

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6241 OF 2021

Nagnath Manappa Waghmare

...Petitioner

Versus

The State Of Maharashtra And Others

...Respondents

Mr. Sambhaji Tope, Advocate for the petitioner.

Mr. Y.G. Gujarathi, AGP for State.

Mr. Prasanna S. Chavan, Advocate for Respondent No. 5.

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th SEPTEMBER, 2022

ORDER :

1. This petition challenges the order passed by the Hon'ble State Minister (Revenue) in Appeal No. 2020/Pra.Kra108/J-7, thereby allowing the appeal filed by respondent No. 5 and setting aside the order passed by the District Superintendent of Land Record, Osmanabad, dated 31.03.2017.

2. Land Survey No. 32 situated at village Tailor Nagar, Taluka- Tuljapur, District- Osmanabad, was owned by Imam Shah Barav Shah. It is the contention of the petitioner that out of this land 3 Hectare 24 Are land (land in question) was allotted to the petitioner's father namely Manappa Revnappa Waghmare, which is given Survey No. 32/1. Accordingly, mutation entry no.

107 was sanctioned on 01.05.1976. The petitioner claims that land in question is in possession of the petitioner since then.

3. At the time of implementation of consolidation scheme in village Tailor Nagar, wrong entries were taken and land in question is shown in Gut No. 57, owned by Shamshu Maheebub Shah Patel, which has total area of 17 Hectare 10 Are.

4. On 16.07.2011, the petitioner filed application for correction of revenue entries, along with delay condonation application before District Superintendent of Land Record/Respondent No. 2. After conducting inquiry, respondent No. 2 by order dated 31.03.2017 allowed the application and held that correction needs to be effected in the entries of the land in question, as there are several mistakes in the same. He also directed Talathi Sajja Tailor Nagar to insert name of the petitioner and to correct the mutation entry.

5. Respondent No. 5 challenged the order passed by respondent No. 2 by filing Writ Petition No. 550 of 2018. This Court asked respondent No. 5 to approach respondent No. 1 for challenging the said order. Accordingly, respondent No. 5 filed

revision under section 257 of the Maharashtra Land Revenue Code, 1966, before Respondent No. 1. The petitioner claims to have filed caveat before respondent No. 1 on 02.01.2020. The petitioner further claims that he was not given opportunity of hearing in the revision filed by respondent No. 5 and revision is allowed behind the back of the petitioner, on the ground of delay in filing application seeking correction, by the petitioner. The petitioner questions legality and propriety of the order passed in revision by respondent No. 1.

6. I have carefully considered the rival submissions of the learned advocate for the petitioner, learned advocate for the respondents and learned Assistant Government Pleader for State. Perused the writ petition, grounds taken therein, annexures thereto and affidavit in reply filed by respondents and the record produced by the learned Assistant Government Pleader.

7. Perusal of record shows that earlier in the year 2013 and 2014 similar request made by the petitioner is rejected by respondent No. 2. These orders are not challenged by the petitioner and they have attained finality. Thereafter, in the year

2016, at the instance of the petitioner panchnama of land in question was conducted on 29.11.2016. At that time, on inquiry, it was found that the petitioner is not in possession of the land in question. It is pertinent to note that said panchnama is signed by the petitioner, his father and mother.

8. It appears that, consolidation scheme of the land in question was finalized on 04.02.1976 and the correction sought by the petitioner after a considerable delay of almost 35 years has been erroneously entertained by respondent No. 2. On this ground also the application of the petitioner ought to have been rejected. It is pertinent to note here that the petitioner's father at no point of time has challenged the mutation entry or sought correction in the same, which is sought by the petitioner by application dated 16.07.2011.

9. In Writ Petition No. 550 of 2018 filed by respondent No. 5, this Court by order dated 11th June, 2018, granted interim relief. During the operation of interim relief the petitioner sold the land in question on 07.05.2019 to Rizwan Harun Rashid Shaikh, by taking consent of his father (in whose name land in question was allegedly recorded earlier). The sale deed is placed

on record in the affidavit in reply by respondent No. 5.

10. The said writ petition thereafter was disposed of on 02.12.2019, as the learned advocate for the respondent therein and learned Assistant Government pleader raised issue of maintainability of writ petition on the ground of alternate efficacious remedy available to respondent No. 5. The writ petition, therefore, was disposed of by granting liberty to respondent No. 5 (petitioner therein) to avail alternate efficacious remedy.

11. It is thus clear that, the petitioner was aware that respondent No. 5 is going to file revision and the petitioner is to oppose it. The notice of revision is sent for service on the address given by the petitioner in the earlier proceeding. The same address is given by the petitioner in the cause title of the present petition. In this view of the matter, it cannot be accepted that the petitioner was never served with the notice.

12. The petitioner has no locus to file proceeding seeking correction in the consolidation scheme on behalf of his father, whose name was recorded to the land in question. The petitioner

has not produced any document to show that his father has authorized him to prosecute proceeding on his behalf.

In view of facts of the present case, though there was stay operating, the petitioner sold the land with the consent of his father and considering the fact that the petitioner, his father and mother have specifically admitted that they are not in possession of the land in question in panchnama dated 29.11.2016, which is signed by them, the petitioner is not entitled for any relief.

13. The petitioner has not come before this Court with clean hands. The conduct of the petitioner dis-entitles him the discretionary relief in extraordinary writ jurisdiction. There is no substance in the challenge raised by the petitioner. The petition being devoid of merit, is dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]