

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

WRIT PETITION NO.919 OF 2005

Raghunath S/o Ashruba Bade
Age: 50 years, Occu: Agril.,
R/o Aswala, Tq. Dharur,
Dist. Beed.

... Petitioner

Versus

1. The State of Maharashtra
Through Secretary Mantralaya,
Mumbai – 32.
2. The Superintendent of Land Record,
Beed, Dist. Beed.
3. The Deputy Director of Land Record,
Beed, Dist. Aurangabad.
4. Prabhakar S/o Sopanrao Chole
Age: Major, Occu: Agril.,
R/o: Aswala, Tq. Dharur,
Dist. Beed.

... Respondents

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Mrs. M. A. Kulkarni, Advocate for Petitioner
Mrs. G. L. Deshpande, AGP for Respondent Nos.1 to 3
Mr. M. R. Andhale, Advocate for Respondent No.4

...

CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON: 5th July, 2022

PRONOUNCED ON: 19th September, 2022

JUDGMENT :

1. This petition filed under Article 226 of the Constitution of India challenges the order dated 29-08-2003 passed by Superintendent of Land Record, Beed/respondent no.2 and the

order passed by Deputy Director of Land Record, Aurangabad/respondent no.3 in Appeal No.Con Appeal/SR 625/04.

2. 7 acres 15 gunthas land, out of old Survey No.1, admeasuring total 29 acres 19 gunthas, situated at village Aswala, Taluka Dharur, District Beed is the subject matter of dispute (for short 'the said land').

3. The said land was in cultivatory possession of the grandfather of the petitioner, namely, Pandurang s/o Gopal Bade as a protected tenant of Ganpati s/o Vennunath Chole. On payment of occupancy price of 7 acres 15 gunthas land, he was declared as protected tenant of the same and certificate under Section 38(E) of the Hyderabad Tenancy Act & Agricultural Lands Act, 1950 (for short 'the said Act') to that effect was issued in his favour on 16-12-1965. Accordingly, name of Pandurang Bade was mutated in the revenue record as owner. After the death of Pandurang Bade, his son, namely, Ashruba Pandurang Bade succeeded to the said land and continued in cultivatory possession of the same and his name was mutated in the revenue record vide Mutation Entry No.211 on 23-04-1973.

4. In the interregnum, original owner Ganpati s/o Vennunath Chole died and Sopan Dadarao (father of respondent no.4) raised

an objection to the Mutation Entry No.211. Sopan Dadarao also filed Regular Civil Suit No.17/1967 seeking injunction from obstructing his peaceful possession on the land Survey No.1 admeasuring 12 acres 39 gunthas against Pandurang Bade, Nivarti Bade and Ashruba Bade. By order dated 26-12-1972, the suit came to be dismissed in default.

5. After the death of Ashurba Bade, the petitioner succeeded to the land Survey No.1 to the extent of 7 acres 15 gunthas and his name was mutated to the said land by Mutation Entry No.435 on 18-05-1983. Thereafter, the consolidation scheme was made applicable to the village and the portion of land Survey No.1 held by the petitioner was given as Gat Nos.9 and 177, and the petitioner's name was mutated to both the said Gat Numbers.

6. The respondent no.4 filed Regular Civil Suit No.291/2001 (old) [196/2002 (new)] for declaration and confirmation of possession on the basis of title by determination of boundary marks with perpetual injunction in respect of the property Survey No.1-AA admeasuring 12 acres 39 gunthas. The Trial Court, after recording evidence, dismissed the suit by judgment and order dated 06-10-2003. Thereafter, Misc. Civil Appeal No.14/2002 filed by respondent no.4 is also dismissed on 03-09-2002.

7. Thereafter, on 29-08-2003, respondent no.4 filed appeal bearing Appeal No.Con/Appeal/S.R./43/01 before respondent no.2 claiming ownership right in respect of the land Survey No.1, Gat Nos.9 & 177, contending that in the consolidation scheme, the name of Raghunath Ashruba Bade is entered to the said land, which is not correct. He therefore complained in that behalf to respondent no.3 by applications dated 21-09-2001 and 27-11-2001. His complaints were forwarded to respondent no.2 and TILR was directed to conduct a panchnama and submit a report. Accordingly, notices were issued to the concerned parties and report was submitted by the TILR to the effect that on verification, respondent no.4 was found in possession of the said land, with its crops. Therefore, he claimed that he is cultivating the said land till date and therefore, the name of petitioner recorded in the consolidation scheme to the said land be removed by canceling the said entry and the name of respondent no.4 be inserted.

8. The respondent no.2 thereafter decided the matter holding that before implementation of the consolidation scheme, respondent no.4 was in possession of the land Survey No.1 (Gat Nos.9 & 177), situated at village Aswala. 7/12 extract also shows his possession and cultivation. In Column No. 17 of the revenue record in File No.2/61, (38) E, dated 07-09-1966, it is mentioned

that, the possession is given to the owner Sopan Chole to the extent of 7 acres 35 gunthas, with standing crops. Therefore, he came to a conclusion that the petitioner is not in possession over the land Gat Nos. 9 & 177 and therefore, passed the impugned order directing that subject to the entries in the other rights column of Survey No.1 (Gat Nos.9 & 177), the name of respondent no.4 is confirmed in the consolidation record.

