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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3035 OF 2021

1. Hamid Hussain Pathan PETITIONERS
Age- Major, Occ – Agril
R/o Jatnandur, Taluka – Shirur (Ka)
District – Beed

2. Iqbal Hussain Shah Pathan
Age – Major, Occ – Agril
Ro Jatnandur, Taluka – Shirur (Ka)
District – Beed

3. Shafique Hussain Shah Pathan
Age – Major, Occ – Agril
R/o Jatnandur, Taluka – Shirur (Ka)
District – Beed

4. Chandbee w/o Adam Pathan
Age – Major, Occ – Agril
R/o Jatnandur, Taluka – Shirur (Ka)
District – Beed

5. Shahjahanbee Allauddin Shaikh
Age – Major, Occ – Agril
R/o Jatnandur, Taluka – Shirur (Ka)
District – Beed

6. Sujatbee Hussain Pathan
Age – Major, Occ – Agril
R/o Jatnandur, Taluka – Shirur (Ka)
District – Beed

VERSUS

1. State of Maharashtra RESPONDENTS
Through its Minister (State)
Revenue Department,
Mantralaya, Mumbai

2. The Additional Commissioner
Divisional Commissioner Office
Aurangabad

3. The Collector,
Collector Office, Aurangabad

4. The Sub Divisional Officer,
SDO Office, Beed

5. The Tahsildar,
Tahsil Office, Shirur Kasar
District – Beed

6. Shama Ayub Khan Pathan,
Age – Major, Occ – Agril
R/o Jatnandur, Taluka – Shirur (Ka)
District – Beed, At present Plot No. 13
Bhoslewadi, Shivajinagar, Pune-5

7. Chimaji Janu Mulik
Age – 62 years, Occ – Agril
R/o Jatnandur, Taluka – Shirur
District – Beed

8. Aashruba Vitthal Mulik
Age – 65 years, Occ – Agril
R/o Jatnandur, Taluka – Shirur
District – Beed

9. Narayan Daulat Jedhe,
Age – 67 years, Occ – Agril
R/o Jatnandur, Taluka – Shirur
District – Beed

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Mr. Rajendra B. Dhakane, Advocate for the petitioners
Mrs.G. L. Deshpande, AGP for respondent - State
Mr. Subhash K. Sawangikar, Advocate for respondent No.6
Mr. N. Y. Kingaonkar, Advocate for respondents No. 7 to 9

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 15th JULY, 2022

PRONOUNCED ON : 15th SEPTEMBER, 2022

JUDGMENT :

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

2. This petition, filed under Article 226 and 227 of the Constitution of India, impugns order dated 26th August, 2019 passed by the Hon'ble Minister for State for Revenue in Appeal bearing No. 2019/Pra.Kra. 166/J-7A.

3. Petitioners' father Husain Shah Iman Shah had 10 anna 8 ps share in land survey No. 231, admeasuring 16 Acre 37 *Are* situated at village Jatnandur, Taluka – Shirur, District - Beed i.e. 11 Acre 11 Are (hereinafter for short "the said land"). Daula Shantaram, Pandit Shantaram, Yaqub Shaikhlal and Abdul Amin, had 1 anna 4 ps share each in the said land i.e. 1 Acre 17 *Are* each, which was reflected in Khasra Pahani Patrak of the year 1954-55. In the consolidation scheme, implemented in the year 1988-89, survey No. 231 is converted into gut No. 581 and the respective shares of the persons are recorded in the revenue record.

4. Petitioners' father filed Regular Civil Suit No. 166 of 1991 for partition and separate possession of the said land, which came to be dismissed in default on 30th June, 2005. The petitioners, after getting knowledge of the same, filed Miscellaneous Civil Application No. 32 of 2007 along with delay condonation application and sought restoration of Regular Civil Suit No. 166 of 1991, which is pending.

5. After dismissal of the suit in default, respondent No.6, whose fathers' name was recorded in the revenue record to the said land, moved an application before the Tahsildar for mutation of her name in the revenue record to the entire Gut No. 581. The Tahsildar allowed the said application on 31st October, 2007. Accordingly, Mutation Entry (ME) No. 1647 is certified on 1st November, 2007.

6. Petitioner No.1 challenged the order of the Tahsildar and ME No. 1647, by filing appeal No. 128 of 2008 before the Sub Divisional Officer, Beed under section 247 of the Maharashtra Land Revenue Code, 1966 (for short "MLR Code"). By order dated 22nd October, 2008, the Appeal was allowed by the Sub Divisional Officer and the ME No. 1647 was set aside.

7. Respondent No.6 challenged the order of the Sub Divisional Officer before the Additional Collector, which was partly allowed on 26th February, 2009, whereby the revenue authorities were directed to take entries in 7/12 extract of respondent No.6 to the extent of ownerhsip of her father and of the petitioners to the extent of ownership of their father, subject to decision of MCA No. 32 of 2007. Respondent No.6 challenged the said order before the Additional Commissioner, by filing revision, which is allowed by the Commissioner on 30th December, 2016 there by setting aside the order passed by the Collector and confirming the ME No. 1647.

