

vdk

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9401 OF 2010

Sundar Premchand Nikalje

.....Petitioner

Versus

Sajaba Govind Nikalje and Others

..... Respondents

...

Mr. A. K. Gawali, Advocate for the petitioner

Mr. K. N. Lokhande, Advocate for respondents no. 5-A to 5-D

Mrs. Geeta L. Deshpande, AGP for respondents no. 7 and 8

...

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 7th January, 2021

ORDER :

1. Heard learned counsel for the petitioner and the appearing respondents.

2. It emerges that dispute had been sought to be raised in respect of mutation entry no. 258 at the behest of present respondents no. 1 to 4 in R.T.S. appeal no. 114 of 1994. Perusal of order passed by the sub divisional officer, Ahmednagar on 29th December, 1998 shows that it had been dismissed for non-prosecution.

Aggrieved by aforesaid order present respondents no. 1 to 4 had been in II R.T.S. Appeal no. 19 of 1999 before the appellate authority - the additional collector, Ahmednagar. The appellate authority purported to reject mutation entry no. 258 and has remanded the matter to sub divisional officer for fresh enquiry and decision in respect of heirship of deceased Govinda Hari Nikalje, by giving opportunity to all the concerned.

3. Aggrieved thereby, revision bearing no. 367 of 2002 had been preferred by petitioner before the revisional authority - additional commissioner, Nashik, and the same was rejected by him vide order dated 30th December, 2008.

4. Learned counsel Mr. Gawali vehemently submits that the purported appeal by present respondents no. 1 to 4 before the sub divisional officer had not been not maintainable and is barred by law of limitation. The appellate authority has missed out on this aspect absolutely. Further he submits, remand of the matter and setting aside mutation entry no. 258 are mutually incompatible. Over and above aforesaid, learned counsel for petitioner during the course of submissions, states that settlement has taken place among the parties and that has been placed on record.

5. Learned counsel for respondents submit that appeal by the concerned respondents and remand would not affect petitioner. It is submitted that after taking stock of the matter order has been passed by the appellate authority.

6. It appears that present petitioner claims to be lineal descendant of original grantee of the land and it is being referred to that mutation entry no. 258 has concern with the same. While mutation entry no. 258 is challenged, at the initial stage matter had been dismissed for non-prosecution whereas in appeal therefrom it is contended on behalf of present respondents that present petitioner is not related to them and has induced his entry in record whereas petitioner's case is otherwise.

7. The appellate authority has purportedly observed to the effect that; mutation entry no. 258 is effected only on strength of application; The original grantee cannot alienate the *Watanland* outside the *Watandar's* family in violation of section 5 of The Bombay Hereditary Offices Act, 1874.

Basis of aforesaid observations is not reflected with reference to consideration of factual aspects nor does it appear any opportunity had been afforded to the parties in that respect

while enquiry with regard to heirship is perceived to be proper. The observations appear to be on very scanty and paltry material available before aforesaid authority.

8. The decision by the additional collector, Ahmednagar dated 31st August, 2002 falls rather too short to have proper comprehension about the subject matter.

9. Revisional authority has generally referred to that papers have been scanned, however, said order as well falls short on reflection of mind and as to what record has been examined. In the circumstances, its order tends to be cursory and is liable to be set aside.

10. Thus, it appears to be expedient that all the orders including order of dismissal for non-prosecution, appellate and revisional order be set aside and proceeding may have to be restored for decision including tenability of the proceedings at the behest of present respondents keeping all points open for parties.

11. As such, order dated 30th December, 2008 in R.T.S. Revision no. 367 of 2002 passed by divisional commissioner, Nashik, order dated 31st August, 2002 in II R.T.S. Appeal

no. 19 of 1999 passed by the additional collector, Ahmednagar, and order dated 29th December, 1998 in R.T.S. Appeal no. 114 of 1994 passed by sub divisional officer, Ahmednagar are set aside. Proceedings before sub divisional officer are restored for decision keeping all points open for parties.

12. With aforesaid directions, writ petition stands disposed of.

[SUNIL P. DESHMUKH]
JUDGE

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