

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

**WRIT PETITION NO. 7512 OF 2022**

Suresh s/o. Trimbak Divate,  
Age. 53 years, Occ. Agriculture,  
R/o. Jafrabad, Tal. Jafrabad,  
Dist. Jalna.

.. Petitioner

Versus

1. The State of Maharashtra,  
Through its Principal Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai.

.. Respondents

2. The Additional Divisional Commissioner,  
Aurangabad Division,  
Aurangabad, Dist. Aurangabad.

3. The Additional Collector,  
Jalna, Dist. Jalna.

4. The Sub-Divisional Officer,  
Sub-Division Bhokardan,  
Dist. Jalna.

5. The Tahesildar, Jafrabad,  
Tal. Jafrabad, Dist. Jalna.

6. The Talathi, Jafrabad,  
Tal. Jafrabad, Dist. Jalna.

7. Narayan s/o. Sambhaji Hiwale,  
Age. 63 years, Occ. Nil,  
R/o. Jafrabad, Tal. Jafrabad,  
Dist. Jalna.

Mr.Anant R. Devakate, Advocate for the petitioner.  
Mr.K.B. Jadhavar, AGP for the respondent/State.  
Mr.B.G. Lathe, Advocate for respondent No.7.

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| <b>CORAM</b>         | <b>:</b> | <b>KISHORE C. SANT, J.</b> |
| <b>RESERVED ON</b>   | <b>:</b> | <b>25.07.2023</b>          |
| <b>PRONOUNCED ON</b> | <b>:</b> | <b>05.10.2023</b>          |

**PC :-**

01. The petitioner is a purchaser of some portion of land from Gat No. 52 situated at village Jafrabad, who purchased different portions of the said land from different persons. Respondent No. 7 is a person claiming interest in said land to the extent of 25 R land. Other respondents are the authorities of the Government, having power under the Maharashtra Land Revenue Code, 1966 [for short “the MLR Code”]. The petitioner has challenged a judgment and order dated 20.05.2022 passed by the Hon’ble Minister for the State (Revenue), Government of Maharashtra, quashing and setting aside the judgment and order passed by the Additional Divisional Commissioner, Aurangabad, directing to take entry in the name of respondent No.7 to the extent of 25 R land and directing to cancel the NA permission granted in favour of the petitioner by the Tahsildar, Jafrabad.

02. The facts in short are that as stated the petitioner purchased various lands from the Forest Department in land Gat No.52, including some portion from one Sambhaji Laxman Hiwale by way of sale-deed dated 11.11.2004. The mutation entries were taken on the basis of sale-deed. The petitioner, thereafter, has sold the same land purchased by him to different persons. Respondent No.7 is son of Sambhaji Hiwale from whom the land was purchased. Respondent No.7 disputed the mutation entry recorded for land Gat No.52 and prayed that the entries be taken on some portion of the land in the name of his father by moving an application before respondent No.5 – Tahsildar stating that the portion admeasuring 42.5 R ought to have been remained in the name of his father. It is his case that some portion out of 42.5 R land is acquired for Jafrabad – Repala road. However, still he is in possession of 24.5 R land. Respondent No.5 called report from respondent No.6 and conducted an inquiry. On the basis of report by respondent No.6, respondent No.5 passed an order and directed to record name of respondent No.7 on the land to the extent of 25 R land and further directed to carry out measurement of the land by the concerned department. On the basis of order passed by respondent No.5, respondent No.6 recorded mutation entry No. 3223 on 04.05.2012.

03. Petitioner challenged the order passed by the Tahsildar by filing an appeal before respondent No.4- Sub-Divisional Officer. Respondent No.4 rejected the appeal and remanded the matter for fresh decision. Against the order of remand, respondent No.7 moved an appeal before respondent No.3- Additional Collector, Jalna. Respondent No.3 also directed to remand the matter to respondent No.4 for fresh decision with direction to hear the concerned persons having share in land Gat No.52 and to conduct inquiry about the remaining area.

04. On remand, respondent No.4 conducted an inquiry and dismissed the appeal by confirming the order passed by respondent No.5 dated 10.02.2012. This order came to be challenged by the petitioner in appeal before respondent no.3. The appeal came to be allowed and the order of the learned Sub-Divisional Officer came to be set aside. Respondent No.7 challenged the order passed by the Additional Collector before respondent No.2 – Additional Divisional Commissioner, by filing revision. Respondent No.2 dismissed the revision filed by respondent No.7. It is this order, which came to be set aside by the Hon'ble Minister by order dated 20.05.2022 with

directions as stated above.