9. Being aggrieved by the said order, the petitioner unsuccessfully challenged the order passed by respondent no.2 by filing appeal before the respondent no.3. The petitioner is, therefore, aggrieved by the orders passed by respondent nos.2 & 3.

10. Heard the learned Advocate for the petitioner, learned Assistant Government Pleader for respondent nos.1 to 3/State and the learned Advocate for respondent no.4.

11. The learned Advocate for the petitioner assailed both the impugned orders on the ground that a correction was sought in the consolidation scheme, which was finalized in the year 1983, by respondent no.4 in the year 2001 i.e. after lapse of 18 years. The same was not maintainable and the impugned order passed by respondent no.3 therefore is without jurisdiction. She further submits that even if for the sake of argument, it is accepted that

respondent no.3 has exercised jurisdiction under Sections 247 and 255 of the Maharashtra Land Revenue Code, 1966 (for short 'MLR Code') still the appeal filed by respondent no.4 was beyond limitation and the same should not have been entertained by respondent no.3 in absence of any delay condonation application filed by respondent no.4. Further submission is that all along in the civil proceedings, respondent no.4 has lost. The petitioner's possession over the said land is proved in the civil suit filed by respondent no.4. She therefore submits that the impugned orders passed by respondent no.2, confirmed by respondent no.3 are erroneous and the same are liable to be quashed and set aside.

12. Per contra, learned Advocate for respondent no.4 supported the impugned orders. He submits that, since there is an alternate remedy to the petitioner to approach before the Settlement Commissioner, the writ petition is not maintainable. He further submits that petitioner is not entitled for more area than granted to him by certificate under Section 38(E) of the said Act. He, therefore, submits that writ petition may be dismissed.

13. In support of his submissions, he relied on **Maa Umiya Transport City and Industrial Estate Limited and Others Vs. Nagorao Lahanu Chouke and Others** reported in **2020 (1) Mh.L.J. 330** and **Nadakerappa Since Deceased By LRs. &**

Others Vs. Pillamma Since Deceased By LRs. & Others
reported in **Laws(SC)-2002-3-97.**

14. Heard Mrs. M. A. Kulkarni, the learned Advocate for the petitioner, Mrs. G. L. Deshpande, the learned Assistant Government Pleader for respondent nos.1 to 3/State and M. R. Andhale, the Advocate for respondent no.4 at length. Perused the record.

15. It is a matter of record that Pandurang Gopal Bade was declared as owner of the said land and on payment of occupancy price, a certificate under Section 38(E) of the said Act was issued in his favour on 16-02-1965. After the death of Pandurang Gopal Bade, his son Ashruba succeeded to the said land and his name is mutated in the revenue record by Mutation Entry No.211 dated 23-04-1973. The record further reveals that after the death of Ashruba, petitioner succeeded to the said land and by Mutation Entry No.435, petitioner's name is mutated to the said land on 18-05-1983.

16. The consolidation scheme was made applicable to the village in the year 1983 and the said property was renumbered as Gat Nos.9 and 177 to which name of the petitioner is entered in the revenue record.

17. On 21-09-2001, respondent no.4 filed application with respondent no.3 seeking correction of entries and cancellation of petitioner's name in the revenue record and substitution of his name. The said application/complaint was forwarded to respondent no.2. The respondent no.2 on receipt of the said complaint directed the TILR, Dharur to issue notice to the concerned parties and conduct panchnama of land Survey No.1 and also to record the statements of petition and respondent no.4.

18. Accordingly, TILR submitted a report that on verification, respondent no.4 was found in possession of the land, with its crops. After TILR submitted report, the respondent no.2, after hearing the parties, allowed the appeal by exercising power under Sections 247 and 255 (3) of the MLR Code and directed to enter the name of respondent no.4 in the consolidation record of Survey No.1 (Gat Nos.9 & 177) by keeping the entries in other rights column intact.

19. It is apposite to consider the provisions of Sections 250 and 251 of MLR Code, which reads thus;

Sections 250 and 251 of MLR Code read thus;

"250. No appeal shall be brought after the expiration of sixty days if the decision or order complained of have been passed by an officer inferior in rank to a Collector or a Superintendent of Land Records in their respective departments ; nor after the expiration of ninety days in any other case. The period of sixty and ninety days shall be counted from the date on which the decision or

order is received by the appellant.

In computing the above periods, the time required to obtain a copy of the decision or order appealed against shall be excluded.

251. Any appeal or an application for review under this Chapter may be admitted after the period of limitation prescribed therefore when the appellant or the applicant, as the case may be, satisfies the officer or the State Government to whom or to which he appeals or applies, that he had sufficient cause for not presenting the appeal or application, as the case may be, within such period."

