

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12719 OF 2019

Nirmala Jaysingh Virole
Through Power of Attorney
Jaysingh Nathoba Virole

.. Petitioner

Versus

State of Maharashtra and Ors.

.. Respondents

.....

- Mr. P. B. Shah a/w. Ms. Gunjan Shah i/by. Kayval P. Shah for Petitioners.
- Mrs. Madhubala Kajle, 'B' Panel for Respondent Nos.1 to 3
- Mr. Sanjiv Sawant a/w. Mr. Abhishek Deshmukh and Mr. Digvijay Palande, for Respondent Nos.5, 6, 8 to 11.

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 13, 2022.

P.C.:

1. Heard Mr. Shah, learned Advocate appearing for Petitioner; Mrs. Kajle, learned 'B' Panel Advocate for Respondent Nos.1 to 3 – State and Mr. Sawant, learned Advocate for Respondent Nos.5, 5, 8 to 11 for some time.

2. On 22.11.2022 the following order was passed-

*"1. Heard Mr. Shah, learned Advocate for the Petitioner.
2. Perused the letter dated 01.03.2015 (Exhibit-N), Order dated 22.12.2016 (Exhibit-P) and the impugned Order dated 13.08.2019 (Exhibit-U). Perusal of the above orders clearly reveal that Deputy Director of Land Record (DDLRL) had specifically directed District Superintendent of Land Record (DSLRL) to conduct an enquiry and take a decision on the original application filed by Petitioner under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 in respect of the clerical error, inter-alia, pertaining to the mutation entry. This clearly appears in*

the subject matter and reference in the letter dated 01.03.2015.

3. The impugned order however records that application of Petitioner has been decided by the DSLR whereas the jurisdiction lies with the Deputy Director of Land Record (DDLRL).

4. Issue notice to Respondents. In addition to service of notice through Court, Petitioner shall serve a copy of the present Petition on Respondents by any permissible mode of service and file affidavit of service with tangible proof thereof before the returnable date. Learned AGP waives notice on behalf of Respondent Nos. 1 to 3. Respondents are directed to file their reply if, any before the next date.

5. It is made clear that appropriate orders shall be passed on merits considering the submissions of the Petitioner.

6. Stand over to 13th December, 2022."

3. Mr. Sawant, learned advocate appears for the private Respondents. That apart, Respondent nos.4 and 7 are not present before the Court.

4. Mr. Shah, learned Advocate appearing for Petitioners submitted that the competent authority mentioned in the order dated 07.08.2019 passed by the Respondent - State in R.T.S. Appeal under Section 257 of the Maharashtra Land Revenue Code [at page No.153 of the Petition] is the Deputy Director of Land Records, Pune. He submitted that Petitioner ought to have challenged the order dated 13.12.2016 by filing Statutory Appeal before the aforesaid authority. On that ground the Respondent-State has dismissed the Revision Application of the Petitioner by the order dated 07.08.2019 .

5. After perusing the record and the impugned order it is seen that since the Petitioner did not file the statutory appeal against

the order dated 13.12.2016, by the impugned order, Revision Application of the Petitioner has been dismissed.

6. Considering that dispute between the parties is with respect to the clerical error / mistake as raised by Petitioner, despite the Deputy Superintendent of Land Record conducting a detailed enquiry in the matter and submitting a report to that effect to the District Inspector of Land Record, Pune, the impugned order is passed. Hence, it would be appropriate and in the interest of justice if on the grounds mentioned in the Petition the Deputy Director of Land Record, Pune is directed to hear the grievance of the Petitioners and decide the same within a time bound programme. Hence, the following order:-

ORDER

- i. The impugned order dated 07.08.2019 is quashed and set aside;
- ii. Petitioner is directed to file the statutory appeal against the order dated 13.12.2016 before the Deputy Director of Land Records, Pune within a period of four weeks from today. Private Respondents, once served with the memo of appeal by Petitioner shall file their reply within a period of four weeks thereafter;
- iii. The Deputy Director of Land Records, Pune shall hear the Petitioner and Private respondents herein in

accordance with law and decide the appeal filed by the
Petitioner on its own merits;

- iv. Delay if any, attributable to the pendency of the present
Petition in this Court stands condoned;
 - v. Since private Respondents Nos.4 and 7 are not
represented before the Court today, necessary notice
shall be issued by the Appellate Authority to those
Respondents;
 - vi. The Deputy Director of Land Records, Pune is directed
to hear the parties and decide the appeal filed by the
Petitioner within a period of four months from today by
following the due process of law;
 - vii. The Deputy Director of Land Records, Pune shall not be
influenced by any observation made in the impugned
order while deciding the appeal of the Petitioner;
 - viii. All contentions of the parties are expressly kept open
including the issue of limitation, delay and locus.
7. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

RAVINDRA
MOHAN
AMBERKAR

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by RAVINDRA
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