

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

WRIT PETITION NO.10919 OF 2019

**DNYANDEO LAXMAN LOHAKARE
VERSUS
THE HON'BLE STATE MINISTER, REVENUE DEPARTMENT AND
OTHERS**

...
Advocate for Petitioners : Mr. Chandrakant K. Shinde
AGP for Respondents – State : Mr. S. W. Munde
Advocate for Respondents No. 6 to 8 : Mr. V. B. Jogdand Patil
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 25th JULY, 2022

PER COURT :

1. The challenge raised in this petition is to the judgment and order dated 13/11/2007 passed by Sub Divisional Officer, Shrirampur Division, Shrirampur in RTS Appeal No.20/2007, which is confirmed in appeal by Additional Collector, Ahmednagar as well as in revision by Additional Commissioner, Nashik Division, Nashik and also in second revision by the Hon'ble State Minister (Revenue).

2. Land Gut No.3156/1-2-3/9 admeasuring 3H 23R situated at village Sonai, Taluka Newasa, District Ahmednagar, was allotted to Ganeshwadi Collective Cooperative Farming Society. The said society was dissolved and thereafter the said land was distributed to the individual members of the society. This is how the subject land was allotted in individual capacity to Govind Bhanudas

Salve in the year 1989, on certain conditions. On compliance of conditions, name of Govind Salve was recorded in revenue record of land Gut No.3156/9 by Mutation Entry No.8657.

3. Govind bequeathed this land in favour of petitioner by way of will deed dated 24/01/1997. Wife of Govind namely Rambhabai is signatory to the said will deed as witness. Pursuant to the will deed, the said land came in possession of the petitioner.

4. It appears that R.C.S. No.271/2006 was filed by present petitioner against Rambhabai, as Rambhabai was obstructing peaceful possession of the said property of petitioner. The suit was compromised and a compromise decree was passed. On the basis of said compromise decree and will deed of Govind, Mutation Entry No.22616 was effected on 14/10/2006.

5. Respondents challenged Mutation Entry No.22616 before Tenancy Awal Karkun, Newasa, by filing complaint case No.64/2006. The said complaint was dismissed mainly on the ground that suit land was allotted to Govind in individual capacity and the Civil Court in compromise decree directed to effect mutation entry in 7/12 extract of the said land in favour of the petitioner. Respondents challenged the said decision by filing RTS Appeal No.20/2007, which was allowed by Sub Divisional Officer,

Shrirampur on the ground that deceased Govind transferred said land to petitioner by way of will deed and the same was done without obtaining prior permission of the Collector.

6. Petitioner challenged decision of Sub Divisional Officer by filing II RTS Appeal No.221/2007. Additional Collector, Ahmednagar dismissed the said appeal and confirmed order passed by Sub Divisional Officer, Shrirampur. Petitioner challenged both the decisions by filing RTS Revision No.476/2013 before Additional Commissioner, Nashik, who partly allowed the revision and remanded matter back to Additional Collector, Ahmednagar.

7. After remand the Additional Collector, Ahmednagar held that, in view of the decision in ***Prabhakar Chinappa Chavan vs State Of Maharashtra, 2004(4) Mh.L.J. 886***, any testamentary disposition is not covered by the definition of transfer under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, and therefore, bequeathing of said land in favour of petitioner by Govind Bhanudas Salve does not amount to transfer. By referring to the letters of District Collector, Ahmednagar, dated 06/08/1982 and 05/02/1983 produced by the respondents before Tenancy Awal Karkun, Newasa, he further held that both these letters are addressed to Gopinath and Govind Raghuji Salve and therefore, recorded a finding that when the said land was with Ganeshwadi Collective Cooperative

Farming Society, both the deceased Govind and deceased Gopinath had share in the same. He, therefore, has drawn conclusion that the original allotment order of the Collector appears to be served on Gopinath as well as Govind and the said land was allotted to Govind as Joint Hindu Family *Karta*. Hence, the Collector partly allowed the appeal and set aside the order of Sub Divisional Officer, so also, Mutation Entry No.22616 was cancelled. This order is confirmed by the Additional Commissioner, Nashik, in RTS Revision No.380/2018, as well as, by the Hon'ble State Minister for Revenue. Hence, the present petition.

