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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12084 OF 2018

Mangal @ Jyoti w/o Chandrakant Pawar PETITIONER
Age – 60 years, Occ – Household
Through GPA
Chandrakant Haridas Pawar
Age – 65 years, Occ – Agril,
R/o H. No. 2/100, Near Kala Maruti,
Maharashtra Bank, Osmanabad
Taluka and District - Osmanabad

VERSUS

1. Anil Arjunrao Naikwadi RESPONDENTS
Age – 55 years, Occ – Business
R/o Marwad Galli, Osmanabad
Taluka and District – Osmanabad

2. Secretary and Special Work Officer,
Revenue and Forest Department,
Main Building, First Floor,
Hutatma Rajguru Chowk,
Madam Cama Road,
Mantralaya, Mumbai – 400 032

3. The Dy. Director of Land Record,
Office of Dy. Director of Land Record,
Near Panchayat Samiti, Aurangabad
Taluka and District – Aurangabad

4. The District Superintendent of Land Record
Osmanabad Taluka and District – Osmanabad

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Mr. V. D. Salunke, Advocate for the petitioner
Mrs. V. S. Chaudhari, AGP for respondent - State
Mr. Sudhir K. Chavan, Advocate for respondent No.1
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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 16th DECEMBER, 2021
PRONOUNCED ON : 23rd DECEMBER, 2021

JUDGMENT:

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

2. This petition is directed against the impugned order dated 4th July, 2008 passed by respondent No. 4 in Appeal No. 141 of 2008, confirmed by respondent No. 3 vide order dated 18th March, 2014 and by respondent No.2 vide order dated 29th August, 2015.

3. The respondent No. 1 filed Appeal No. 141 of 2008 before the Respondent No. 4 under section 247 of the Maharashtra Land Revenue Code, 1966 (for short "the MLR Code") seeking correction in Record of Rights in respect of Survey Nos. 143 and 144 situated in Osmanabad City, on the basis measurement conducted in the year 1957 and Mutation Entry No. 718/2 sanctioned on 11th May, 1970.

4. Respondents No. 2 to 7 and 9 to 18, in appeal No. 141 of 2008 filed by the present respondent No. 1 before respondent No. 4 - the District Superintendent of Land Record, Osmanabad, have submitted that without prejudice to the area purchased by them, they have no objection to carry out correction sought by

respondent No. 1 in terms of measurement of 1957, and consented to take entry of the effect of division of shares (फाळणी बाराचा अंमल), in land record and revenue record, as per the measurement of sub division of shares (पोट हिस्सा मोजणी) conducted in 1957.

5. The petitioner, being respondent No. 8, resisted the appeal on the ground that though there is delay in filing the appeal, no application for condonation of delay is filed and she is the joint possessor of the suit property and respondent No. 1 has no right to sell the said property. It was contended that the sale effected by respondent No. 1 in favour of respondents No. 9 to 18 is illegal. Respondent No. 4 allowed the appeal filed by respondent No. 1 and directed to effect corrections in the revenue record in respect of survey No. 143 and 144 as per the mutation entry No. 718/2, which was sanctioned on the basis of the measurement of sub division of shares (पोट हिस्सा मोजणी) held in the year 1957 and as per the subsequent sale deeds.

6. The said decision, rendered by respondent No. 4, was unsuccessfully challenged by the petitioner before respondent No. 3. The petitioner, thereafter challenged both these decisions by filing an appeal before respondent No. 1, which was

dismissed vide order dated 29th August, 2015. The petitioner is before this court being aggrieved by the orders passed by respondents No. 2 to 4.

7. Heard learned advocate for the petitioner, learned advocate for respondent No. 1 and learned Assistant Government Pleader for respondents No. 2 to 4.

8. Learned advocate for the petitioner assailed the impugned order on the ground that respondent No. 1 filed Appeal before respondent No. 4 seeking correction in the revenue record in the year 2008, on the basis of the measurement of sub division of shares (पोट हिस्सा मोजणी) conducted in the year 1957 and Mutation Entry No. 718/2 taken in 1970. The appeal was filed by respondent No. 1 after forty years, which was beyond limitation and no application for delay condonation was filed. In spite of the fact that the point of limitation was raised, the same is not considered by the respondents. According to the petitioner, section 250 of the MLR Code provides for 60 days limitation to file appeal. The partition was effected in the year 1957 and nobody took objection to the same till 2008. According to the petitioner, the impugned order passed by respondent No. 4 is without jurisdiction. In support of her submissions, the petitioner

relied on the following judgments

I. *"Gunda Tuka Shinde (Died) LRs V/s Pandharinath Ramrao Shinde and Another" 1991 Mh.L.J. 669*

II. *"Mathuradas Mohta College of Science, Nagpur V/s R. T. Borkar and Others" 1997 (2) Mh.L.J. 168.*

III. *"Gulabrao Bhaurao Kakade V/s Nivrutti Krishna Bhilare and Others" 2001 (supp) Bom. C.R. 688*

IV. *"Ragho Singh V/s Mohan Singh and Others" 2001 AIR SCW 2351*

9. The petitioner, further submitted that the petitioner has filed Regular Civil Suit No. 455 of 2016, in respect of the suit property.

