**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH: NAGPUR**

WRIT PETITION NO. 5917 OF 2019
Ramkrushna s/o Bisan Sayyam
vs.
The Divisional Commissioner and others

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Mr. Sudhir Malode, Advocate for petitioner.
Mr. H. D. Dubey, AGP for respondent Nos.1 to 4.
Mr. U. P. Dable, Advocate for respondent No.5.

CORAM : MANISH PITALE J.
DATE : 30/03/2022

By this writ petition, the petitioner has challenged orders passed by the respondent No.2 Additional Collector and the respondent No.1 Divisional Commissioner, under the Maharashtra Land Revenue Code, 1966, whereby an order of the Sub-Divisional Officer (SDO) was set aside, pertaining to mutation entry in favour of the petitioner.

2. It was the case of the petitioner before the SDO that when respondent No.6 sought to interfere with the property in question, he was constrained to make enquiry before the revenue authorities. Pursuant to such enquiry, it was found that the name of respondent No.6 was entered in the revenue record pertaining to the property in question. According to the petitioner, the property belongs to him and that he belongs to a tribal community. In this backdrop, the petitioner filed an appeal before the SDO, claiming that the mutation entry be restored in his name. In this proceeding respondent Nos.5 and 6 were added as contesting parties, apart from the Tahsildar and Talathi. In the aforesaid appeal before the SDO, the respondent Nos.4 and 5 claimed that the mutation entry was correctly made in favour of respondent No.6, for the reason that respondent No.5 had purchased the property in a public auction conducted by the Nagpur District Central Co-operative Bank for alleged liability of loan concerning the said property. It was then contended that the respondent No.5 had sold the property to respondent No.6 and that therefore, the appeal filed by the petitioner deserved to be dismissed.

3. The SDO passed order dated 31/10/2012 recording the rival submissions. Before the SDO the petitioner contended that the documents on which the respondent Nos.5 and 6 were placing reliance were forged and fabricated as there was no such record about auction conducted by the aforesaid bank. In this backdrop, the SDO had called for the records and it was found that despite efforts, the record could not be traced. The SDO then considered the effect of the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (Act of 1974) and came to conclusion that even if an auction had to be conducted in respect of the said property, it could have been undertaken only with prior permission of the Competent Authority under the aforesaid Act of 1974. On this basis, it was found that the appeal filed by the petitioner deserved to be partly allowed. Accordingly, the appeal was partly allowed in favour of the petitioner, the mutation entry was restored in his name and the SDO directed the Tahsildar to conduct an enquiry for ascertainment of facts.

4. Aggrieved by the same, the respondent No.6 filed appeal before the Collector. The said appeal was allowed by order dated 30/08/2018 passed by the Additional Collector, Nagpur, whereby the order of the SDO was set aside and the entry came to be restored in favour of respondent No.6.

5. Aggrieved by the same, the petitioner filed a revision application before the Divisional Commissioner. The said revision application was dismissed, as the Commissioner agreed with the reasoning given by the Additional Collector.

6. The present writ petition was filed by the petitioner challenging the said orders passed by the Additional Collector and the Commissioner. On 26/08/2019, this Court issued notice to the respondents and specifically directed that the respondent No.3 Tahsildar shall produce record of the particular Revenue case on the basis of which, mutation entry was made in favour of respondent No.5.

7. On 03/09/2021, the respondent No.3 Tahsildar filed an affidavit wherein it was stated as follows: -

> *"2. The answering respondent in view of the above stated directions issued by the Hon'ble High Court submits that, search was conducted to trace out the record of the revenue case but the same could not be trace out. The record of the revenue case is not available at the office of the answering respondent. A certificate dated 24.08.2021 is issued by the Revenue Record Section of Tahsil Office, Nagpur (Rural) to that effect. The same is annexed herewith and marked as Annexure R-3-1.*
>
> *Hence this reply."*

8. A perusal of the above quoted portion of the reply affidavit on behalf of the respondent No.3

Tahsildar shows that the record of the said revenue case could not be traced. It is in this backdrop that the learned counsel for the parties were heard.

