IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 7474 of 2019

Smt. Sulochana wd/o Anandilal Goyenka and Others
Vs.
Murarilal S/o Chaturbhuj Murarka and Others

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Mr. H.R. Gadhia, Advocate for the petitioners
Mr. S.S. Sharma, Advocate for the respondent No.1
Mr. K.L. Dharmadhikari, AGP for the respondents No.2 to 6
Mr. N.P. Singhania, Advocate for respondent No.1(A) to 1(D)

CORAM : MANISH PITALE, J.

RESERVED ON : 17.06.2021

PRONOUNCED ON: 21.06.2021

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this Writ Petition, the petitioners have challenged order dated 16/09/2019, passed by respondent No. 6 i.e. the State Minister for Revenue of the Government of Maharashtra, whereby a review application filed by the original respondent No.1 (Now deceased and represented by his legal representatives), was allowed.

3. Upon notices being issued in this Writ

Petition, the respondent No.1 through his legal representatives was served and the respondents No.2 to 6 being State Authorities are represented through the learned A.G.P. The legal representatives of respondent No.1 entered appearance through counsel.

4. Mr. H.R. Gadhia, learned counsel appearing for the petitioners submitted that the impugned order passed by respondent No.6 is wholly unsustainable and it smacks of arbitrariness on the part of respondent No.6. It is submitted that although the original order dated 13/03/2013 was passed by the then Minister of the State of Maharashtra in favour of the petitioners, the purported review proceeding was undertaken, without notice to the petitioners and a bare perusal of the impugned order would show that there was nothing to indicate as to when the review proceeding was actually initiated by respondent No.1. This is evident from the fact that there was no separate number assigned to the review proceeding and the impugned order simply carries the number of the appeal, which was originally allowed in favour of the petitioners by the said order dated 13/03/2013. According to the learned counsel for the petitioners, it has been wrongly and incorrectly recorded in the first para of the impugned order that notices were issued to the petitioners and that written submissions of the parties were on record when the impugned order dated 16/09/2019, was passed.

5. The learned counsel for the petitioner invited attention of this Court to documents filed along with pursis dated 17/06/2021, particularly copies of envelops in which notices for hearing and then the impugned order passed in the review application, were allegedly sent to the petitioners. It was pointed out that the date of dispatch printed on the envelops would show that they were sent on 13/11/2019, much after the impugned order dated 16/09/2019. It was brought to the notice of this Court that the present Writ Petition was filed on 18/10/2019 and notice was issued by this Court on 13/11/2019, when interim relief was also granted. On this basis, it was submitted that after the impugned order had been passed and when this Court issued notice in the Writ Petition, the respondent authorities had sent the said envelops on 13/11/2019. This, according to the learned counsel for the petitioners, further fortifies the contention of the petitioners that neither notices were issued by the respondent No.6 before passing the impugned order, nor was the impugned order officially communicated to the petitioners before filing of the present Writ Petition.

6. Apart from this, the learned counsel appearing for the petitioners submitted that a perusal of the impugned order would show that even on the merits of the matter, the respondent No.6 has completely misdirected itself and that this is evident from the material available on record, particularly the detailed reasons given by the then Minister of the State

of Maharashtra, who had passed the order dated 13/03/2013, whereby revision proceeding initiated by the petitioners had been allowed and the mutation entry in respect of the property in question recorded in favour of the petitioners was restored. On this basis, it was submitted that the impugned order deserved to be set aside.

7. Mr. K.L. Dharmadhikari, learned A.G.P. appeared on behalf of respondents No.2 to 6. He invited attention of this Court to the contents of the reply filed on behalf of said respondents. According to learned A.G.P., the reply was based on the record of the proceeding and that, therefore, the present Petition could be decided on the basis of the material available.

8. Mr. S.S. Sharma, learned counsel appearing for respondent No.1 (through legal representatives), submitted that the petitioners were not justified in claiming that they were not put to notice when the impugned order was passed. It was submitted that in the opening paragraph of the impugned order dated 16/09/2019, itself clearly recorded that the petitioners were heard. It was further submitted that there was no question of there being any delay in filing of the review application and for this purpose, the learned counsel for the said respondents invited attention of this Court to the copy of the review application filed before the respondent No.6. This was placed on record along with pursis dated 16/06/2021. It was submitted that a perusal of the review application and the application

for stay filed along with the same demonstrated that it was prepared on 28/03/2013 and filed on the same day before the office of respondent No.6 and that this was evident from the endorsements on the applications. Hence, it was submitted that there was no question of any delay in filing of the review application.

9. On merits it was submitted that in the review application, it was pointed out that the predecessor of the petitioners could not be said to be owner of the land in question. It was submitted that the revenue authorities had correctly appreciated the material on record while rejecting the claim of the petitioners for restoring the mutation entry made in their favour and that the order dated 13/03/2013, passed by the then Minister in favour of the petitioners was erroneous. On this basis, it was submitted that the Writ Petition deserved to be dismissed.