10. On the other hand, learned advocate for respondent No. 1 submits that the order impugned in the writ petition is dated 29th August, 2015 and the present writ petition is filed on 3rd October, 2018 i.e. after delay of more than 3 years and on this ground alone the writ petition is liable to be dismissed. He submits that the petitioner is guilty of suppression of material facts and she has not come before the court with clean hands. In fact, in the year 1998, a joint application, signed by the petitioner and respondent No. 1, was filed before respondent – authorities seeking correction in the revenue record, on the basis of the

measurement of sub division of shares (पोट हिस्सा मोजणी) held in 1957 and Mutation Entry No. 718/2. He further submits that Mutation Entry No. 718/2 is never challenged. In fact, in spite of directions to the Tahsildar, the revenue record was not corrected on the basis of the measurement of sub division of shares (पोट हिस्सा मोजणी) in 1957 and after Mutation Entry No. 718/2 was sanctioned in the year 1970. He submits that the petitioner has filed Regular Civil Suit No. 455 of 2016 seeking injunction in respect of the property in question. Deliberately the petitioner has not sought declaration of title. Decisions of the respondents can be made subject to the decision of the civil suit. Concurrent findings of facts are recorded by the respondent -authorities, which may not be interfered with in the extra ordinary writ jurisdiction. He, therefore, submits that the writ petition may be dismissed.

11. Learned Assistant Government Pleader for respondents No. 2 to 4 supports the impugned orders contending that the revenue record is corrected in view of the measurement of sub division of shares (पोट हिस्सा मोजणी) conducted in the year 1957 and Mutation Entry No. 718, which was already directed in the year 1998, however, the same remained to the corrected. When this fact was brought to the notice of the authorities by

respondent No. 1, the authorities have rightly directed rectification of the revenue record. In that view of the matter, there is no substance in the challenge raised in the writ petition.

12. Learned advocate for the petitioner, in the reply, submitted that an appeal under section 247 of the MLR Code was filed by respondent No. 1 and it was not a proceedings for rectification, therefore, limitation of sixty days is applicable in the facts of the present case.

13. Admittedly, the petitioner has challenged the order passed by respondent No. 2 dated 29th August, 2015 by filing present writ petition on 3rd October, 2018. In paragraph No. 10 of the memo of writ petition, the petitioner has tried to explain that since she had filed Regular Civil Suit No. 45 of 2016 in respect of the suit land, she could not prefer the writ petition under wrong impression that the proceedings in respect of the suit land are going on. Said explanation is unacceptable. Thus, the petitioner has approached this court after a delay of more than three years, which is not properly explained by the petitioner and on that ground alone the writ petition is liable to be dismissed.

14. Though respondent No.1 has approached respondent No. 4 by filing appeal under section 247 of the MLR Code, the said

proceeding appears to be for seeking correction of the revenue record, on the basis of the measurement of sub division of shares (पोट हिस्सा मोजणी) done in the year 1957 and on the basis of mutation entry No. 718/2. It is specific contention of the respondent No. 1 that the survey Nos. 143 and 144 were measured in the year 1957 and on that basis Village Form No. 12 (मंजूर फाळणी बारा) was prepared. As per the Form No. 12, there ought to have been three shares in survey No. 143, however, four shares were created and seven twelve extracts of four shares were prepared. Similarly, in survey No. 144 five shares should have been created but seven shares were created and erroneously seven twelve extracts of seven shares were prepared. Respondent No. 1 as well as present petitioner, repeatedly approached the revenue authorities seeking correction of the revenue record, however the record was not corrected and hence respondent No.1 filed said proceedings, seeking correction in the revenue record.

15. Section 155 of the MLR Code reads thus-

> *"155. The Collector may, at any time, correct or cause to be corrected any clerical errors and any errors which the parties interested admit to have been made in the record of rights or registers maintained under this Chapter or which a Revenue Officer may notice during the course of his inspection:*

Provided that, when any error is noticed by a "Revenue Officer during the course of his inspection, no such error shall be corrected unless an notice has been given to the parties and objections, if any, have been disposed of finally in accordance with the procedure relating to disputed entries."

As per this provision, Collector can, at any time, correct or caused to be corrected any clerical error or any error which the parties interested admit to have been made in the record of rights or register maintained under this Chapter. Thus, the proceedings filed by the respondent No. 1 though was titled as appeal under section 247 of the MLR Code, it can be termed as filed under section 155 of the MLR Code. Admittedly, the interested parties are issued notice and were heard while deciding said proceedings. It is by now a settled legal position that the proceedings even if filed under wrong provision, it does not affect merits of the case. Since the proceedings filed by respondent No. 1 were for correcting revenue record by taking effect of sub division of shares (पोट हिस्सा मोजणी) conducted in the year 1957 and mutation entry No. 718/2 sanctioned in the year 1970, the same can be termed as seeking corrections / rectifications of the record of rights or register maintained under Chapter "X" of the MRL Code.

