

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO. 237 OF 2022
IN WRIT PETITION NO. 1250 OF 2022

KAMLAKAR BAPURAO KULKARNI AND OTHERS
VERSUS
POPATRAO VITTHALRAO KULKARNI AND OTHERS

...
Mr. Rajendra Deshmukh, Senior Advocate, a/w Mr. S.A.
Jadhav i/b. Mr. D.R. Deshmukh – Advocates for Applicants
Mr. S.G. Sangle – AGP for Respondent Nos.2 to 6
Mr. C.V. Thombre – Advocate for Respondent No.1
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CORAM : RAVINDRA V. GHUGE
& S.G. DIGE, JJ.
DATE : 21st October, 2022

ORDER :

1. By this Review Application, the applicants have put forth prayer clauses 'B', 'C' and 'D' as under :

“(B) This Review Petition may kindly be allowed by recalling Order dated 25/01/2022 passed by this Hon’ble High Court in Writ Petition No.1250/2022, while disposing of the same with certain directions and further the Writ Petition No.1250/2022, may kindly be dismissed with exemplary cost.

(C) Pending the hearing and final disposal of this Review Petition, the effect, operation, execution and implementation of the Order under review dated 25/01/2022 passed by this Hon’ble High Court in Writ Petition No.1250/2022, may kindly be stayed.

(D) Pending the hearing and final disposal of this Review Petition, the effect, implementation and operation of the Letter/Notice of final hearing dated

23/06/2022 (Annexure - 'D') issued from the office of the present Respondent No.6/The Tahasildar, Georai to the review petitioners and other, may kindly be stayed."

2. After we heard the matter on 20.10.2022, Mr. C.V. Thombre, learned advocate representing the original petitioner Popatrao Vitthalrao Kulkarni, sought a passover to take instructions from him. Today, Mr. Popatrao Vitthalrao Kulkarni has filed an affidavit tendering an unconditional apology for having filed Writ Petition No. 1250 of 2022 seeking a direction that, his pending application dated 11.04.2009 before the S.D.O. Beed, be decided within a time frame, when the said application was already adjudicated upon by order dated 06.02.2014 passed by the S.D.O. Beed. Mr. Popatrao Vitthalrao Kulkarni then stated in paragraph No.3 that, the application dated 11.04.2009 and application dated 28.11.2019 (*wrongly typed as 28.18.2019*) were handed over to the advocate. Then we are informed that, "handed over to the Advocate" means advocate Mr. D.K. Dagadkhair. He was the same advocate to file Writ Petition No.1250 of 2022.

3. It is conceded in the light of the record that, application

dated 11.04.2009 filed by Mr. Popatrao Vitthalrao Kulkarni was decided by the S.D.O. Beed on 06.02.2014. The present applicants approached the District Collector by preferring appeal 2014/CD/APPEAL/CR-46 challenging the order of the S.D.O. Beed. By order dated 23.05.2014 the proceedings were decided. Mr. Popatrao Vitthalrao Kulkarni then approached the Additional Commissioner, Aurangabad, Division-Aurangabad by preferring case No. ROR/REV/210/2014/B under Section 257 of the Maharashtra Land Revenue Code, 1966. That Revision was dismissed vide order dated 27.11.2015. Mr. D.K. Dagadkhair, learned Advocate represented Mr. Popatrao Vitthalrao Kulkarni before the Additional Divisional Commissioner No.2, Aurangabad by preferring proceedings No. 2015/ROR/REV/509 and by order dated 17.03.2018 the proceedings were also dismissed.

4. Thereafter Mr. Popatrao Vitthalrao Kulkarni approached this Court by filing Writ Petition No.1250/2022 through the same advocate Mr. D.K. Dagadkhair stating in the cause title, viz. *"In the matter of Direction to the Respondents to Make Corrections of clerical errors in the record of Right and registeres, maintained under Section 155 of the*

Maharashtra Land Revenue Code, 1966. As prayed by application dated 11.04.2009”.

