IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1661 OF 2021

Shri. Ganpat Popat Jadhav and Anr. ...Petitioners
V/s.
Smt. Lankabai Parashram Shinde and Ors. ...Respondents

Mr. Rameshwar N. Gite a/w. Mr. Rohit D. Gorade, for the Petitioners.
Mrs. Madhubala Kajale, AGP for the Respondents / State.
Mr. Rokade Narayan Gopinath, for the Respondent Nos.1 & 2.

CORAM : C.V. BHADANG, J.
DATE : 6 OCTOBER 2022

Order-

. This petition is heard finally by consent of parties.

2. The Petitioners are challenging the order dated 20 June 2019 passed by the Respondent No.5 – Divisional Commissioner, Nashik, thereby rejecting the Revision Application No.RTS/REV/44/2019, as being not maintainable in view of Section 252 of the Maharashtra Land Revenue Code, 1966.

3. I have heard the learned counsel for the parties. Perused record.

4. The learned counsel for the Petitioners states that the grandfather of the Petitioners was recorded as owner in respect of the subject lands vide Mutation Entry No.1219 in pursuance of an order passed under Section 32(G) of the Bombay Tenancy and Agricultural Lands Act, 1948. After death of their grandfather, the name of Popat Jadhav who is father of the Petitioners was cultivating the lands. Popat Jadhav died on 14 December 1975. Respondent Nos.1 and 2 applied to the Revenue Authorities for recording their names in the revenue record, in respect of the subject properties on 1 April 1976, in pursuance of which, the names of Respondent Nos.1 and 2 came to be recorded in the year 1976 vide Mutation Entry (ME) No.101. The learned counsel points out that the Petitioners got knowledge of the said entry on 21 February 2016 and they applied to the Sub Divisional Officer (SDO) in RTS Appeal No.54/2016 for cancellation of the ME No.101 and for recording of their names. The SDO rejected the application on 29 January 2018 which was challenged by the Petitioners before the learned Additional Collector in RTS Appeal No.34/2018 which was dismissed by the Collector on 24 September 2018. That was sought to be challenged by the Petitioners before the Additional Commissioner in RTS Appeal No.44/2019 which is rejected by

the impugned order on the ground of maintainability.

5. The learned counsel for the Petitioners has placed reliance on the decision of this Court in *Gurudassing Nawoosing Panjwani Vs. State of Maharashtra and Ors.* [1] in order to submit that the revision application is not maintainable. It is submitted that there is no delay as the Petitioners being illiterate, they were otherwise unaware of ME No.101 and on coming to know of the said entry in February 2016, had approached the Authorities.

6. The learned counsel for the Respondent Nos.1 and 2 placing reliance on Section 252 of the Code states that the revision was clearly not maintainable. He also points out that there is a delay of more than 40 years in challenging ME No.101.

7. Learned AGP also supported the impugned order.

8. I have considered the submissions made.

9. A perusal of the impugned order shows that the learned Commissioner placing reliance on Section 252 of the Code has held the revision application to be not maintainable. The learned counsel for the Petitioners, in all fairness, states that the decision of the Supreme Court in *Gurudassing Nawoosing Panjwani (supra)* was not brought to the notice of the learned

1 *(2016) 2 SCC 213.*

Commissioner. For the present, it is neither necessary nor possible to go into the merits of the matter as revision application has not been entertained and has been rejected at threshold as not maintainable. Thus, the consideration in the present case is only confined to the question whether revision application can be said to be maintainable. In my considered view, the learned Commissioner had no occasion or benefit of the rival contentions of the parties on the basis of the relevant provisions of the Code and the decision of the Supreme Court in *Gurudassing Nawoosing Panjwani (supra).* In that view of the matter, I find that it would be appropriate that the learned Divisional Commissioner reconsiders the issue of maintainability of revision application in the light of relevant provisions of the Code and the decision of the Supreme Court in *Gurudassing Nawoosing Panjwani (supra).* If the Divisional Commissioner comes to the conclusion that the revision is maintainable, the same can be considered, on its own merits.

10. In that view of the matter, the petition is partly allowed. The impugned order is hereby set aside. The learned Divisional Commissioner shall reconsider the issue of maintainability of the revision application, afresh, in the context of relevant provisions of the Land Revenue Code and the decision of the Supreme Court in *Gurudassing Nawoosing Panjwani (supra)* and after hearing the parties. Rival contentions of the parties on the question of maintainability as well as merits are left open.

Needless to mention that in the event the learned Divisional Commissioner comes to the conclusion that the revision is maintainable, the same shall be decided, on its own merits. The parties to remain present before the Divisional Commissioner on 14 November 2022.

11. The petition is disposed of, in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.