16. Respondent No. 4, while allowing the proceedings filed by respondent No. 1, has recorded a finding that the measurement of sub division of shares (पोट हिस्सा मोजणी) in survey Nos.143 and 144 was done by the then office of Surveying Tahsildar in the year 1957. As per the said measurement, entries in record of rights in Forms No. 4 to 11 and 12 were taken and mutation entry No. 718/2 was sanctioned on 11th May, 1970 by the Special District Inspector of Land Records, Osmanabad. In spite of that even after forty one years' period, no entry in record of rights was accordingly taken. In absence of any order from the revenue or land record departments, erroneously survey No. 143 was sub divided into four shares and survey No. 144 was sub divided in seven shares and accordingly seven twelves extracts were prepared. Present petitioner submitted representation to Tahsildar, Osmanabad on 12th June, 1998, 2nd July, 1988 and also to the Collector, Osmanabad, requesting for correction of the revenue record on the basis of the measurement of sub division of shares (पोट हिस्सा मोजणी). Accordingly, the Taluka Inspector of Land Records informed the Tahsildar, Osmanabad that as per the measurement of sub division of shares (पोट हिस्सा मोजणी), it is necessary to take entry in seven twelve extract and in the revenue record, without which the measurement cannot be

done. Even the Collector, vide letter dated 19th May, 1998 and Tahsildar vide letter dated 27th November, 1998 directed Talathi, Osmanabad to correct the revenue record in respect of survey Nos. 143 and 144.

17. In spite of repeated requests by the petitioner, the revenue record was not corrected and hence, the respondent No. 4, by taking into consideration the anomaly in the revenue record, directed to remove the same and directed that the revenue record be corrected according to the measurement of sub division of shares (पोट हिस्सा मोजणी) held in the year 1957.

18. Perusal of the findings recorded by respondent No. 4 clearly indicates that there is no illegality or perversity in the reasons given by the respondent No.4 while passing the impugned order. It is clear from the record that the revenue record was not corrected as per the measurement of sub division of shares (पोट हिस्सा मोजणी) held in 1957 and Mutation Entry No. 718/2. Admittedly, the Mutation Entry No. 718/2, which is sanctioned in the year 1970, is not challenged by any of the parties. Hence, no fault can be found with the directions issued by respondent No. 4 for correction of the revenue record. The correction in the revenue record shall be subject to the decision

in the Regular Civil Suit No. 455 of 2016 filed by the petitioner.

19. Decisions in ***Gunda Tuka Shinde*** and ***Gulabrao Bhaurao Kakade*** (supra) are on the point of variation in the consolidation scheme, which was challenged after two years. This court held that in view of section 19 (1) of the Consolidation Act, objection to the consolidation scheme cannot be made after the period, under section 19 (1) of the Act, has expired. These rulings since are rendered in the context of section 19 of the Consolidation Act, are of no help to the petitioner.

20. ***"Mathuradas Mohta College"*** (supra) is in respect of appeal filed before the School Tribunal, wherein delayed appeal was filed before the School Tribunal in absence of any explanation for delay, the Division Bench of this Court, held that since no sufficient cause was made out, the Tribunal had no jurisdiction to entertain the appeal. Such are not the facts of the present case.

21. In ***"Ragho Singh"*** (supra), appeal filed by the petitioner, therein was beyond the time by ten days and application under section 5 of the Limitation Act was not filed, the Hon'ble Apex Court held that the Additional Collector had no jurisdiction to allow that appeal and the appeal was liable to be dismissed on the ground of limitation.

In the present case, since correction of the revenue record on the basis of measurement of sub division of shares (पोट हिस्सा मोजणी) of 1957 and Mutation entry No. 718/2 sanctioned in the year 1970, is sought, which remained to be carried out in spite of directions given in the years 1998 and 2000 by the revenue authorities, there is no question of limitation and delay in approaching the competent authority seeking relevant rectification.

22. In that view of the matter, it is not possible to accept the arguments of the petitioner that since the appeal is filed under section 247 of the MLR Code, the same ought to have been filed within sixty days from the date of actual accrual of cause of action.

23. In the peculiar facts of the present case, since the petitioner herself has persuaded the authorities for taking the effect of measurement of sub division of shares (पोट हिस्सा मोजणी) of 1957 and Mutation Entry No. 718/2 of 1970, in the revenue record, the petitioner is not entitled now to claim that revenue record should not be corrected after lapse of a period of forty years.

24. There is no merit in the challenge raised by the petitioner in the present writ petition. The writ petition is, therefore, dismissed. Rule stands discharged. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

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