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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8301 OF 2021

Dagdu s/o Vitthal Dahite
Age – 65 years, Occ – Agri
R/o Hoddane, Taluka – Sakri
District – Dhule
At present / Dusane, Taluka – Sakri
District - Dhule

PETITIONER

VERSUS

1. Shri Sitaram Darkya Bhil
Age – 56 years, Occ -
R/o Hoddane, Taluka – Sakri
District – Dhule
2. Smt. Satibai Karansing Thakare
R/o Dondaicha, Taluka – Shindkheda
District – Dhule
3. The State of Maharashtra
Through its Minister for Revenue
Maharashtra State
Mantralaya, Mumbai 400 032
4. The Additional Commissioner,
Nashik Division, Nashik at Nashik
5. The Additional District Collector,
Dhule at Dhule
6. The Sub Divisional Officer,
Dhule at Dhule
7. The Tahsildar,
Sakri, Taluka – Sakri
District – Jalgaon

RESPONDENTS

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Mr. Nilesh N. Desale, Advocate for the petitioner
Mr. Vinod Jadhav h/f Mr.A.V.Hon, Adv. for respondents No.1 & 2
Mr. Y. G. Gujrathi, AGP for respondent - State

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 12th JULY, 2022

PRONOUNCED ON : 7th SEPTEMBER, 2022

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.

2. The challenge raised in this writ petition is to the order dated 29th June, 2021 passed by respondent No. 3 in RTS/3120 Case No. 92/J-6-A.

3. Undisputed facts, leading to this petition, are that, land survey No. 52 (Gut No. 89) admeasuring 163 Acre was allotted to Yashwant Nagar Collective Farming Society on 31st March, 1963. At the time of allotment of the said land, names of 16 members of the said society were approved. Subsequently, the said society went into liquidation and hence the District Collector, on 31st August, 1976, resumed the land to the Government and directed to allot the same equally to the members of the said farming society. Though Umar Kalu Khatik and Vitthal Bhaga Patil (deceased father of the petitioner) were members of the said farming society since its inception and were cultivating the land of their respective shares, their names were omitted from the order of allotment and though Akhadya Devtya Bhil, Darkya

Vanya Bhil, Bhurya Maya Bhil, Vagur Akhadya Bhil and Malhar Kalsing Bhil were never members of the said farming society and though they were not residing in the said village Hoddane, lands were allotted in their names. When this fact was realized, Umar Kalu Khatik and Vitthal Bhaga Patil complained to the Collector on 20th November, 1987 pointing out this anomaly. The District Collector, Dhule, vide order dated 20th April, 1988, granted permission to correct earlier allotment order and directed the Tahsildar to effect necessary change, after due inquiry.

4. The Tahsildar conducted an inquiry, in which it was revealed that there was mistake in the allotment order and, therefore, by order dated 4th May, 1988, allotment made in favour of ineligible persons was cancelled and names of Umar Kalu Khatik and Vitthal Bhaga Patil were included in the allotment order and they were allotted 11.25 Acre land each, on payment of appropriate fee.

5. However, in spite of direction by the Tahsildar to the concerned Talathi to effect mutation entry, no steps were taken to record name of father of the petitioner and after him name of the petitioner, in the revenue record in respect of the said land. The petitioner, therefore, submitted an application dated 6th September, 2010 to the Tahsildar. The Tahsildar after holding

inquiry and after recording statements of the concerned persons, directed to mutate name of petitioner in respect of land Gut No. 89 B/26 admeasuring 4 Hectare 31 Are, by order dated 28th November, 2011. Even after this order, since name of the petitioner was not mutated, the petitioner again approached the Tahsildar. The Tahsildar, by order dated 2nd July, 2012, directed to mutate the name of the petitioner in respect of the said land and also directed to remove the entry made in the other rights column, in respect of sections 36 and 36 A of the Maharashtra Land Revenue Code, 1966 (hereinafter for short "the said Code"). After this order, name of the petitioner was recorded by mutation Entry No. 873.

6. Respondents No.1 and 2, being aggrieved by the aforesaid order dated 2nd July, 2012 passed by the Tahsildar, filed RTS Appeal No. 72 of 2013 before the Sub Divisional Officer, Dhule under section 247 of the said Code, contending that since the land belongs to tribals, entries under section 36 and 36 A of the said Code could not have been removed. The petitioner resisted the appeal contending it not being maintainable and the land is not a tribal land and that it was land of the farming society and the names of predecessors of respondents No.1 and 2 were illegally recorded in respect of the said land. The Sub Divisional

Officer, vide order dated 30th June, 2015 allowed the appeal filed by respondents No.1 and 2 and set aside the order of the Tahsildar and directed to correct seven twelve extract.