05. In the meantime, respondent No.7 filed RCS No.8 of 2013 in the Court of learned CJJD, Jafrabad seeking directions to carry out measurement of the land and for injunction to the extent of his holding of 25 R land. It is reported that the suit is still pending. The rights are thus subject to outcome of civil proceeding. The written statement is filed, wherein the defences are raised of non-joinder of necessary party etc. The land of respondent No.7 is already acquired for various purposes. When the suit is pending, there is no need to file revenue proceeding. The Hon'ble Minister has not considered all these facts properly and has passed the order. The direction to take entry in the name of respondent No.7 is thus illegal, as per submission of the petitioner.

06. It is case of respondent No.7 that deceased Sambhaji Laxman Hiwale was having total 38 R land. There is no *locus standi* to the petitioner to claim right over the land in possession of the respondent. The learned Advocate Mr. Lathe for respondent No.7 submits that the learned Tahsildar has rightly passed order dated 10.02.2012. His application was only for

correction of the entry. The direction was sought for measurement, as TILR has refused to measure the land. In the suit already order is passed under the section 26 for appointment of Court Commissioner. He accepted that the petitioner has sold lands to various persons. However, respondent No.7 claims to be in possession of 25 R land. It is submitted that in-fact the petitioner had sold different portions to different persons and as on today he is not having any land in Gat No.52.

07. In view of this, this Court has to consider the submissions of the parties. From the judgment and order of the Additional Commissioner, Jalna dated 12.02.2016, it is seen that the petitioner was having only 27 R land. When this was the position, he obtained order of NA to the extent of 35 R land without getting land properly measured through the Land Records Department. He has also not paid charges of measurement. After remand, the Sub-Divisional Officer came to a conclusion that the petitioner had purchased only 27 R land and therefore Mutation Entry No.1151 was taken only in respect of 27 R land and maintained the order passed by the Tahsildar. In the appeal by the petitioner, the learned Additional Collector confirmed the findings recorded by the Sub-Divisional Officer. However, allowed the appeal

by observing that the learned Sub-Divisional Officer has not followed the direction while remanding the matter.

08. In the revision by respondent No.7, the learned Additional Divisional Commissioner has confirmed the order passed by the Sub-Divisional Officer and rejected the revision application. It is for this reason, respondent No.7 approached the Hon'ble Minister. The Hon'ble Minister observed that father of respondent had sold land to the extent of 34.50 R in favour of the petitioner. The petitioner sold the land to various other persons. Thus, total land of 73.50 R land is sold by the petitioner. The remaining land 42.50 R was still in possession of father of the respondent. The entry of this land wrongly came to be bracketed by the Talathi. The Hon'ble Minister relied upon report of the inquiry by the Tahsildar dated 20.08.2020. It is specifically observed that the Additional Divisional Commissioner has not considered this material aspect of the report and therefore has passed the impugned order.

09. This Court finds that the Tahsildar, Jafrabad had conducted inquiry on receiving report by the Talathi and thereafter had passed the order. This Court finds that in the petition, there is no case made out to show that

the said report was not correct, when on the inquiry by the Tahsildar on the basis of report received, contrary conclusion was recorded. It was required to consider other material, if produced by the authorities. This Court finds that no ground is made out to show as to how the impugned order is incorrect.

10. As of now a dispute is also pending before the Civil Court. The respondent has filed on record the panchanama prepared by the Court Commissioner in the civil suit. Thus, the matter is subjudice before Civil Court. The Civil Court had passed order dated 23.09.2014 directing appointment of TILR as Court Commissioner for carrying out measurement of land Gat No.52 and to specify the area actually in possession of the plaintiff and to submit map along with measurement. This Court has also gone through the report prepared by the Talathi, which is placed on record by the respondent. The said report shows that respondent No.7 is in possession of 25-30 R land.

11. Though the petitioner has raised various grounds, some basic aspects needs to be seen are that as to whether really there is record that respondent No.7 is in possession. For that purpose report of Talathi dated

11.12.2012 is material. Unless anything is shown contrary to this report, this Court is of the opinion that no interference is warranted while exercising jurisdiction under Article 227 of the Constitution of India.

12. Thus, considering all above, this Court finds that no case is made out to allow the petition. It is clarified that the rights of the parties would be subject to outcome of RCS No.8 of 2013 pending before the Civil Court. The petition is, thus, devoid of merits and same is hereby dismissed.

**[KISHORE C. SANT, J.]**