Prayer clauses ‘B’ and ‘C’ of the Writ Petition No.1250 of 2022, were put forth as under :

“B. By issuing writ of Mandamus or certiorari or appropriate directions, orders, in the nature of appropriate writ / order, the respondents, may be directed to make correction of clerical error in the record of rights and registers maintained under section 155, of the Maharashtra Land Revenue Code, 1966, in respect of the lands old survey number, survey no. 13 admeasuring 35 acres and survey no. 14, admeasuring 27 acre and 27 guntha land, New gut no. 55, 56, 57 and 62, situated at village Malegaon Khurd, Tq. Georai, Dist. Beed.

C. By issuing writ of Mandamus of certiorari or appropriate writ or directions, orders, in the nature of appropriate writ / order, the respondent no.5 Tahasildar Gevrai, Tq. Gevrai, Dist. Beed, may be directed to obey and act up on the orders of the Higher Authority respondent no.2 to 4, annexed at Exh. C Colly.”

5. In the Writ Petition, the pleadings set out in paragraph

Nos.7, 8, 9, 10, 11, 12, 13 and 14 read as under :

“7. However it appears that the revenue authority, without any reason and without any documents and rights has entered the names of above said persons to the agricultural lands of petitioner and surprisingly the names of above said persons has entered in revenue record, as well as 7/12 extract without any mutation entry. As such the serious mistake is done by the revenue authority for the best reason known to them. It may be by joining hand with above said persons.

Therefore the petitioner who is suffering and causing grate prejudice and without any reasons, depriving and affected, on 11/4/2009, submitted detail representation to respondents, under section 155 of Maharashtra Land Revenue Code, 1966, for correction of the above said clerical/errors mistake, in revenue record. Here to annexed herewith the copy of representation dated, 11/04/2009, along with copy of letter dated 03/03/2021 issued by the Tahasildar Gevrai and marked at Exh.B colly.

8. The petitioner further submits that from the time to time he was also visited and requested to higher revenue officers and respondent no.2 to 4, for same purpose, as so long, the respondent no.5 has not taken any action, on applications for correction of revenue record, in respect of the land survey no. 13 and 14 Village, Malegaon Khurd, Tq. Gevrai, Dist. Beed. The respondent no.2, the Divisional Commissioner Aurangabad, vide letter dated 24/09/2012, 07/04/2017, as well as the respondent no.3. The Collector Beed, vide letter dated 24/01/2012, 14/06/2012, 14/08/2012 and 11/06/2012 and the respondent no.4 the Sub-Divisional Officer, Beed vide letter dated 07/05/2013, to the concern respondent no.5, asked him to take proper action on applications for correction of revenue record in respect of the land survey no. 13 and 14 Village, Malegaon Khurd, Tq. Gevrai, Dist. Beed. New gut No.55, 56, 57 and 62. Here to annexed with letters dated 24/09/2012, 07/04/2017 by Revenue Commissioner Aurangbad, Letters dated 24/01/2012, 14/06/2012, 14/08/2012, 11/06/2012 by the Collector Beed, and vide Letter dated 07/05/2013 by Sub-Divisional Officer Beed, and marked at Exh. C Colly.

9. That the lastly on 04/03/2020 the petitioner again requested to the respondent no.5, for the correction in clerical error in the record of rights and registers maintained under section 155, of the Maharashtra Land Revenue Code, 1966, in respect of the lands old survey number, survey no. 13 admeasuring 35 acres and survey no. 14, admeasuring 27 acre and 27 guntha

land, situated at village Malegaon Khurd, Tq. Gevrai, Dist. Beed, new gut No.55, 56, 57 and 62. However, the respondent No.5, has not taken any action and failed make correction as prayed. The copy of application dated 04/03/2020, is annexed herewith and marked at Exh. D.

10. It is further submitted that even after the span of 13 years the respondent no.5, has not taken any action. The petitioner since last 13 years, pursuing to all respondents and requested to make necessary correction, to the revenue record of survey number 13 and 14, Village Malegaon Khurd, Tq. Gevrai, Dist. Beed, new Gut No. 55, 56, 57 and 62 but however the respondents are not taking any decision and not applied their mind, as well as not exercised power vested with them under the law. As such non action on their part amount to injustice, due to which the petitioner is affected and deprived from the rights at least to get proper action according to law, from the respondents and therefore at his old age he has no option except to approach too this Hon'ble Court.