7. The petitioner challenged the order dated 30th June, 2015 passed by the Sub Divisional Officer in RTS Appeal No. 72 of 2013, before the Additional District Collector, by filing proceedings bearing No. 91 of 2015. The Additional District Collector, allowed the proceedings vide order dated 13th June, 2018 and confirmed the order of the Tahsildar so also the mutation entry No. 873. The Tahsildar was directed to conduct inquiry regarding ineligible members of the said farming society and to remove their names from the record.

8. Respondents No.1 and 2 challenged this order of the Additional Collector, by filing Revision No. 703 of 2018 under section 257 of the said Code, before the Additional Commissioner, Nashik. The Revision was dismissed by confirming the order of the Collector. Respondents No.1 and 2 challenged the order of the Commissioner before respondent No.3 – the Hon'ble State Minister for Revenue, by filing RTS. 3120/ Case No. 92/J-6A, which is allowed. Hence, this writ petition.

9. Heard learned advocate for the petitioner. Learned

advocate for respondents No. 1 and 2 and learned Assistant Government Pleader for respondent – State.

10. Learned advocate for the petitioner submits that the initial order passed by the Tahsildar dated 4th May, 1988 was not challenged at any point of time and for the first time, the said order was questioned before respondent No.3 in the year 2019. Though the petitioner pointed out this aspect, the same is not properly appreciated by the third respondent, while passing the impugned order. He submits that it is the duty of the revenue authority under section 149 of the said Code, to take revenue entries. He submits that section 36 of the said Code is not applicable as the land was never owned by Tribal nor was it transferred or exchanged by the Tribunal. Since the land belonged to the farming society and it was wrongly allotted to the predecessor of respondents No.1 and 2, the land cannot be termed as belonging to Tribal and, therefore section 36 of the said Code could not have been applied. Since the allotment to the predecessor of respondents No.1 and 2 was cancelled, the land was resumed to the Government and the Government has allotted the land to the members of the farming society, in that view of the matter, section 36A of the said Code is not applicable to the facts of the present case. He submits that Regular Civil

Suit No. 242 of 2021 is filed by the petitioner against respondents No.1 and 2 and the State for injunction in respect of the said land. Exhibit-5 application for temporary injunction filed in the said suit is kept pending due to pendency of the present writ petition. He, therefore, submits that the impugned order passed by respondent No.2 cannot be sustained and the same is liable to be quashed and set aside.

11. Learned advocate for respondents No.1 and 2 on the other hand, supported the impugned order. He submits that the Tahsildar has committed an error in reopening the allotment of land of the year 1973, in the year 1988. He submits that respondent No.3 has rightly appreciated the facts of the case and was justified in coming to the conclusion that sections 36 and 36A of the said Code are applicable to the facts of the present case. He, therefore, submits that there is no substance in the writ petition and the same deserves to be dismissed.

12. Learned Assistant Government Pleader also supports the impugned order.

13. Indisputably, the said land is out of 163 Acre land, which was allotted to Yashwant Nagar Collective Farming Society, on collective farming basis, by order dated 31st March, 1963. At the

time of said allotment, names of 16 members of the said society were approved. After the said farming society went into liquidation, the Collector by order dated 31st August, 1976, resumed the land to the Government and allotted the same equally amongst the members of the society. Accordingly, the Tahsildar issued order on 4th July, 1977 distributing the land to the members of the said society.

14. It is also a matter of record that Umar Kalu Khatik and Vitthal Bhaga Patil (father of the petitioner) by application dated 20th November, 1987, pointed out to the Tahsildar that they were valid members of the farming society, since its inception and they are cultivating the land of their shares till that date, however, their names were wrongly deleted from the land allotment order. The farming society, at no point of time, dismembered them. On the contrary, Akhadya Devtya Bhil, Darkya Vanya Bhil, Bhurya Maya Bhil, Vagur Akhadya Bhil and Malhar Kalsing Bhil were never members of the said farming society, still the land is allotted to them. These people do not reside at village Hoddane and they are residents of Shindkheda Taluka. They do not cultivate the land personally. Therefore, it was requested that names of these five persons may be removed and the land be allotted to the applicants.

15. Pursuant to this application, an inquiry was conducted, statements of the concerned persons were recorded and from the statements it was revealed that these five persons, namely Akhadya Devtya Bhil, Darkya Vanya Bhil, Bhurya Maya Bhil, Vagur Akhadya Bhil and Malhar Kalsing Bhil, were not personally cultivating the land and they were not residing at village Hoddane.

