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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2704 OF 2020

Sarjerao Eknathrao Shinde PETITIONER
Age – 44 years, Occ – Agriculture
R/o Near Hanuman Mandir
Sanjay Nagar Old Jalna,
Taluka and District - Jalna

VERSUS

Shridevi Shivaji Patil RESPONDENT
Age – 55 years, Occ – Business,
R/o Varandvan, Kacheri Road,
Old Jalna, Taluka & District - Jalna

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Mrs. Almas Abdul Quader, Advocate for the petitioner
Mr. Subodh P. Shah, Advocate for the respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 5th APRIL, 2022
PRONOUNCED ON : 12th APRIL, 2022

ORDER :

1. This petition is directed against the order dated 19th April, 2017, passed by the Divisional Commissioner, Aurangabad, confirming the order dated 26th May, 2016 passed by the Additional Collector, Jalna.

2. The petitioner filed ROR Appeal No. 2014/ROR/CR-3 before the Sub Divisional Officer, Jalna contending that the petitioner's

father was owner and possessor of Gut No. 321 (Survey No. 118), admeasuring 7 Acre, 32 Guntha (hereinafter for short "the said land"). One Chunnilal Lala Madhavvale submitted an application requesting to take revenue entries on the basis of agreement to sale executed by father of the petitioner in favour of Chunnilal, on 31st August, 1959. The Talathi, took entry of the agreement to sale in the revenue record and forwarded the same to the Circle Officer for approval of the mutation entry, which was rejected by the Circle Officer on 2nd April, 1960. The said land is the ancestral property of the petitioner and it was never sold to Chunnilal. No sale deed was executed in respect of the said land. Chunnilal, by joining hands with the Talathi, entered his name into seven twelve extract. After the death of Chunnilalnames of his heirs were recorded in the revenue record in respect of the said land. Heirs of Chunnilal illegally sold the said land to the respondent, though they were not owners of the same. On the basis of said sale transaction, Mutation Entry No. 826 was illegally taken, hence the petitioner sought cancellation of the Mutation Entry No. 826.

3. The Sub Divisional Officer, after considering the record, partly allowed the appeal, holding that the said land is ancestral property of the petitioners and name of Lala Chunnilal was

wrongly entered in the ownership column of the said land. The Sub Divisional Officer held that Regular Civil Suit No. 124 of 2004 filed by the petitioner was dismissed so also the appeal filed by the petitioners challenging the decision in RCS No. 124 of 2004 was dismissed. It is further held that since there is no registered sale deed of the said land executed by the father of the petitioner in favour of Chunnilal, the entry of agreement of sale executed was required to be taken in other rights column, however, entry of heirs of Chunnilal Lala, namely Lala Chunnilal was taken in the ownership column and, therefore, he has sold the said land in the year 1994 to the respondent and accordingly, Mutation Entry No. 826 was certified on 16th May, 1994. Thus, since name of Lala Chunnilal was wrongly taken in the ownership column in the revenue record in respect of the said land, the petitioner was deprived of his ancestral property. Therefore, the Sub Divisional Officer cancelled Mutation Entry No. 826 and directed the entry of the agreement to sale executed by the father of the petitioner in favour of Chunnilal Lala be taken in other rights column in seven twelve extract of the said land. The petitioner was directed to approach competent civil court to challenge the registered sale deed dated 22nd April, 1994 executed by Lala Chunnilal in favour of the respondent.

4. The respondent, who has purchased the said land from Lala Chunnilal on 22nd April, 1994, challenged the decision of the Sub Divisional Officer, by filing appeal No. 2015/RB/Appeal/CR-24 before Additional Collector under section 247 of the Maharashtra Land Revenue Code. The Collector allowed the appeal filed by the present respondent holding that the respondent purchased the said land by way of the registered sale deed and accordingly Mutation Entry No. 826 was certified in favour of the respondent. The petitioner has not challenged the said sale deed before the competent civil court. Regular Civil Suit No. 124 of 204 filed by the petitioner claiming ownership and possession of the suit land is dismissed on 9th October, 2007 so also the Regular Civil Suit No. 353 of 2011 filed by the petitioner seeking injunction is dismissed on 26th April, 2013. Therefore, the Collector allowed the appeal filed by the respondent, by order dated 26th May, 2016.

5. Being aggrieved by the decision of the Collector, the petitioner filed Revision No. ROR/REV/253/2016 before the Additional Commissioner, who dismissed the revision upholding the order passed by the Collector. Hence, the present writ petition.

