

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

WRIT PETITION NO. 6098 OF 2021

Balkrishna Somnath Lahoti .. Petitioner
Age. 68 years, Occ. Agri. & Business,
R/o. 421, Subhash Chowk,
Nandurbar.

Versus

1. The Tahsildar, Nandurbar .. Respondents
Dist. Nandurbar.

2. Ramdas Vedu Marathe
Age. 48 years, Occ. Service,

3. Dilip Vedu Marathe
Age. 45 years, Occ. Agriculture,

Both R/o. In front of Siddhivinayak
Mandir, Desaipura, Nandurbar.

Mr. Ram B. Deshpande, Advocate for the petitioner.
Mrs.D.S. Jape, AGP for respondent No.1/State.
Mr. S.M. Kulkarni, Advocate for respondent Nos. 2 and 3.

CORAM : KISHORE C. SANT, J.
DATED : 25.07.2023

PC :-

01. Heard learned Advocates for the parties. The petition is taken up
for final disposal by consent of the parties.

02. The petitioner has assailed an order passed by the learned Additional Commissioner (Rehabilitation), Nashik Division, Nashik rejecting revision application bearing No. RTS/Revision/131/2019 vide judgment and order dated 28.02.2021. By the impugned order, the learned Additional Commissioner has rejected the revision filed by the petitioner and confirmed the order passed by the learned Additional Collector, Nandurbar dated 19.12.2018, rejecting his appeal No. 201/Tenancy/F/Kaksh-7/Kavi-54/2017 confirming the order passed by the learned Sub-Divisional Officer, Nandurbar, cancelling mutation entry No. 41097, taken in favour of respondent Nos. 2 and 3.

03. The facts in short are that the petitioner claimed to have acquired rights on the basis of will executed by one Balkrushna Dattatray Kulkarni dated 28.01.2016. On that basis mutation entry was taken. It is case of the petitioner that the mutation entry was never challenged by the respondents by filing any appeal to the higher authority. However, one Vikrant More claiming to be a Social Worker associated with a political party wrote a letter to the Tahsildar in respect of the mutation entry and also in respect of the

proceedings under section 32 and 32(O) of the Bombay Tenancy and Agricultural Lands Act filed by the present respondents. It is alleged that on the basis of this letter, the Additional Collector, Nandurbar wrote a letter to the Tahsildar and called for a report. The Tahsildar pursuant to the letter from the Sub-Divisional Officer, submitted a report on 29.08.2017. It is submitted that the respondent's father was a tenant in the land. The right claimed on the basis of will is not legal. He reported that the mutation entry No. 41097 deserves to be cancelled. It is on the basis of that the Additional Collector issued notices to the parties.

04. After hearing the parties RTS No. 60/2017 came to be decided by holding that deceased Dattatray had no authority to execute the will in favour of present petitioner concluding that the entry taken in the name of the petitioner deserves to be cancelled. It further transpires from the order that during the lifetime of Dattatray, he had executed a sale-deed in favour of the petitioner on 15.01.2010 for an amount of Rs.4 lakhs. It is recited in the said will that since name of respondents appear in the tenancy column in 7/12 extract, no sale deed could be executed and it is for this reason the sale-deed could not be executed. By mentioning this, the will was executed. The

authority further held that the mutation entry taken on the basis of said will is not proper. There was already an application made by the respondents for declaring them as tenant. The proceedings under section 32-M of the Tenancy Act was filed and was rejected. Though 32-M application was rejected on the ground that the property falls within the Municipal limits of Nandurbar and therefore the Tenancy Act is not applicable, however, it is observed that it was necessary to see as to when tenancy was created, whether the land was within municipal limits. The learned Sub-Divisional Officer thus cancelled the Mutation Entry and directed to initiate fresh inquiry in respect of 32-M proceedings under the Tenancy Act and to take decision.

05. Both the authorities i.e. Additional Collector and the Additional Commissioner confirmed findings and dismissed the appeal and revision filed by the petitioner respectively.

06. The submission of the petitioner is that it was necessary for the respondents to challenge the mutation entry by filing appeal. The authorities have travelled beyond jurisdiction by entertaining the communication sent by a person i.e. Vikrant More, who is totally unconnected with the subject matter.

He had no *locus standi* to question the mutation entry and also to question proceedings under section 32-M. He submits that even the legal heirs of the deceased Dattatray were not given notice prior to taking a decision. It is prayed for quashing and setting aside the impugned judgment and thereby to restore the interim relief in the name of the petitioner.