16. Perusal of the original allotment order dated 31st March, 1963, reveals that names of these five persons are not mentioned in the list of original members of the society, whose names reflected in the said order and membership of Umar and Vitthal was approved. Therefore, while passing the allotment order in the year 1977, a mistake was committed in allotting the land in the names of these five persons and not allotting the land to the members of the society, Umar Khatik and Vitthal Bhaga Patil. By relying upon Government Resolution dated 9th January, 1983, which lays down that those persons who have left farming society, either who have resigned and those who were newly inducted, are not eligible for allotment of the land, the Tahsildar, has rightly passed order dated 4th May, 1988 thereby cancelling allotment granted in favour of the five persons and allotting 11.25 Acre land each to Umar and Vitthal on payment of arrears of

farming society by them.

17. It appears that though in the year 1988, the order was passed in favour of the petitioner's father, necessary revenue entries were not effected. Though it was the duty of the revenue authorities under section 149 of the said Code to take necessary entries, the same were not taken.

18. The petitioner, therefore, filed RTS proceedings No. 20 of 2010 before the Tahsildar with a request to enter his name in the crop inspection record. Pursuant to the said proceedings, the Tahsildar personally visited the agricultural land and inspected the same. At that time, Sitaram Darkhya Bhil and Suka Zulal Bhil, predecessors of respondents No.1 and 2 and adjoining land owners were present there. Their statements were recorded. The petitioner was found to be in cultivatory possession of the said land. It was also revealed that the predecessors of respondents No.1 and 2 were not residing at the said village and they were residents of Mauje Virdel, Taluka – Shindkheda, District Dhule. After considering the record and statements of the persons present at the time of the inspection, the Tahsildar arrived at a conclusion that though the said land is standing in the joint names of Sitaram Darkhya Bhil and Suka Zulal Bhil, in new tenure, still the said land was being cultivated by Vitthal in his

lifetime and after him the petitioner is cultivating the same. Therefore, since nobody had objection to enter name of the petitioner in the cultivation column of the Kharif season of 2010-11, the Tahsildar directed to enter name of the petitioner in the crop inspection record.

19. The petitioner, thereafter, applied to the Tahsildar to enter his name in the seven twelve extract on 23rd February, 2005, on the basis of order dated 4th May, 1988. An inquiry was conducted and report was submitted to the Sub Divisional Officer who directed to follow the procedure under section 149 and 140 of the said Code and Record of Right Rules. The Tahsildar, after considering the record and after realizing the fact that the predecessors of respondents No.1 and 2 though were not members of the farming society, the land was wrongly allotted in their names and they were not residing in the village and though the father of the petitioner was the founder member of the said farming society, he was wrongly left out at the time of allotment of the land, and as per order dated 4th May, 1988, said land was permanently allotted to petitioner's father, still, his name was not entered in the revenue record, hence the Tahsildar directed that the name of the petitioner be entered in the revenue record in respect of the said land, by removing entry under sections 36

and 36A of the said Code.

20. At the instance of respondents No.1 and 2, the Sub Divisional Officer, set aside the order of the Tahsildar in appeal filed under section 247 of the said Code, holding that the said land belonged to Tribals and the Tahsildar has not obtained necessary permission of the Collector before entering names of the petitioners in respect of the said land.

21. The Collector, in the appeal filed under section 257 of the said Code by the petitioner, has confirmed the order of the Tahsildar and set aside the order of the Sub Divisional Officer, holding that possession of the said land was given to the petitioner in the year 1988 and it was duty of the revenue authorities to enter name of the petitioner in the revenue record. This aspect is ignored by the Sub Divisional Officer, Panchanamas prepared from time to time confirm that the petitioner was and is in possession of the said land. The statements of Sitaram Bhil was recorded pursuant to application dated 23rd February, 2005 of the petitioner to enter his name in the revenue record and in the said statement, Sakharam Bhil has categorically admitted that the petitioner is in cultivatory possession of the said land, he has also sworn an affidavit to that effect on 20th November, 2004 before Executive Magistrate,

Sakri. He has given no objection to enter name of the petitioner in the revenue record and he further confirmed that he or his heirs have no concern with the said land. The Collector, therefore, set aside the order of the Sub Divisional Officer and confirmed the order of the Tahsildar. The order passed by the Collector is confirmed in revision by the Additional Commissioner, Nashik.