6. Heard Mrs. Almas Abdul Quader, learned advocate for the

petitioner and Mr. Subodh P. Shah, learned advocate for the respondent. Perused the documents annexed along with the writ petition.

7. Learned advocate for the petitioner strenuously submits that the impugned orders, passed by the Collector and the Commissioner, are contrary to the record and relevant documents, in the form of Pahani Patrak and Khasra Patrak, which show that forefathers of the petitioner are owners of the said land, are not taken into consideration and are ignored by both the authorities. According to the learned advocate, the Sub Divisional Officer was right in directing cancellation of the Mutation Entry No. 826, by giving cogent reasons and the Collector and the Commissioner had no reason to interfere in the order passed by the Sub Divisional Officer. According to her, since name of Lala Chunnilal was wrongly entered in the seven twelve extract in the ownership column of the said land, the said mistake was rightly rectified by the Sub Divisional Officer holding that the said land is the ancestral property of the petitioner. Further submission is that due to the mistake of the revenue officers, the petitioner should not be deprived of ownership of his ancestral property. Learned advocate for the petitioner further submits that the respondent did not acquire title at any point of

time, as no sale deed was ever executed in favour of Lala Chunnilal by the father of the petitioner. In support of her submissions, learned advocate for the petitioner relied on a judgment of the Supreme Court in the case of ***"Jitendra Singh Vs. State of Madhya Pradesh and Others" 2021 SCC OnLine SC 802***.

8. Learned advocate for the respondent, on the other hand, supports the impugned orders contending that Regular Civil Suit No. 124 of 2004 filed by the father of the petitioner seeking declaration of ownership and recovery of possession in respect of the said land, against the respondent, being defendant No.1 and others, including Chunnilal and his legal heirs, was dismissed by judgment and decree dated 9th October, 2007. Regular Civil Appeal No. 213 of 207 filed by by the father of the petitioner against the judgment and decree in Regular Civil Suit No. 124 of 2004 dated 9th October, 2007 is also dismissed by the appellate court by judgment and decree dated 13th June, 2013. He submits that after the decision of the appellate court, the revenue proceedings are initiated by the petitioner. The appellate judgment is not challenged by the petitioner and has become final. According to him, the petitioner has no *locus standi* to file revenue proceedings, since his father has lost the civil

proceedings. There was delay of more than nineteen years in challenging Mutation Entry No. 826, which is erroneously condoned by the Sub Divisional Officer, without assigning any reason. He submits that the Sub Divisional Officer has exceeded his jurisdiction by entering into the question of title. According to him, the Sub Divisional Officer gave the decision ignoring the decision of the competent civil court. He submits that concurrent findings of facts are recorded by the Collector and the Commissioner and no error can be found in the same. By relying on a co-ordinate bench decision of this Court in ***"Shrikant R. Sankarwar and Others V/s Krishna Balu Naukudkar" 2003 (2) Mh.L.J. 276***, he submits that the revenue authorities cannot go into the question of title and the question of the title can only be decided by the competent civil court, which is decided by the civil court in favour of the respondent. He, therefore, submits that the impugned orders passed by the Collector and the Commissioner, are not liable to be interfered with.

9. Admittedly, Regular Civil Suit No. 124 of 2004 filed by the father of the petitioner claiming ownership and recovery of possession of the said land against the respondent and Chunnilal and his legal heirs, is dismissed on merits by the competent civil court. The said decision is confirmed in appeal filed by the father

of the petitioner i.e. Regular Civil Appeal No. 213 of 2007. While dismissing the appeal, the appellate court has taken into consideration old entries in the seven twelve extract, which show that Chunnilal was shown in cultivating possession of the said land, since 1977-78. Appellate Court has also considered that consolidation statement show that before implementation of the consolidation scheme, Chunnilal and three others were cultivating the said land. It is observed by the appellate court that certified copy of Mutation Entry No. 28 (Exhibit-39) shows that at the time of death of Chunnilal, 3 Hectare 15 *Are* land out of Gut No. 321 was standing in his name and after his death, his legal heirs were brought on record. The respondent has purchased the said land from the legal heirs of Chunnilal, by a registered sale deed in the year 1994, on the basis of which Mutation Entry No. 826 is taken. Therefore, the appellate court held that - *"On the basis of said evidence it can be said that the plaintiffs have miserably failed to prove that they have any concern what-soever with the suit land. On the contrary, evidence available on record clearly goes to show that the defendant no. 02 has inherited the suit land from his father and became the owner of the suit land."*

10. It is settled position of law that revenue authorities cannot

go into the question of title and the mutation entries are taken for the purpose of assessment of revenue collection thereof. In ***"Shrikant R. Sankarwar"*** (*supra*), a co-ordinate bench of this Court has held thus -