8. Heard Mr. C. K. Shinde, learned advocate for petitioner, Mr. V. B. Jogdand Patil, learned advocate for respondent Nos. 6 to 8 and learned Assistant Government Pleader for respondents – State.

9. Record reveals that the suit land was allotted individually to all the members of Ganeshwadi Collective Cooperative Farming Society. Allotment order dated 16/05/1989 mentions only name of Govind Bhanudas Salve and nobody else. Since Govind complied with the conditions mentioned in the allotment order, the said land was recorded in the name of Govind in revenue records, vide Mutation Entry No.8657.

10. Govind, by notarised will deed dated 24/01/1997, to

which his wife Rambhabai is witness, bequeathed the said land in favour of petitioner. Compromise decree was passed in favour of the petitioner in suit filed against Rambhabai i.e. R.C.S. No.271/2006. In the said suit, trial Court directed to enter the petitioner's name in 7/12 extract of the said land. Accordingly, by Mutation Entry No.22616 name of petitioner is recorded in the revenue record of the said land.

11. Challenge to the Mutation Entry No.22616 by the respondents was rightly rejected by the Tenancy Awal Karkun, Newasa, by holding that the said land was allotted to Govind in his individual capacity and Govind and Rambhabai had executed will deed in favour of the petitioner. Since the said land was not an ancestral property, Govind had a right to bequeath the said land as per his wish. Therefore, by placing reliance on the allotment order, will deed and the directions of Civil Court in R.C.S. No.271/2006, Tenancy Awal Karkun has rightly rejected the complaint and confirmed Mutation Entry No.22616.

12. The Sub Divisional Officer as well as Collector erred in passing order in favour of respondents on the sole ground that giving of the said land in favour of petitioner by way of will deed amounts to transfer and no prior permission was obtained before transferring the said land to petitioner. The Commissioner rightly

remanded the matter back to Collector.

13. After remand, though the Collector accepted contention of petitioner that allotment of land by way of will does not amount to transfer, however, he has recorded a perverse finding that the said land was allotted to Govind as joint family *Karta*. The said finding is contrary to the allotment order placed on record at Exhibit-A as well as revenue record of the said land. Allotment order, so also, the revenue record certified pursuant to the allotment order, nowhere refer Gopinath's name. Since the said finding of Collector is contrary to the record, the same is unsustainable.

14. It is also a matter of record that respondents earlier filed R.C.S. No.03/2007 claiming that the will deed executed in favour of petitioner be declared null and void and the decree passed in R.C.S. No.271/2006, since is obtained by fraud, be declared *void ab initio* and respondents be declared owners of the said land. The suit was dismissed by order dated 30/12/2008, as the respondents failed to lead evidence.

15. Respondents thereafter filed R.C.S. No.246/2012 on 13/09/2012, claiming the same relief. In the said suit, application Exhibit-5 was filed by respondents, which is rejected by the trial

Court on 21/11/2015 by detail order. The trial Court has *prima facie* come to a conclusion that land of the society was given to Govind in individual capacity, there is presumption about 'Joint Hindu Family', but there is no presumption that the family has 'Joint Family Property'. It is held that respondents/plaintiffs will have to prove that it was a joint family property and Govind and Gopinath jointly purchased the said property. The trial Court, therefore, by considering the will deed as well as the compromise decree passed in R.C.S. No.271/2006, rejected the interim injunction application filed by respondents. In the order passed by trial Court it is observed that "*Meantime the Government restored the land to the name of the State vide Mutation Entry No.24208*".

16. Will deed executed in favour of petitioner and compromise decree passed in R.C.S. No.271/2006 are challenged in R.C.S. No.246/2012 and it is for the Civil Court to decide the rights of the parties. Revenue authorities had no jurisdiction to decide the rights of the parties. Findings recorded by the revenue authorities that the said land was allotted in favour of Govind as Joint Family *Karta*, is contrary to the allotment order as well as the revenue record which is certified pursuant to the allotment order. The impugned orders, therefore, cannot be sustained in these peculiar facts of the case.

17. In the result, writ petition is allowed in terms of prayer clause 'B'. Needless to mention that revenue record and revenue entries shall be subject to the final decision in R.C.S. No.246/2012.

(NITIN B. SURYAWANSHI, J.)

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