

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

WRIT PETITION NO. 8984 OF 2014

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| 1. | Ramdas Vitthal Nikumbh
Age : 57 years, Occ – Business & Agriculture
R/o Gayatri Colony, Amalner
Taluka – Amalner, District – Jalgaon | PETITIONERS |
| 2. | Govind Vinayakrao Vinchurkar
Age – 54 years, Occ – Agriculture & Business
R/o Deshmukh Nagar, Pimpale Road,
Amalner, Taluka – Amalner
District – Jalgaon | |

VERSUS

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| 1. | The State of Maharashtra
Through its Secretary,
Department of Revenue,
Mantralaya, Mumbai-32 | RESPONDENTS |
| 2. | The Additional Commissioner,
Nashik Division, Nashik
District – Nashik | |
| 3. | The Collector, Jalgaon
District – Jalgaon | |
| 4. | Jyoti Jitendra Pawar (Thakur)
Age -34 years, Occ – Household
R/o Mill Chawl, Amalner
Taluka – Amalner, District – Jalgaon | |

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Mr. V. D. Sapkal, Sr. Advocate i/b Mr. Girish S. Rane, Advocate for petitioners

Mr. S. W. Munde, AGP for respondents No.1 to 3 - State

Mr. Mahesh Bhokariker, Advocate for respondent No. 4

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 10th MARCH, 2022

PRONOUNCED ON : 27th APRIL, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.
2. This petition takes exception to the judgment and order dated 09-09-2014 passed by respondent No.1 in RTS Appeal No.177/G-6/2014, thereby reversing the decision of respondent No.2 – Additional Commissioner in RTS Revision No.144 of 2012.
3. The facts, shorn of unnecessary details, are as follows:
4. Final plot No.217 admeasuring 6279.7 Sq.Mtrs and final plot No.218 admeasuring 2813.9 Sq.Mtrs, formed out of land Gut No.1738 (earlier survey No.817), situated at Amalner, District Jalgaon, are the subject matter of present petition (for short ‘the property in question’).
5. On 15-12-1970 final town planning scheme was implemented at Amalner. Land Gut No.1738 (earlier survey No.817) was one of the properties included in the town planning scheme. Part of the property in question was used for road, auditorium and garden. The property in question was allotted by the Planning Authority to the original owners Laxman Ramchandra Bhandarkar, Magan Ramchandra Bhandarkar and

Kashinath Ramchandra Bhandarkar. At the time of implementation of the town planning scheme no objection whatsoever was raised to the said scheme or to the property in question. The petitioners purchased the property in question from Bhandarkars in the year 1999-2000.

6. After purchasing the property in question the petitioners applied for Non-Agricultural (for short 'N.A.') permission to the Collector. By order dated 01-12-2000 the Collector granted N.A. permission in favour of the petitioners on certain conditions. Accordingly Mutation Entry No.16321 was recorded indicating the conversion of use of the property in question into non-agricultural use.

Thereafter, the legal representatives of one deceased Tulshiram applied for recording their names to the revenue record in respect of the Gut No.1738, which was allowed and the names of legal representatives of deceased Tulshiram were recorded to Gut No.1738 by Mutation Entry No.16063. After a period of more than 11 years the respondent No.4 claiming herself to be one of the legal heirs of deceased Tulshiram, challenged the N.A. permission granted in favour of the petitioners, by filing revision before respondent No.2. The petitioners opposed the said revision by filing written say. The revision filed by respondent No.4 was dismissed by respondent No.2, by a reasoned order dated 10-07-2012.

7. Respondent No.4 thereafter filed RTS Appeal No.177/G-6/2014 before respondent No.1, which is allowed. Hence the present petition.

8. Heard Mr. V. D. Sapkal, learned senior advocate for the petitioners, Mr. Munde, learned Assistant Government Pleader for respondents No.1 to 3 and Mr. Bhokarikar, learned advocate for respondent No.4.