9. Mr.Malode, learned counsel appearing for the petitioner submitted that both the Additional Collector and the Commissioner erred in interfering with the well reasoned order passed by the SDO. It was submitted that the SDO, not only restored the mutation entry in favour of the petitioner, but directed an enquiry by remanding the matter to the Tahsildar, which was justified in the facts and circumstances of the present case, particularly when the record of the aforesaid revenue case has not been traced even till today. It was submitted that this was a serious matter, which the Additional Collector as well as the Commissioner failed to appreciate.

10. Mr.Dubey, learned AGP appearing on behalf of the revenue authorities submitted that the respondent No.3 Tahsildar had already filed the aforesaid reply-affidavit in the context of the direction given by this Court to produce record of the said revenue case.

11. Mr.Dable, learned counsel appearing for respondent No.6 submitted that if some time was granted, he would make an effort to produce relevant documents to demonstrate that he was a bonafide purchaser from respondent No.5 and in the facts and circumstances of the present case the impugned orders did not deserve interference.

12. This Court has considered the contentions of the rival parties, in the backdrop of the material available on record. It is evident from the order dated 31/10/2012, passed by the SDO that the non-availability of the record with the Tahsildar was noticed even in the said order. The entire theory about the respondent No.5 having purchased the property in question in a public auction held by the aforesaid bank could have been verified on the basis of record of the aforesaid revenue case.

13. The respondent No.6 is claiming title on the basis of alleged Sale Deed executed by the respondent No.5 and nothing beyond that. In the absence of the relevant record, the SDO was justified in considering the rival contentions on the basis of the material available on record and reaching specific findings. It was on the basis of material available on record that the SDO found that the mutation entry deserved to be restored in favour of the petitioner, being conscious of the fact that the entire record pertaining to the revenue case was not brought before him. The SDO correctly gave the further direction of remanding the matter to the Tahsildar to ascertain the facts involved in the matter, in accordance with provisions of the Act of 1974.

14. As opposed to this, a perusal of the order of the Additional Collector shows that the well reasoned order of the SDO was set aside, without reference to the failure of the Tahsildar to produce the record of the relevant revenue case. The two grounds on which the order of the SDO was set aside were, firstly, that a proceeding initiated before the Naib Tahsildar on behalf of the petitioner in respect of the mutation entry was rejected by an order dated 22/12/2008, which had allegedly attained finality and secondly, that the entry dated 25/03/2013, pursuant to the order of the SDO dated 31/10/2012, was taken in a manner that violated principles of natural justice.

15. This Court is surprised at the reasoning adopted by the Additional Collector, because both the aforesaid reasons are found to be wholly unsustainable in the facts and circumstances of the present case. As to the first ground pertaining to alleged finality attained by the order of the Naib Tahsildar, the Additional Collector was completely oblivious of the fact that the petitioner was constrained to file the aforesaid appeal before the SDO pertaining to the very mutation entry and that the appeal stood allowed by the order dated 31/10/2012. There was no question of the order of the Naib Tahsildar having attained finality. The second ground pertaining to violation of principles of natural justice is also unsustainable. It is an admitted position that the entry dated 25/03/2013 was made pursuant to the order dated 31/10/2012 passed by the SDO. It is an admitted position that respondent Nos.5 and 6 were parties in the appeal before the SDO and that they contested the proceedings and it is thereafter, that the appeal filed by the petitioner stood partly allowed by the order dated 31/10/2012. The entry made pursuant thereto on 25/03/2013 was only a consequential action and there was no question of violation of any principles of natural justice when such entry was made. Therefore, both the reasons recorded by the Additional Collector are found to be unsustainable.

16. The Commissioner passed the impugned order dismissing the revision application of the petitioner, by merely adopting the reasoning given by the Collector, thereby showing non-application of mind.

17. In view of the above, this Court finds that both the impugned orders are unsustainable and they deserve to be set aside. The order passed by the SDO dated 31/10/2012, partly allowing the appeal of the petitioner was justified in the facts and circumstances of the present case, particularly because the matter was further remanded to the Tahsildar to inquire into the facts of the matter, in the backdrop of the failure to produce records pertaining to the revenue case of the year 1991-92.

18. Accordingly, the writ petition is allowed. The impugned orders passed by the Additional Collector and the Commissioner are quashed and set aside and the order dated 31/10/2012, passed by the SDO is restored.

19. The enquiry contemplated under the said order pursuant to remand to the Tahsildar is expedited and it is expected that the said enquiry into the facts of the matter shall be completed at the earliest.

JUDGE