10. A perusal of material on record would show that the original owner of the property in question i.e. an agricultural plot bearing number 168/7 in City Survey No. 13-D situated in Shegaon, District Buldhana, admeasuring about 14804.7 Sq.Mts., was one Muktilal s/o Haridas Murarka. According to the petitioners, they being the legal heirs of the said Muktilal Murarka, were entitled to the said property. In the course of proceedings undertaken before the revenue authorities, on 11/09/2007, the Superintendent of Land Records i.e. respondent No.3

had passed an order holding that the legal heirship certificate of the petitioners appeared to be legal and proper, but, since the respondent No.1 i.e. Murarilal Murarka was claiming possession in the said plot, a detailed enquiry was necessary. Accordingly, the Taluka Inspector of Land Records i.e. respondent No.2 was directed to issue notice to all concerned and conduct an enquiry. On 16/02/2008, the respondent No.2 passed an order setting aside the earlier mutation order dated 06/08/2005. Aggrieved by the same, the petitioners filed an appeal under the provisions of the Maharashtra Land Revenue Code, 1966, before the respondent No.3 – Superintendent of Land Records, who by order dated 16/06/2009, partly allowed the appeal and held that the question concerning the aspect of adverse possession raised by respondent No.1 was required to be determined by a competent Civil Court.

11. As against the said order, the petitioners filed a further appeal before the Deputy Director of Land Records i.e. respondent No.4. But, on 04/03/2010, the respondent No.4 dismissed the appeal, as a consequence of which the petitioners were constrained to file revision application under Section 257 of the Code. It is the said revision application, which was decided on 13/03/2013, by the then Minister of the State of Maharashtra.

12. In the detailed order dated 13/03/2013, the then Minister noted on the basis of material on record

that the respondent No.1 had filed a civil suit in the year 2009, but, the same had been dismissed in default. Thereupon, the then Minister noted that the respondent No.1 had claimed title and possession in the aforesaid plot on the basis of sale deed, yet, no document was produced and no order from any competent Court on the basis of adverse possession was also produced by the respondent No.1. It was found on facts that the respondent No.1 had failed to show any proof of rights in the said plot and accordingly, the claims of respondent No.1 were rejected on merits. On the basis of such reasoning, the then Minister allowed the revision application, setting aside the orders impugned in the revision application and restored the mutation entry bearing No. 1445 in respect of the said plot in favour of the petitioners. Thus, by the said order dated 13/03/2013, the claim of the petitioners was accepted on merits and revision application stood allowed in its entirety.

13. It appears that the petitioners apprehended that the respondent No.1 might approach this Court by filing a Writ Petition and accordingly they had filed a Caveat before this Court. But, there is nothing to show that the respondent No.1 ever approached this Court in order to challenge the aforesaid order dated 13/03/2013, passed by the then Minister, allowing the revision application of the petitioners.

14. According to the petitioners they were shocked when they were confronted with the

impugned order dated 16/09/2019, whereby a review application purportedly filed by respondent No.1 was allowed. According to the petitioners, even a copy of the said order was never served upon them officially. On enquiry made by them, the petitioners came to know that the said order dated 16/09/2019 had been passed and that it had been recorded in paragraph 1 of the said order that the petitioners had been served with notices and that written submissions of the rival parties were considered by respondent No.6 while passing the impugned order. In the Writ Petition a specific statement is made on behalf of each of the petitioners that none of them ever received any notice regarding any review application filed in respect of the aforesaid order dated 13/03/2013. In the reply filed on behalf of respondent – State, it has nowhere been stated that the respondent No.6 had issued notices to the petitioners in the review application before considering the same on merits.

15. Even the learned counsel appearing for the legal representatives of respondent No.1 claimed that the petitioners were served, only on the basis of the observations made in the opening paragraph of the impugned order. There is no material placed on record to show that the respondent No.6 ever issued notices to the petitioners before hearing the review application and that such notices, if any, were ever served on the petitioners. The copies of envelopes placed on record with pursis dated 17/06/2021 on behalf of the petitioners demonstrates that such envelopes were

dispatched by the respondent authorities on 13/11/2019, which was much after the impugned order was already passed on 16/09/2019. Therefore, there is no reason for this Court not to accept the contention of the petitioners that they were never served with any notices from respondent No.6 regarding the review proceedings and that the impugned order was passed behind their back. A perusal of the impugned order also shows that there is no separate registration of any review proceeding noted in the impugned order and the number of the proceeding stated at the top of the impugned order is that of the very proceeding that was initiated by the petitioners themselves before the respondent – State and which had been allowed by the order dated 13/03/2013. It is shocking that respondent No.6 proceeded in such an arbitrary manner, after more than six years of the order dated 13/03/2013, being passed in favour of the petitioners. There is nothing to show as to when notices were issued to the petitioners and how and in what manner they were served in respect of the purported review proceeding. The entire proceeding before respondent No.6 pertaining to alleged review application purportedly initiated by respondent No.1 stood vitiated.

