were mutated to the suit-land, and lastly the parties have entered into a settlement-cum-partition deed.

16. In the totality of the circumstances, the Sub-Divisional Officer as well as the Divisional Commissioner were justified in negativating the claim of respondent Nos.7 to 9. It is imperative to note that what was under challenge was certification of Mutation Entry No.936 on the strength of the alleged settlement-cum-partition deed. Indisputably, the petitioner had withdrawn RCS No.39 of 1992. It was also asserted in the pursis that the dispute was settled out of the Court and the petitioner had accepted a sum of Rs.12,000/- from the respondents. However, the withdrawal of the suit by itself, in any event, would not confer propriety rights over the suit land upon the respondent Nos.7 to 9.

17. The Minister [Revenue] committed a manifest error in recording a finding that the certification of Mutation Entry No.936 was pursuant to the order of the Court. In-fact, there was no adjudication by the Civil Court. It is not the case that a settlement was arrived

at between the parties before the Court and the terms of settlement were tendered before the Court and the said settlement received the imprimatur of the Court. What was placed before the Tahsildar was the settlement-cum-partition deed, which was not registered. The Sub-Divisional Officer was within his rights in recording a finding that there was no instrument on the basis of which the names of respondent Nos.7 to 9 could have been mutated to the record of right of the suit land. The Minister [Revenue] proceeded on an incorrect premise that in RCS No.39 of 1992, the Civil Court had adjudicated the rights of the parties.

18. Even if the case of respondent Nos.7 to 9 is taken at par, it becomes evident that the name of respondent No.7-Bajirao was mutated as the person in cultivation of the suit land. At best, the claim was based on agreement for sale. It is trite that an agreement for sale does not create any interest in the property. It is not the case that there was conveyance

of the suit land in favour of Bajirao in conformity with the governing provisions of law.

19. Furthermore, the disputed Mutation Entry No.936, drew support and sustenance not from the possessory title of respondent Nos.7 to 9, but on the basis of the alleged settlement-cum-partition deed. Thus, the certification of the Mutation Entry No.936 of 1995, on the basis of alleged settlement cum partition deed, cannot be legally sustained.

20. Undoubtedly, the respondent Nos.7 to 9 are in possession of the suit land. In the previous suit, being RCS No.39 of 1992 and in the RCS No.318 of 2018, instituted by the petitioner and Gahininath, in the intervening period as well, there are averments to the effect that the respondent Nos.7 to 9 are in possession of the suit land and a decree for delivery of possession is sought. The question as to whether the respondent Nos.7 to 9 have perfected their title to the suit land on

the basis of prescription or otherwise, whether the petitioner is precluded from instituting a fresh suit in respect of the suit land after having withdrawn the earlier suit and whether the petitioner is entitled to declaration of title over the suit land are all the matters, which are to be adjudicated by the Civil Court. The entry in the revenue record does not make or unmake title. The entries are made for fiscal purpose.

21. The upshot of the aforesaid consideration is that the impugned order deserves to be interfered with. The Mutation Entry of 936 of 1995 is required to be cancelled. However, it is necessary to further direct that the names of respondent Nos.7 to 9, who are indisputably in continuous possession and cultivation of the suit land, be shown in the cultivator's column of the suit land.

22. It is further necessary to clarify that the question of title to the suit land is to be decided by

the Civil Court in accordance with the law and without being influenced by any of the observations made by this Court, the primary purpose of which was to test the legality, propriety and correctness of the impugned order.

23. Hence, the following order :-

The petition stands partly allowed.

The impugned judgment and order passed by the Minister [Revenue] in अपील-4315/प्र.क. 136/ज-7 अ dated 19th April, 2017 stands quashed and set aside.

The Mutation Entry No.936 certified on 24th July, 1997 stands cancelled.

However, the names of respondent Nos.7 to 9 be shown in the cultivator’s column of the suit land.

Rule made absolute in the aforesaid terms.

No costs.

[N.J.JAMADAR,J.]