9. The learned senior advocate submits that with effect from 15-12-1970 the Town Planning Scheme was made applicable at Amalner and earlier survey No.817 (Gut No.1738) was converted into final plot No.217, admeasuring 6279.7 Sq. Mtrs. and final plot No.218, admeasuring 2813.9 Sq. Mtrs. Part of the said survey number was used for road, auditorium and garden. At the time of implementation of Town Planning Scheme no objection was ever raised by the petitioners. As per Section 88 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'the Act of 1966') *'on and after the day on which preliminary scheme comes into force all lands required by the planning authority vest absolutely in the planning authority, free from all encumbrances'*. In that view of the matter, according to him the original owner had no right whatsoever in the property in question. Once the land is included in the Town Planning

Scheme, provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'the Act of 1948') are not applicable. He submits that respondent No.4, who is daughter of deceased Tulshiram Surajmal Thakur, claims that in the year 1953-54 her predecessors were the tenants of these agricultural lands i.e. the property in question. However, over a period of 60 years, they were never declared as tenants under Section 70(b) of the Act of 1948. He relied on the consent deed (Page No.69) executed by the legal representatives of the tenants Surajmal Thakur (Devare) and Tulshiram Thakur (Devare) whereby they have relinquished their rights on the property in question. He further submits that Regular Civil Suit No.22/2001, filed by the legal representatives of Surajmal Thakur (Devare) and Tulshiram Thakur (Devare) seeking declaration against the petitioners (defendant Nos. 1 and 2) and others, including Bhandarkars, that they are not the owners of the land Gut No.1738 (earlier survey No.817) admeasuring 2H 77R situated at Amalner, was withdrawn by filing pursis Exhibit-73. They have consented for the purchase of part of the property in question by defendant Nos. 1 and 2 (present petitioners). The plaintiffs in the said suit have also executed registered consent/relinquishment deed. He further submitted that under Section 250 of the Maharashtra Land Revenue Code, 1966, the order passed by the Collector granting N.A. permission could have been challenged before the

Divisional Commissioner within a period of 60 days. According to him, the order passed by the Collector granting N.A. permission ought to have been challenged before the Divisional Commissioner under Section 250 within 60 days. The same is not done by respondent No.4 and only because there is no limitation for filing revision under Section 257, revision is filed. According to him, no right is created in favour of respondent No.4 on the basis of Mutation Entry No.16063 which is certified after the N.A. permission is granted to the petitioners. He submits that the N.A. order lapses after a period of 1 year, after which it cannot be challenged. The respondent No.1, by ignoring these aspects, has entertained the challenge raised by respondent No.4 and passed the impugned order.

10. He further submits that when the petitioners purchased the property in question a public notice was issued, however no objection was raised by respondent No.4 at that point of time. All these aspects are not taken into consideration by respondent No.1 while passing the impugned order and therefore, the impugned order is unsustainable. He also submits that in absence of any declaration about the tenancy rights and in absence of any objection raised about the tenancy rights during finalisation of Town Planning Scheme and at the time of grant of N.A. permission, the contentions of respondent No.4 are liable to be rejected at the threshold. He submits that the order passed by the Commissioner dismissing the

revision filed by respondent No.4 is correct and the impugned order passed by respondent No.1 ignoring all these relevant aspects is unsustainable and liable to be quashed and set aside. In support of his contentions he relied on the decisions of the Hon'ble Supreme Court in *State of Gujarat Vs. Patil Raghav Natha and Others, 1969 (2) SCC 187* and *Santoshkumar Shivgonda Patil and Others Vs. Balasaheb Tukaram Shevale and Others, (2009) 9 SCC 352*.

11. The learned advocate for respondent No.4 on the other hand, by placing reliance on the receipt dated 16-06-2014 issued by Manohar Bhikaji Bhandarkar in favour of the Vijay Tulshiram Thakur (Devre), submits that this receipt is proof of payment of tenancy charges to the owner of property in question. Thus, the owner has admitted that the family of respondent No.4 was paying rent to them. There is nothing on record to show that the tenant has surrendered his right, procedure prescribed for surrender is not followed in the present case. According to him, the point of limitation is rightly decided by respondent No.1 by condoning the delay on the part of respondent No.4, by placing reliance on Exhibit-I affidavit executed by the original owner in respect of the disputed land to the effect that, the disputed land is given to the predecessors of Vijay Tulshiram Thakur (Devare) by a registered agreement on 10-05-1947 and even till execution of the affidavit the said disputed land is continued

in possession of Devare since his ancestors. They are regularly paying the tenancy charges of the said land. He, therefore, submits that this also supports the case of respondent No.4 that the said land is a tenanted land. He therefore, submits that the impugned order passed by respondent No.1 is just, legal and proper and no case is made out by the petitioners to interfere with the same.