20. Section 250 of MLR Code provides ninety days limitation within which appeal must be brought.

Section 251 gives the power of delay condonation, if sufficient cause is shown for belatedly filed appeal.

21. It is a matter of record that the appeal filed by respondent no.4 under Section 247 of MLR Code before respondent no.2 was filed after delay of eighteen years. Admittedly, no delay condonation application was filed along with the said appeal. The appeal itself was therefore not maintainable.

22. In **Ragho Singh Vs. Mohan Singh and Others** reported in **(2001) 9 SCC 717**, the Apex Court held that '*condonation of delay is not permissible in absence of any application for the same*'. In that case appeal filed before the Additional Collector beyond time by 10 days was held liable to be dismissed in absence of application under Section 5 of the Act for condonation of delay.

23. In **Sneha Gupta Vs. Devi Sarup and Others** reported in **(2009) 6 SCC 194**, the Hon'ble Apex Court has held that, "*in absence of application for condonation of delay, the Court has no jurisdiction in terms of section 3 of the Limitation Act to entertain the application filed for setting aside decree after expiry of period of limitation*".

24. In view of the above decisions, the impugned order passed by respondent no.2 is without jurisdiction and therefore it cannot be sustained in law and facts of the present case.

25. It is settled legal position that correction in consolidation scheme cannot be sought after a period of three years as is held in **Santoshkumar Shivgonda Patil & Ors. Vs. Balasaheb Tukaram Shevale & Ors.** reported in **(2009) 9 SCC 352**.

In this view of the matter also, the proceedings filed by respondent no.4 seeking correction in the consolidation scheme finalized in the years 1983 and 2001 was not maintainable.

26. Record further reveals that Regular Civil Suit No.17/1967 was filed by Sopan Dadarao Chole (petitioner's father), seeking injunction against the predecessor of petitioner to the extent of 12 acres 39 gunthas land out of Survey No.1-A, situated at village Aswala, Taluka Kaij. The suit was dismissed in default by order dated 26-12-1972.

27. Thereafter, Regular Civil Suit No.291/2001 (old) 196/2002 (new) is filed by respondent no.4 against the petitioner for declaration and confirmation of possession of Gat Nos.9 & 177 of the said land. The suit is dismissed by the Trial Court. While deciding the suit, the Trial Court has recorded a finding that Pandurang Gopal was declared as protected tenant of the said land and though the said decision was challenged under Section 8 of the said Act by the father of respondent no.4 before Maharashtra Revenue Tribunal, Aurangabad, this matter is dismissed in default on 21-06-1972. The Trial Court has referred to certified copy of decision by Tahsildar in File No.1969/T.R. dated 20-03-1997 by which it is evident that Survey No.1 admeasuring 7 acres 5 gunthas is confirmed finally and copy of that declaration of tenancy was forwarded to Civil Court and accordingly, Mutation Entry No.211 was sanctioned on 23-06-1973. The possession receipt dated 10-10-1965 shows that Pandurang Gopal was put in possession of the said land. Since these findings are recorded by the Civil Court on the basis of evidence led before it, there are ignored by respondent no.2 while passing the impugned order. In view of Civil Court's decision, the impugned order passed by respondent no.2 is unsustainable.

Misc. Civil Appeal No.14/2002 filed by respondent no.4 challenging the decision of the Trial Court is also dismissed by order

dated 03-09-2002. Thus, in respect of the said land, Competent Civil Court has delivered judgment against respondent no.4.

28. In Maa Umiya Transport City and Industrial Estate Limited and Others (*Supra*), the learned Single Judge of this Court has held that Section 250 of MLR Code does not provide limitation for filing review application or for exercise of review jurisdiction by the concerned authority.

In the present case, respondent no.2 has exercised appellate jurisdiction under Section 247 of MLR Code. Hence, this ruling would not assist respondent no.4.

29. In Nadakerappa Since Deceased (*Supra*), the Apex Court was considering the provisions of Karnataka Land Reforms Act, 1961 and Rules, 1974, wherein a proviso is added to Section 48A of the said Act, which provides that Tribunal may on its own or on the application of any of the parties, for reasons to be recorded in writing correct the extent of land in any order passed by it after causing actual measurement and after giving an opportunity of being heard to the concerned parties. The Apex Court therefore held that, in view of proviso, it was permissible for the tenant to make an application seeking correction in respect of the extent of land in the order of the Land Tribunal. The proviso was inserted on 20-10-1995 and the correction was sought in the year 2002. It was

further held that the High Court was not justified in quashing the notice issued by the Land Tribunal on the ground of delay of about 20 years.

30. Such are not the facts of the present case. Hence, this ruling also does not support the case of respondent no.4.

31. For the aforesaid reasons, writ petition is allowed in terms of prayer clause 'C'. The impugned judgment and order 29-08-2003 passed by respondent no.2, so also impugned judgment and order passed by respondent no.3 are hereby quashed and set aside. Rule is made absolute in the above terms. No costs.

[NITIN B. SURYAWANSHI, J.]

Sameer