22. It is, therefore, clear from the record that the said land originally was allotted to the farming society of which the petitioner's father was one of the founder member. After the society went into liquidation, in the year 1973, 163 Acre land allotted to the said society was resumed to the government and under the orders of the Collector, the said land was directed to be distributed amongst the members of the said society. In the first allotment order dated 31st March, 1963, names of Umar Khatik and Vitthal Patil are included as founder members of the said farming society. It is also clear from the record that though the five persons were at no point of time, members of the said society, the land was wrongly allotted to them and though Umar Khatik and Vitthal Patil, father of the petitioner, were founder members of the said farming society, their names were wrongly excluded from the allotment order. Hence, they approached the

Tahsildar in the year 1988 pointing out this anomaly. After holding enquiry and after perusing the original allotment order of 31st March, 1963 and after recording statements of all the concerned, the Tahsildar has rightly come to the conclusion that father of the petitioner was one of the founder member of the said farming society, whose name was excluded at the time of allotment in the year 1973. He, therefore, allotted the said land to the father of the petitioner by cancelling the allotment in favour of said five persons.

23. From time to time, applications were made to the revenue authorities for entering name of the petitioner in the revenue record of the said land and Panchanamas conducted from time to time confirm cultivatory possession of the petitioner over the said land. Even the statement of predecessor of respondents No.1 and 2 recorded in the year 2005, confirms this position that the said land was being cultivated by the father of the petitioner and after his death by the petitioner and the predecessors of respondents No.1 and 2 were at no point of time in possession of the said land and that they were not residing in the said village and were residing in different Taluka.

24. It is pertinent to note here that the order dated 4th May, 1988 passed in favour of the petitioner's father was at no point

of time challenged by the predecessors of respondents No.1 and 2 or by respondents No.1 and 2. From the statement made in the revision memo, filed by respondents No.1 and 2 before respondent No.3, it appears that they have challenged the order dated 4th May, 1988, for the first time in the year 2019.

25. It is also clear from the record that predecessors of respondents No.1 and 2 were never members of said farming society. As per the record, petitioner's father was one of the founder member of the said farming society. Therefore, the allotment of the said land in favour of predecessor of respondents No.1 and 2 itself was illegal and in correct. In this view of the matter, the Tahsildar was justified in passing the order dated 4th May, 1988, which was passed after holding a detail inquiry and after recording statements of the concerned, including the predecessors of respondents No.1 and 2. The Tahsildar has rightly cancelled the allotment in favour of predecessors of respondents No.1 and 2 and was justified in allotting the said land in favour of the petitioner's father.

26. Taking into consideration these facts, entry under section 36 and 36A of the said Code was rightly directed to be deleted by the Tahsildar vide order dated 2nd July, 2005. It is clear from the record that the said land was recorded in the name of

predecessors of respondents No.1 and 2 only on paper and as admitted by them, at no point of time, they were in cultivatory possession of the said land. In these facts, the entry in the revenue record under section 36 and 36A of the said Code was improper.

27. As the said land was not in occupancy of predecessors of respondents No.1 and 2 at any point of time and as the said land is not transferred by Tribals / predecessors of respondents No.1 and 2, provisions of section 36 and 36A of the said Code cannot be said to be applicable to the said land.

28. Admittedly, there is no transfer of Tribal's land to non Tribal and the allotment in favour of the Tribal was wrong and the same is cancelled subsequently by the competent revenue authority. Section 36 and 36A of the said Code cannot be said to be applicable to the said land. The said entry under section 36 and 36A is rightly directed to be deleted.

29. Respondent No.3, while passing the impugned order, has ignored all these relevant aspects and has misread and misinterpreted the provisions of section 36 and 36A of the said Code. The reliance placed by respondent No.3 on section 36 and 36A of the said Code is misplaced and misconstrued. While

passing the impugned order, the definition of occupancy is misinterpreted. Respondent No.3 has ignored the fact that the said land was resumed by the government and it was allotted to the members of the farming society. The observation that the occupancy of the said land is transferred from Tribal to the petitioner without prior permission of the competent authority as per section 36 and 36A of the said Code, is perverse. While recording the finding that the order dated 4th May, 1988 passed by the Tahsildar is wrong, it is ignored that the said order is never challenged either by respondents No.1 and 2 or by their predecessors. The impugned order, therefore, is unsustainable in law and facts, as the same is based on misinterpretation of the relevant provisions and the same is passed without properly appreciating the record.

30. In the result, the writ petition is allowed in terms of prayer clause "C". Order dated 29th June, 2021 passed by respondent No.3 – Minister of Revenue Maharashtra State, in RTS – 3120/Case No. 92/J-6A, is hereby quashed and set aside. Rule is made absolute in aforesaid terms. No costs.

31. At this stage, learned advocate for respondents No.1 and 2 seeks stay of this order. For the reasons stated in the order, the request is rejected.

[NITIN B. SURYAWANSHI]
JUDGE