11. The Tahasildar Gevrai, since 13 years, for this or that reasons, prolonging the correction of the revenue record file without any sufficient and cognate reasons. Or reasons known to them and acting arbitrary, perverse, etc. and nothing doing and thing and kept the file on his record without any order, since long.

12. That the respondents are the public servants and bound to perform legal duty, but has neglected to do so such legal duty and failed to perform and discharge the same. Further the respondents failed to exercise power and discretion wrongly and malafide and irrelevant consideration, and a such manner, as to frustrate the main object.

13. The petitioner therefore has no alternative to left except to approach to this Hon'ble High Court for filing writ petition, as the from time to time though requested by the petitioner. The respondents are

neglected, and powers are misused by the officials. Thus the said act of respondents amounts to violation of fundamental rights guaranteed by the Article 14 to 16 of the Constitution of India.

14. The petitioner has not filed any other petition or proceeding in this Court or in any other court or Supreme Court of India except this petition.”

6. The affidavit placed on record by Mr. Popatrao Vitthalrao Kulkarni dated 21.10.2022 is marked as “X-1” for identification.

7. It is quite obvious from the *Vakilpatra* filed with the registry in Writ Petition No.1250 of 2022 that advocate Mr. D.K. Dagadkhair has filed the Writ Petition and he was also the advocate before the Additional Divisional Commissioner – 2, Aurangabad when the order was passed on 17.03.2018. It is on account of the misrepresentation and suppression of the facts on the part of advocate Mr. D.K. Dagadkhair before this Court (Coram : S.V. Gangapurwala and S.G. Dige, JJ.), that the Court was made to believe that the application filed by Mr. Popatrao Vitthalrao Kulkarni for correction was pending and hence, this Court passed an order, which reads as under :

“. The grievance of the petitioner is that the

application is filed with the Tahsildar for correction of the record. The same is not yet decided.

2. The learned A.G.P. appears for respondents-State.

3. In case, the application filed by the petitioner for correction of the record under Section 155 of the Maharashtra Land Revenue Code is pending with the authority, then the authority shall take decision upon it on its own merits, in accordance with law and policy, after hearing all parties concerned, expeditiously and preferably within a period of nine (09) months from today.

4. Writ Petition is disposed of. No costs."

8. The Review Petition is allowed. We recall our order dated 25.01.2022 and we dismiss Writ Petition No.1250 of 2022. Needless to say, the hearing before the Tahsildar, Gevrai vide notice dated 23.06.2022, stands quashed and set aside.

9. Since Mr. Popatrao Vitthalrao Kulkarni has tendered an apology we are accepting the said apology. However, since Popatrao Kulkarni is a retired clerk from a Taluka Court, the presumption is that he is aware of the legal procedure and he is equally party to the fraud on the Court. Hence, we are imposing costs of Rs.5,000/- (rupees Five Thousands only) to be deposited by him with the Advocates Association of

Bombay High Court bench at Aurangabad within thirty (30) days from today.

10. In so far as Mr. D.K. Dagadkhair - learned advocate, we find it to be fit case for recommending initiation of disciplinary action and consider contempt proceedings under the provisions of Contempt of Courts Act, 1971. We are informed that despite three requests made by Mr. C.V. Thombre - learned advocate, Mr. Dagadkhair - learned advocate, did not care to remain present in this proceeding.

11. Registry to issue simple notice to Mr. D.K. Dagadkhair - learned advocate (Advocate Code - 606), R/o. 1, Ganesh Complex, 1 Sahyognagar, opposite Khinsvara Vihar, Sutgirni road, Garkheda, Aurangbad, Mobile No. - 9422703844, returnable on 13th December, 2022.

(S.G.DIGE, J.)

(RAVINDRA V. GHUGE, J.)