12. The learned Assistant Government Pleader for respondents – State supported the impugned order.

13. Heard Mr. V. D. Sapkal, learned senior advocate for the petitioners and Mr. Bhokarikar, learned advocate for respondent No.4 and Mr. S. W. Munde, the learned Assistant Government Pleader for respondents No.1 to 3 – State, at length. Perused the documents placed on record.

14. By the Bombay Government Gazette dated 04-12-1922 (page No.67) the Town Planning Scheme for Amalner Municipality was sanctioned. Survey No.817 in the municipal limits is included in the said scheme along with other survey numbers. Thus, it is clear that the property in question is within Amalner Municipal limits since year 1923. On 15-12-1970 Town Planning Scheme was made applicable to the Amalner City. In that scheme the possession of survey No.817 (Gat No.1738) was taken by the Municipal Council Amalner. As per the Town Planning Scheme some

portion of the property in question was utilised for construction of road, garden and auditorium. Final plot No.205 admeasuring 40R 73.8 Sq.Mtrs, final plot No.217 admeasuring 6279.7 Sq.Mtrs and final plot No.218 admeasuring 2813.9 Sq.Mtrs. were handed over to the heirs of Bhikaji Ramchandra Bhandarkar (Original Owner), as per the certificate issued by Amalner Municipal Council dated 12-04-2001 (page No.65). At no point of time respondent No.4 or her predecessors ever objected to the Town Planning scheme.

15. Section 88 of the Act of 1966 reads thus :-

“88. On and after the day on which a preliminary scheme comes into force— (a) all lands required by the Planning Authority shall, unless it is otherwise determined in such scheme, vest absolutely in the Planning Authority free from all encumbrances; (b) all rights in the original plots which have been reconstituted shall determine and the reconstituted plots shall become subject to the rights settled by Arbitrator.”

16. It is, therefore, clear that as per Section 88 the property in question is vested absolutely in the planning authority free from all encumbrances. Respondent No.4 and/or her predecessors, therefore, had no right to claim any right, title or interest in the property in question.

17. The petitioners at the time of purchasing the property in question from Bhandarkars issued public notice. At that time also no objection was taken by respondent No.4 to the said transaction.

18. It is a matter of record that Regular Civil Suit No.22/2001 was

filed by the family members of Tulshiram Thakur (Devare) for seeking relief of permanent injunction in respect of the property in question. The said suit is withdrawn by the plaintiffs therein by filing pursis (page No.84) that, the disputed properties are within municipal limits since 1923 and therefore, provisions of Section 32A to 32R of the Act, 1948 are not applicable to these properties. Hence, the plaintiffs cannot be the owners of the property in question. So also, the property in question is taken into possession by the Municipal Council under Town Planning Scheme and after utilising some portion remaining portion is handed over to the heirs of the original owner Bhikaji Ramchandra Bhandarkar. The property in question was never in possession of the plaintiffs and the plaintiffs have given consent to the transaction of defendant Nos. 1 and 2 (present petitioners). Accordingly a registered consent deed in the form of relinquishment deed is also executed by the plaintiffs. The plaintiffs have relinquished their right to the property in question. Hence, they are not willing to continue the said suit and the suit may be disposed off. The suit was accordingly disposed off on the basis of the said pursis.

Perusal of the consent deed/relinquishment deed (page No.69) reveals that the plaintiffs have entered their names as tenants in the revenue record of the property in question, after N.A. permission was granted in favour of the petitioners in the year 2000. As the property in

question is in Municipal limits since 1923, Sections 32A and 32R of the Act, 1948 are not applicable to the property in question. The plaintiffs have already relinquished their right to the property in question. It is pertinent to note here that respondent No.4 is signatory to the consent deed/relinquishment deed along with the plaintiffs, which is executed in favour of the petitioners. In this view of the matter respondent No.4 is not entitled to claim that her predecessors were tenants and on the basis of Mutation Entry Nos.1022 and 16063, she is entitled for the reliefs claimed by her in the revision filed before the respondent No.2.

19. The N.A. permission is granted in favour of the petitioners on 01-12-2000. The respondent No.4 has challenged the same by filing RTS revision in the month of March, 2012 i.e. after lapse of more than 11 years. The Additional Commissioner, Nashik Division, Nashik, has rightly held that since the final plot Nos.217 and 218 were in the municipal limits since 1923, provisions of Section 32G to 32R of the Act, 1948 are not applicable to the same. After the Town Planning Scheme was made applicable to Amalner in the year 1970, the property in question was acquired under the said scheme. At that time the rights of all the concerned came to an end. After utilizing some portion of the property in question, remaining land was given to the original owner Bhandarkar. Therefore, as per Section 88 of the Act, 1966 the right of respondent No.4 has come to an end.