16. In this context, Section 258 of the Code becomes relevant, which pertains to the power of review that can be exercised by the revenue authorities, including the State Government. It is clearly provided under the proviso to Section 258 of

the Code that no order can be varied or reversed unless notices are given to all the interested parties and that no order affecting the right of a private person can be reviewed, except on an application of a party to the proceeding and it is further provided that such an application for review can be entertained only within 90 days of passing of the order sought to be reviewed.

17. In fact, the impugned order makes no reference to these aspects of the matter, which further shows the haste in which the respondent No.6 passed the impugned order and how mandatory procedural requirements were thrown to the wind. It is unfortunate that the impugned order was passed showing such a glaring disrespect to mandatory procedural requirements, which goes to the root of the matter and also affects substantive rights of private persons.

18. This Court could have set aside the impugned order and sent the matter back for fresh consideration before the respondent No.6, only on the ground that neither notices were issued nor there is any proof of any service of notices on the petitioners and impugned order was passed behind their back. But, considering the manner in which the entire proceeding was taken up and decided by respondent No.6, this Court does not intend to follow the aforesaid path of remanding the matter back. The impugned order is being considered on merits to examine as to whether it can be said that a ground for review was

made out and whether the impugned order can be sustained on merits.

19. A perusal of the impugned order shows that the respondent No.6 discussed the merits of the matter in paragraphs No.2 and 3. The respondent No.6 refereed to the proceedings initiated before revenue authorities and the claims made by the rival parties. Thereafter, the respondent No.6 referred to a genealogy on the basis of which the respondent No.1 claimed right in the property in question. This was in the face of findings rendered in the earlier order dated 13/03/2013, passed by the then Minister holding in favour of the petitioners that the respondent No.1 had claimed right in the property either on the basis of sale deed or on the basis that he had acquired title by adverse possession. It is relevant to note that even in the review application filed on behalf of respondent No.1, copy of which was placed along with pursis dated 16/06/2021, before this Court, there is no reference to any genealogy at all. Thus, it becomes clear that the respondent No.6 imagined that the respondent No. 1 was claiming right in the property on the basis of genealogy and ancestry. This further demonstrates that the impugned order is wholly unsustainable.

20. It is also surprising that the respondent No.6 recorded in the impugned order at paragraph 3 that a civil suit was filed by the petitioners, while in the review application itself it is stated that the civil suit

was filed in the year 2009 by brother of respondent No.1 raising certain claims in the suit property. It is further admitted in the review application itself that the said suit stood dismissed in default. This further demonstrates the glaring factual errors committed by the respondent No.6 while passing the impugned order. In fact, when one of the revenue authorities in the proceedings below had sought to relegate the parties to the Civil Court, it was the petitioners who had challenged the said order and eventually the contentions of the petitioners were accepted by order dated 13/03/2013, passed by the then Minister. Thus, it becomes abundantly clear that the respondent No.6 completely misdirected himself in allowing the review application when no ground for exercising power of review was made out, apart from the fact that the whole proceeding was completely vitiated and smacked of arbitrariness.

21. The reply filed on behalf of respondents No.2 to 6 interestingly states in para 15 as follows :

> "It is submitted that the petitioners are legal heirs of the said original owner Muktilal Murarka is a matter of record. It is submitted that the records of this Respondent No.2 shows that said plot is originally owned by Muktilal Murarka."

22. It is evident from the said statement made in the reply that even as per the State Authorities the petitioners are indeed the legal heirs of Muktilal Murarka, who according to records of the respondent authorities was the original owner of the property in

question. This fact completely destroys the basis of the impugned order passed by the respondent No.6.

23 As noted above, the reply filed on behalf of respondent – state authorities is completely silent on the question as to whether notices were ever issued to the petitioners in the review application filed by respondent No.1 and whether they were served by such notices. In fact, the learned A.G.P. submitted that record did not show anything about issuance of notice by respondent No.6 in the review application before passing the impugned order. Thus, the impugned order is sustainable on all grounds and it deserves to be set aside.

24. In view of the above, the writ petition is allowed. The impugned order passed by respondent No.6 is quashed and set aside. Consequently, order dated 13/03/2013, passed by the then Minister in favour of the petitioners is restored and the mutation entry bearing No. 1445 in the revenue record is found to be correct.

25. The writ petition is disposed of.

JUDGE

MP Deshpande