07. The learned Advocate Mr. S.M. Kulkarni for the respondents vehemently opposes the petition. He submits that since prior to 1950 there are entries in the name of Vedu Kautik Marathe, whose name is shown in the other rights column as a tenant. These entries are continuously appearing in the revenue record and till now there is no challenge to these entries. The authorities have rightly exercised their jurisdiction vested in them and no fault can be found with the judgment. He further points out that there were also proceedings filed by late Dattatray seeking eviction of deceased Vedu from the land. This clearly shows that Vedu was in settled possession of the land in the capacity of a tenant. There was also a tenancy case No.8 of 1987 filed before the Tahsildar under section 43-D of the Tenancy Act. Same was dismissed. He submits that the nomenclature of the application or the proceedings does not vitiate the proceeding. He submits that the dispute is about revenue

entries and revenue authorities have jurisdiction to decide the proceedings in respect of revenue entries. He further submits that the respondents have even filed regular civil suit in the Court of learned Civil Judge, Senior Division bearing RCS No.18 of 2007. The learned Judge has allowed Exh.5 application and has granted injunction in favour of the respondents directing the petitioner not to disturb peaceful possession over the property. Said suit is still pending. He thus submits that the petition deserves to be dismissed.

08. The learned AGP submits that both the authorities have rightly considered the record and have concurrently arrived at the conclusion that in view of the pendency of the civil suits, all the orders will naturally be subject to outcome of the civil proceedings.

09. The learned Advocate for the petitioner Mr.Deshpande submits in rejoinder that the learned Sub-Divisional Officer has considered the matter under section 256, when in-fact, no jurisdiction is vested in the Sub-Divisional Officer under section 257. He further submits that the authorities have directed to re-open the issue of 32-M proceedings. The respondent was expected to file proper proceedings under the MLR Code or under the Tenancy

Act.

10. Having considered the submissions, this Court finds that the question was necessarily related to the entries in the revenue record. The Tahsildar and Sub-Divisional Officer certainly have power to decide the matter. While considering the matter, the learned Sub-Divisional Officer has rightly considered the rival claims of the parties. Though it is tried to be submitted that the Sub-Divisional Officer has taken cognizance of the letter sent by third person, however, it is seen that the action was taken only on the report by the Tahsildar. All the orders are based upon the record. The petitioner could not point out any error in the findings on the basis of record. The only grievance is that no proper appeal/representation was filed. This Court finds substance in the submission of learned Advocate Mr. Kulkarni that what needs to be seen is as to whether the Authorities have power to exercise jurisdiction. In this case, the petitioner could not show that the Authority had no jurisdiction to decide the matter except stating that the jurisdiction is exercised without proper appeal/representation. This Court does not find substance in that submission. His further submission is that the question was only related to mutation entry and there was no occasion to direct to re-open

issue of 32-M proceeding. This Court finds that even otherwise the respondents can very well seek recourse to the provisions the Tenancy Act.

11. So far as reply of the respondents is concerned, it is clear from the record that the right from 1941 to 1950, father of the respondents is shown as tenant in the property. This fact is not disputed by the petitioner. From the other material it is also seen that time and again deceased Vedu was trying to pay rent of the land. However, said rent was not accepted by the land lord. The deceased Vedu therefore had deposited the rent amount before the Authorities. Deceased Dattatray had even filed application for eviction of the tenant. Further orders passed in the civil suit shows that the respondents are in settled possession. Under such circumstances, it is clearly seen that it was only to give go bye to executing sale-deed, since it was not possible, in view of the fact that the respondents are tenant in the property a will was executed.

12. The learned Advocate for the petitioner sought to rely upon judgment in the case of Laxman R. Vajage Vs. Collector of Bombay and Others reported in 2005(1) Mh.L.J.487. This Court has held that when order is passed without jurisdiction, said is nullity and can be challenged in the writ

petition without exhausting alternative remedy. This Court finds that there is no dispute about this proposition. In this case the Authorities are having jurisdiction. Only objection is that they have exercised said jurisdiction without it being properly invoked. So, that cannot be said to be a ground to cause interference in the limited jurisdiction available to this Court under Article 227 of the Constitution of India. This Court finds that the findings of the authorities are concurrent. No case is made out to call for interference. The writ petition stands dismissed with no order as to costs. The observations made in this order are only for the purpose of deciding the writ petition and the authorities shall not be influenced by any of the observation made in this order.

[KISHORE C. SANT, J.]