

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

**REVIEW APPLICATION NO.18 OF 2019
IN
WRIT PETITION NO.13020 OF 2018**

Sambhaji s/o. Sitaram Mhetre	..Applicant
Vs.	
The State of Maharashtra	
and ors.	..Respondents

Mr.P.U.Gujrathi, Advocate i/b. Mr.V.P.Latange, Advocate for
applicant

Mr.S.P.Tiwari, AGP for respondent nos.1 to 4

Mr.V.V.Tarde, Advocate for respondent nos.5 and 6

**CORAM : R.G. AVACHAT, J.
RESERVED ON : FEBRUARY 18, 2021
PRONOUNCED ON : JUNE 10, 2021**

ORDER :-

This is an application for review of the order dated
28.11.2018 passed in Writ Petition No.13020 of 2018.

2. Heard learned counsel appearing for the parties.

3. Mr.Gujrathi, learned counsel appearing for the
applicant, would submit that the order sought to be reviewed was

passed on the very first day on which the matter was listed before the Court. No notice had ever been issued to the respondents. Learned AGP had appeared in the matter as he was very much available before the Court. The Writ Petition was filed challenging the order dated 25.09.2018 passed by the Hon'ble Minister of State for Revenue in Case No. एकत्रि ३३१६/१२५/प्र.क्र.५०५/ज-६, confirming the order passed by the Deputy Director of Land Records, Nashik Division, Nashik, in case No. एकत्रि/अपील एस. आर.५४०/ अहमदनगर dated 13.10.2016.

According to learned counsel, it was basically the matter arising out of implementation of the scheme of consolidation of holdings. By virtue of Section 36-A of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act ("the Act", for short), the Civil Court has no jurisdiction to settle, decide or deal with any question which is by or under said Act, required to be settled, decided or dealt with by the State Government or any Officer or authority.

4. The mistake has been crept in the order sought to be reviewed, by observing that mere entries in the revenue record do not confer any substantive right, title and interest in immovable property. It is always open to the petitioner to take steps to challenge the documents on the basis of which entries have been made. With these observations in the order, the Writ Petition was disposed of.

5. According to learned counsel for the applicant, since the issue involved in the Writ Petition could not be agitated in a Civil Court, the order dated 28.11.2018 needs to be reviewed with a direction to hear the Writ Petition on merits.

6. Mr.Tarde, learned counsel for respondent nos.5 and 6 supported the order under review.

Mr.Tiwari, learned AGP for respondent nos.1 to 4, reiterated the submissions made by learned counsel for respondent nos.5 and 6.

7. The order sought to be reviewed reads thus :-

By this petition, the petitioner has challenged the order passed by the Deputy Director of Land Records and the Hon'ble Minister for Revenue under the provisions of Maharashtra Land Revenue Code. The proceedings arise from the correction of revenue record. It appears that the geneses of the entries in question are certain sale deeds which were executed. The reference to the same is found in the order passed by the learned Deputy Director of Land Records. It is pursuant to this sale deed that the disputed entries have been made. It is informed that, as on date, there is no challenge to the sale deed. It is settled that mere entries in the revenue record do not confer any substantive right. It is always open to the petitioner to take steps to challenge the documents on the basis of which the entries have been made, if such challenge is permissible in law. With these observations making the entries subject to the proceedings that the petitioner proposes to undertake, the Writ Petition is disposed of.

8. Reading of the aforesaid order would indicate that the Court was under impression that the mutation entry, which

was under challenge in the proceedings before the revenue authorities, was effected pursuant to the sale deed under which the petitioner had purchased the land. The same is, however, not the case. Moreover, the Writ Petition was disposed of without issuance of notice to the otherside.

9. From the pleadings it appears that it is the case of the petitioner that the land survey no.458/2 ad-measuring 2 H 50 R, was owned by Sopan and Dnyandeo (brothers) Zagade. The petitioner purchased 1 H 62 R land in survey no.458/2 from both these brothers under the registered sale deed 15.04.1986. The effect of the sale has been given in the revenue record by virtue of mutation entry no.3238. Land survey no.458/2 came to be divided as survey nos. 458/2A and 458/2B. The petitioner continued with possession of the land ad-measuring 1 H 62 R. Thereafter, the scheme of consolidation of holding was implemented in the village. Mutation entry no.171 in Hissa Form No.12 was effected pursuant to the consolidation scheme. The petitioner claimed to have no notice of the scheme of consolidation. It is only in

2013, the petitioner realised that 16 R land was shown less in his name although he continued to possess 1 H 62 R of land. He, therefore, approached the District Superintendent of Land Records for effecting necessary corrections in the revenue record that was brought into effect pursuant to the implementation of the scheme of consolidation of holdings. The petitioner had been unsuccessful in the said proceedings before three forums below. Writ Petition No.13020 of 2018 was, therefore, filed.

10. From the aforesaid pleadings, it is clear that the petitioner was not agitating corrections of revenue record that was brought into effect pursuant to the sale deed dated 15.04.1986. The petitioner, in substance, took exception to implementation of the scheme of consolidation of holdings, wherein less land was shown in his name. Section 36-A of the Act bars jurisdiction of the Civil Court to settle, decide or deal with any question, which, under said Act, required to be settled, decided or dealt with by the State Government or any Officer or authority.

11. In my view, although a remedy of civil suit is not barred for the petitioner to establish his title to the land purchased by him vide sale deed dated 15.04.1986, the proceedings under challenge in the Writ Petition were necessarily under the Act. The order dated 28.11.2018 came to be passed in ignorance of the detailed averments in the petition. The Writ Petition came to be disposed of impliedly observing the petitioner to have remedy before the Civil Court. Since the implementation of the scheme of consolidation of holdings in respect of the land purchased by the petitioner was under challenge, the Writ Petition deserves to be decided on merits after hearing the parties concerned. There is mistake apparent on the face of record in observing that it is always open to the petitioner to take steps to challenge the documents on the face of which entries have been made. The order dated 28.11.2018 passed in Writ Petition No.13020 of 2018, therefore, needs to be recalled.

12. The application, thus, succeeds in terms of the following order :-

- (i) The Review Application is allowed.
- (ii) The order dated 28.11.2018 passed in Writ Petition No.13020 of 2018 is recalled. Writ Petition be restored to file for hearing on merit.

[R.G. AVACHAT, J.]

KBP