8. The petitioners filed review petition before the Divisional Commissioner. The Commissioner partly allowed the review and confirmed the decision of the additional Commissioner subject to the decision of the Miscellaneous Civil Application No. 32 of 2007, by order dated 2nd November, 2018.

9. In the mean time, petitioners filed Regular Civil Suit No. 451 of 2017 for declaration, ownership and perpetual injunction of the said property, which is sub-judice.

10. The petitioners, thereafter, approached the Hon’ble Minister by filing revision, challenging the decision of the

Divisional Commissioner, which is dismissed on 26th August, 2019. The petitioners, therefore, are before this Court challenging the order passed by respondent No.1.

11. The petitioners claim that their names recorded in bracket of the seven twelve extract of the said property be removed from bracket. The petitioners also challenge the ME No. 1647 being contrary to Chapter X of the MLR Code.

12. Heard learned advocate for the petitioners. Learned advocates for the respondents and the learned Assistant Government Pleader for the State.

13. Learned advocate for the petitioners strenuously submits that the said land is in possession of the petitioners since their forefathers. Since the year 1954-55, in the Khasara Pahani Patrak, said land is recorded in the name of petitioners' father. Names of forefathers of the petitioners and the petitioners were recorded in the revenue record of the said land till 30th June, 2005, i.e. till the date on which Regular Civil Suit No. 166 of 1991 filed by the father of the petitioners for partition and separate possession of the said land was dismissed in default. Taking disadvantage of the said fact, name of respondent No.6 was mutated to the entire Gut No. 581, i.e. even to the share of

the petitioners, which is not permissible in law. Therefore, ME No. 1647 recording name of respondent No.6 to the entire Gut No.581 is illegal. He submits that the revenue authorities concurrently recorded finding of fact in favour of the petitioners. According to him, the impugned order and the revenue entries are contrary to the Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance), Rules, 1971 (for short "ROR Rules"). He submits that the Tahsilar has no authority to record ME No. 1647. Respondent No.1 has ignored the fact that names of the petitioners and their predecessors were recorded in the revenue record of the said land, since 1954-55. According to him, as per section 149 of the MLR Code, the petitioners have got right to the said land. This fact is ignored by the Tahsildar and by respondent No.1. As per Rules 31 and 32 of the ROR Rules, the Tahsildar ought to have taken pencil entry in the revenue record, which is not done. As per section 150 of the MLR Code, Register of Mutations and register of disputed cases is kept. This provision is also ignored while passing the impugned orders. The petitioners' names have to be recorded to the extent of 10 Anna 8 ps share. The impugned orders and the revenue entries are taken by wrongly interpreting the dismissal of the suit in default. He further submits that in Regular Civil Suit No. 451 of 2017, filed by the petitioners for declaration of title and injunction, the civil court has passed *status quo* order, which is operating till date. This aspect is also ignored by the respondents while passing the impugned orders. He submits that respondents No. 7 to 9 are the subsequent purchasers, who have purchased the portion of Gut No. 581 from respondent No.6 and according to respondent No.6, they are in possession of the respective portions purchased by them. He submits that the petitioners are in possession of 10 anna 8 ps share of their father and in view of this fact the impugned order is not sustainable.

14. Learned advocate for respondent No.6, on the other hand, supported the impugned order. He submits that respondent - Collector has rightly held that ME No.1647 shall be subject to the decision of the Civil Court, which will be binding on the parties. He submits that the petitioners filed restoration application belatedly, after two years. He, therefore, submits that there is no merit in the petition and the petition deserves to be dismissed.

15. Learned advocate for respondents No. 7 to 9 adopted the submissions of respondent No.6. He further submits that earlier civil suit for partition and separate possession was filed and hence there is no question of filing subsequent suit for the same cause of action.

16. Learned Assistant Government Pleader supported the impugned order. He submits that earlier suit was dismissed in default on 30th June, 2005 and till date the application for restoration is pending. He submits that there is no merit in the petition and the petition deserves to be dismissed.

17. It is evident from the record that while sanctioning Mutation Entry No. 1647, the Tahsildar has ignored the old revenue record showing name of the petitioners' father to the extent of 10 anna 8 ps share (i.e. 11 Acre 11 Are), since the year 1954-55, till 30th June, 2005 and possession of the petitioners over the said land since their forefathers.

Dismissal of Regular Civil Suit No. 166 of 1991 in default, which was filed by the petitioners' father for partition and separate possession, was not a sufficient ground to record Mutation Entry No. 1647 thereby mutating name of respondent No.6 to the entire Gut No. 581. Therefore, the action of the Tahsildar, in sanctioning Mutation Entry 1647 is illegal and cannot be sustained.