> *" 9. Bare reading of sections 149 and 150 of the said Code and the said Rules would therefore disclose that the powers which are to be exercised by the Revenue Officers in relation to the mutation of entries in the revenue records pertaining to the immovable properties in the villages are for the purpose of updating such revenue records in respect of rights acquired by the parties in different modes specified under the said Section 149. Such right might have been acquired by way of any document executed by the parties and duly registered or on account of pronouncement of decision by the Courts or authorities competent to deal with the matters pertaining to the rights and interests of the parties in relation to the immovable properties. Neither Section 149 nor Section 150 empowers the revenue authorities acting thereunder and according to the procedure prescribed under the said Rules to adjudicate upon the rights of the parties or their title to the immovable properties. The said provisions of law only deal with the revenue records being updated in relation to the immovable properties for the purpose of assessment of revenue and collection thereof.*
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> *10. The Sub-section (3) of Section 150 of the said Code clearly speaks of "any objection to any entry made under Sub-section (1) in the register of mutations." Sub-section (6) thereof deals with the powers of the revenue authorities to test "Entries in the register of mutations" and "if found correct or after correction" the same to "be certified .... in such manner as may be prescribed". Thus, the*

objections which are to be entertained and to be dealt with under Section 150 of the said Code by such Revenue officers are in relation to the entries proposed to be made pursuant to acquisition of rights by the parties intimated under the report made by the parties or by the registering authorities to the Talathi and not in relation to the right itself of the parties in or to the immovable properties. The enquiry pursuant to such reports to the Revenue Officers, has to be restricted to the matters pertaining to the mutation of the entries in the revenue records. Such enquiry cannot travel beyond the power given to the authorities under the said provision of law. Such power being restricted to ascertain the veracity of the proposed entry, based on the document produced by the parties, the authorities cannot adjudicate upon the rights acquired by the parties to such properties in respect of which the mutation of entry is requested for. In other words the Authorities in such enquiry will have to ascertain as to whether documents produced before such authorities apparently disclose acquisition of right in favour of the applicant in a manner and of the nature claimed by him or her and not whether the applicant is in fact entitled to claim such right in or to the property. The power to adjudicate regarding such issue pertaining to right of the parties to the immovable properties vests in the Courts and the Authorities duly empowered to enquire and adjudicate about the same and not with the revenue officers acting under sections 149 and 150 of the Code and the provisions of the said Rules. In brief, therefore, the enquiry contemplated under Section 150 in relation to application for mutation of entries is to ascertain whether the document produced reveal acquisition of right stated to have been acquired in the land in respect of which mutation of entry is sought for, and does not empower such Authorities to adjudicate upon the title and rights of the parties to the immovable proprieties. In fact the entire proceedings prescribed under sections 149 and 150 of the said Code and the procedure prescribed for the same under the said

Rules relate to the dispute pertaining to the mutation and certification of entries in the register depending upon the documents which are produced by the parties and not to decide about the rights of the parties to such properties.

13. It is well settled law that the entries in the revenue records are basically for revenue purposes and do not by themselves constitute title to the property in favour of any person. Such entries can, undoubtedly, be corroborative piece of evidence to establish the certain rights of the parties in relation to property but they themselves cannot create any title in favour of any person in relation to any immovable property."

11. In the light of the above observations, it is clear that the revenue authorities cannot decide the right of the parties.

12. The Sub Divisional Officer has erroneously condoned the delay of more than 19 years, without assigning any reason. In one line, the Sub Divisional Officer has condoned the delay, observing that considering the principles of natural justice, since the property is joint Hindu family property and considering the interest of the petitioner in the same, delay of 19 years is condoned. Since the delay is condoned by an un-reasoned order, the said order passed by the Sub Divisional Officer is unsustainable. While passing the said order, the Sub Divisional Officer has erroneously ignored the decision of the competent civil court in respect of ownership and possession of the said

land. In that view of the matter also, the order passed by the Sub Divisional Officer is unsustainable in law and facts of the present case.

13. Since the decision in ***"Jitendra Singh"*** (*supra*), is rendered in different facts, the same is not applicable to the case of the petitioner.

14. Collector and the Commissioner have properly considered the matter and have rightly applied the law applicable to the facts of the case and have passed well reasoned orders. The petitioner has failed to make out a case to cause interference in the concurrent findings of facts recorded by the Collector and the Commissioner, in extraordinary writ jurisdiction of this Court. The writ petition being devoid of any merit is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

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