Respondent No.2 has also taken into consideration the decision dated 11-05-1976 in the Tenancy Case/Amalner/22/74, in respect of the property in question. He has also held that respondent No.4 has not produced any proof that she or her predecessors were tenants and merely on the basis of 7/12 extract nobody can be termed as tenant. Considering these aspects the respondent No.2 has rightly rejected the revision filed by the respondent No.4.

20. Respondent No.1 has erroneously recorded a finding that the petitioners have not placed on record anything to show that the property in question is in municipal limits from 1923 and as per the documents placed on record by respondent No.4 the property in question came in municipal limits from 1970. Therefore, the provisions of Sections 32G to 32R are applicable in the present case. Respondent No.1 further erred in holding that on 7/12 extract of property in question, names of respondent No.4's predecessors and of respondent No.4 and others as tenants are there till date and their rights are not extinguished. If respondent No.4 is not a tenant then why her name is not deleted from the revenue record. While recording this finding respondent No.1 has ignored the settled legal position that mere entry in 7/12 extract is not a proof of title. Respondent No.1 has ignored the Bombay Government Gazette, implementation of town planning scheme in the year 1970 and provisions of Section 88 of the

Act of 1966, while passing the impugned order. Since these relevant aspects are not taken into consideration and undue importance is given to the irrelevant aspects, the impugned order passed by respondent No.1 stands vitiated.

21. Reliance placed by respondent No.1 on the affidavit of the legal heirs (page No.86) and receipt of tenancy rent of the property in question (page No.88) are misplaced and misconceived. In the said affidavit earlier survey number and Gut number of the property in question are mentioned in the year 2013-2014, when in the year 1970 final plot Nos. 217 and 218 were formed out of Gut No.1738 (earlier Survey No.817). Therefore, the said affidavit and receipt should not have been relied upon by respondent No.1. The impugned order is, therefore, passed ignoring the relevant record and relevant provisions applicable to the matter and the same is passed without assigning proper reasons.

22. The learned senior advocate for the petitioners was right in placing reliance in ***Patil Raghav Natha and Others*** (supra) wherein the Hon'ble Supreme Court held :-

“11. The question arises whether the Commissioner can revise an order made under Section 65 at any time. It is true that there is no period of limitation prescribed under Section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised.

12. It seems to us that Section 65 itself indicates the length of

the reasonable time within which the Commissioner must act under Section 211. Under Section 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. In this case the Commissioner set aside the order of the Collector on October 12, 1961, i.e. more than a year after the order and it seems to us that this order was passed too late.

13. We are also of the opinion that the order of the Commissioner should be quashed on the ground that he did not give any reasons for his conclusions. We have already extracted the passage above which shows that after reciting the various contentions he badly stated his conclusions without disclosing his reasons. In a matter of this kind the Commissioner should indicate his reasons, however briefly, so that an aggrieved party may carry the matter further if so advised.

14. We are also of the opinion that the Commissioner should not have gone into the question of title. It seems to us that when the title of an occupant is disputed by any party before the Collector or the Commissioner and the dispute is serious the appropriate course for the Collector or the Commissioner would be to refer the parties to a competent court and not to decide the question of title himself against the occupant.”

23. In *Santoshkumar Shivgonda Patil* (supra), the Hon’ble Apex Court has held that revisional power under Section 257 of the Maharashtra Land Revenue Code should be exercised within a reasonable time of three years. In the case in hand respondent No.1 has erroneously proceeded to

condone the delay of more than 11 years without assigning cogent reasons.

24. Respondent No.1 has exceeded his jurisdiction by going into the question of title of the property in question. He ought to have asked the respondent No.4 to approach the competent Civil Court for decision on the question of title. The impugned order is, therefore, unsustainable in law and facts of the case.

25. For the aforestated reasons, the writ petition is allowed in terms of prayer clause 'A' and 'B'. The impugned order passed by respondent No.1 in RTS Appeal No.177/G-6/2014 is hereby quashed and set aside, so also, the RTS Revision No.144/2012 preferred by respondent No.4 is dismissed. Writ petition is disposed off accordingly.

26. Rule is made absolute in the above terms. No costs.

NITIN B. SURYAWANSHI
JUDGE