18. The Tahsildar was duty bound to record petitioners' names to the extent of 10 ann 8 ps share of the said land. It appears that while passing the impugned order and taking ME No. 1647

the Tahsildar has misinterpreted dismissal of the suit filed by petitioners' father, in default. While sanctioning the ME No. 1647, order passed by the Additional Collector dated 30th October, 1993 is misinterpreted by the Tahsildar.

19. It needs to be noted here that the Tahsildar has passed the impugned order while *status quo* order passed by the Civil Court in RCS No. 441 of 2017 filed by the petitioners, for declaration of title and injunction in respect of the said land was operating.

20. As per Rules 31 and 32 of the ROR Rules, the Tahsildar ought to have taken pencil entry in the revenue record and instead of doing that, the impugned ME No. 1647 is taken, that too to the entire Gut No. 581, which is unsustainable in law and facts of the case.

21. The Sub Divisional Officer, by his order, has rightly set aside ME No. 1647, by observing that restoration application field by the petitioners is pending before competent civil court. The Tahsildar has certified the ME No. 1647, by ignoring all these aspects so also the fact that respondent No.6 has not filed heirship certificate or any relevant document to show that she is heir of deceased Abdul Amin.

22. The Additional Collector, in a challenge raised by

respondent No.6 to the order passed by the Sub Divisional Officer, has held that respondent No.6 has to prove on record that she is heir of Abdul Amin. If she produces heirship certificate, then her name could have been recorded in 7/12 extract to the land owned by Abdul Amin. It is further held that the petitioners' names shall be entered on the 7/12 extract of the land owned by Husain Shah Imam Shah and, therefore, he partly allowed the appeal and directed the Tahsildar to take entries accordingly in 7/12 extract and further directed that the final decision in Miscellaneous Application No. 32 of 2007 shall be binding on the parties. The Additional Collector has rightly appreciated the facts of the matter and the record and has passed a well reasoned order.

23. The Additional Commissioner, by giving erroneous reasons, had upset the order passed by the Additional Collector. Though it is observed in the impugned order that name of respondent No.6 be recorded to the land owned by Abdul Amin, in the operative part of the order, the Additional Commissioner confirmed ME No. 1647, ignoring the fact that Abdul Amin had only 1 anna 4 ps share (i.e. 57 Guntha = 1 Acre 17 Are). Whereas, Husain Shah Imam Shah had 10 Anna 8 ps share (i.e. 11 acre 11 Are) and by ME No. 1647, name of respondent No.6

was recorded to the entire share of Hussain Shah Imam Shah and Abdul Amin. Thus, non application of mind on the part of Additional Commissioner in passing the order in the revision is writ large on the face of record. In the circumstances, the said order cannot be sustained.

24. The Additional Divisional Commissioner though passed an order that review filed by petitioner No.1 is partly allowed, however, he has confirmed the order passed by the Assistant Commissioner and directed that the decision shall be subject to the final decision in MA No. 32 of 2007.

25. For the same reasons, for which the order passed by the order passed by the Additional Commissioner is unsustainable, this order also cannot be sustained as the Additional Divisional Commissioner has also failed to consider that name of respondent No.6 should have been entered in 7/12 extract in respect of the land owned by Abdul Amin i.e. to the extent of 1 Acre 17 *Are*. Whereas, by ME 1647, name of respondent No.6 is recorded even to the share of the petitioners.

26. The Sub Divisional Officer, Additional Collector and the Divisional Commissioner have concurrently recorded findings of fact and have held in favour of the petitioners. They have rightly

directed to take entry of the petitioners to the extent of their father's share, which is in consonance with the ROR Rules.

27. Respondent No.1 has erred in interfering with the concurrent findings of fact recorded by the Sub Divisional Officer and the Additional Collector. While passing the impugned order, no reasons, whatsoever, are recorded by respondent No.1. There is no discussion on merits of the matter in the impugned order. The impugned order passed by respondent No.1 is unreasoned order and the same cannot be sustained in the light of the ratio in ***Kranti Associates Pvt. Ltd., and Others V/s Masood Ahmed Khan and Others" MANU/SC/0682/2010***.

28. For the aforesaid reasons, the writ petition deserves to be allowed and the same is allowed in following terms.

a. Impugned order dated 26th August, 2019 passed by respondent No.1 in Appeal-2019//Case No. 166/J-7A is hereby quashed and set aside.

b. Impugned orders dated 30th December, 2016 passed by Commissioner in Revision No. 79 of 2009 and dated 2nd November, 2018 in Review No. 84 of 2017 are hereby quashed and set aside.

c. Mutation Entry No. 1647 is hereby quashed and set aside.

d. Names of the petitioners be recorded to the said land to the extent of 10 anna 8 ps share (i.e. 11 Acre 11 Are).

e. This order shall be subject to the decision of the civil Courts in MA No. 32 of 2007 and Regular Civil Suit No. 451 of 2017.

f. Rule is made absolute in aforesaid terms.

g. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

drp/wp3035-21