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

29 WRIT PETITION NO.9840 OF 2018

Jagannath Ashru Supekar, ...**PETITIONER**

VERSUS

1. The State of Maharashtra, ...**RESPONDENTS**
Through Minister for State
Revenue and Forest, Mantralaya,
Mumbai

2. The Divisional Commissioner,
Nashik Division, Nashik

3. The Collector, Ahmednagar
Dist. Ahmednagar

4. The Sub-Divisional Officer,
Pathardi Division, Tq. Pathardi,
Dist. Ahmednagar

5. The Tahasildar,
Pathardi, Tq. Pathardi,
Dist. Ahmednagar

6. Eknath Ashru Supekar,

7. Padmabai W/o. Ashru Supekar

8. Mukta Ramdas Mache

Mr. S. H. Tripathi, Advocate for the petitioner
Mr. D. R. Jayabhar, Advocate for the respondent No.6
Mr. A. K. Gawali, Advocate for respondent Nos. 7 and 8
Mr. K. N. Lokhande, AGP for the respondents/State

AND
29 WRIT PETITION NO.9844 OF 2018

1. Padmabai Ashru Supekar, ...**PETITIONERS**

2. Mukta Ramdas Mache,

VERSUS

1. The State of Maharashtra, ...**RESPONDENTS**
Through Minister for State
Revenue and Forest, Mantralaya,
Mumbai

2. The Divisional Commissioner,
Nashik Division, Nashik

3. The Collector, Ahmednagar
Dist. Ahmednagar

4. The Sub-Divisional Officer,
Pathardi Division, Tq. Pathardi,
Dist. Ahmednagar

5. The Tahasildar,
Pathardi, Tq. Pathardi,
Dist. Ahmednagar

6. Eknath Ashru Supekar,

7. Jagannath Ashru Supekar,

Mr. A. K. Gawali, Advocate for petitioners
Mr. S. H. Tripathi, Advocate for the respondent No.7
Mr. D. R. Jayabhar, Advocate for the respondent No.6
Mr. K. N. Lokhande, AGP for the respondents/State

CORAM : KISHORE C. SANT, J.
DATE : 06th JULY, 2023

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1. Heard the parties.

2. Petitioner No.1 in writ petition No.9844/2018 is the wife of deceased Ashru Supekar. The petitioner No.2 happens to be his daughter. Respondent Nos.6 and 7 happens to be son of petitioner No.1 and deceased Ashru Supekar. Respondent No.7 in wp/9844/2018 is the petitioner in wp/9840/2018. Since in both the petitions order under challnege is the same, both are taken up together. The Parties are referred as per their status in wp/9844/2018.

3. The facts in short are that; Ashru Supekar husband of petitioner No.1 and father of petitioner No.2, and respondent Nos. 6 and 7 died on 19-06-1987. Thereafter names of respondent Nos. 6 and 7 were mutated in the revenue record in the ownership column. However, names of petitioners were only

shown in other rights column. Further case is that respondent No.6 approached respondent No.7 and obtained his signature and got executed partition deed under Section 85 of the MLR, Code. It is the allegations that on the basis of such partition deed, revenue authorities have taken entries without issuing notice to petitioners and respondent No. 7 under Section 85 and mutation entry was taken vide mutation entry No.2679 dated 07-07-2012. The petitioners, therefore, raised objection. The petitioners, therefore, challenged both the orders before the Sub-Divisional Officer i.e. one effecting partition and second taking mutation entries by filing RTS. However, said came to be rejected and therefore, the petitioners filed two revisions before the Additional Collector, Ahmednagar. The learned Additional Collector allowed both the revisions holding that entries taken are without following proper procedure and without issuing notice. Respondent No.6, therefore, filed two revisions bearing RTS No. 329/2016 and 330/2016. The learned Revisional Commissioner, Nashik rejected both the revisions and confirmed the orders passed by the learned Additional Collector, Ahmednagar. Respondent No. 6 challenged both the judgments and orders by filing only one revision before the Hon'ble Minister. The Hon'ble Minister in RTS No. 3317/378/2017 allowed the revisions making it clear that order would be subject to out come of the civil proceeding. The said order is challenged by this petitioners by filing present petition No.9844/2018. Both the petitions are taken up together.

4. It is the submission of the learned Advocate Mr. Gawali in writ petition No.9844/2018 that it was necessary for revenue authorities to give notice before taking mutation entries and before effecting partition under Section 85. There is violation of Rule 3 and 10 of the Maharashtra Land Revenue (Partition of holding) Rules, 1967. He also placed reliance upon the judgment reported in 2010 (2) ALLMR 256 in the case of Somnath Punja Bargal and Another Vs The Hon'ble Minister, Revenue Department, Maharashtra State, Mantralaya & others wherein this court has considered the Rule 3 of the above rules and held that said rule is mandatory and had allowed the

petition by quashing the notice issued under Section 85 by the Tahasildar in that case and order passed by the Hon'ble Minister was set aside. In that case, the matter was remanded to the authorities. Learned advocate further submits that while setting aside the well reasoned order passed by the learned Additional Divisional Commissioner, the Hon'ble Minster has not assigned any proper reason.

5. Mr. Tripathi, learned advocate in writ petition No. 9840/2018 adopts the arguments of Mr. Gawali, learned advocate. In addition, he raised point that the Hon'ble Minister has entertained one revision against two impugned orders which is not permissible. He submits that signatures were obtained by misleading him that those are required for mutation entries. He was kept in dark about the documents on which signatures were obtained.

6. Mr. Jaybhar, learned advocate for respondent No. 6 in wp/9840/2018 submits that respondent No.7 at no point of

time filed any proceeding when he has come with the case of misleading. He also submits that stamp papers were also purchased by respondent No.7. On the consent deed his signatures and photographs also appear. This clearly shows that he was aware about the application filed before the authorities and prays for rejection of the petition.

7. During the course of hearing it is also brought to notice of this court that civil suit is already pending between the parties in the court of learned CJJD, Pathardi bearing RCS No. 506/2014. When the parties are litigating before the civil court and since the Hon'ble Minister has also made it clear that the order is subject to out come of the civil proceeding, this court finds that all the orders passed by the Hon'ble Minister would be subject to out come of the civil proceeding as stated above. Only anxiety of the petitioners is that on the basis of revenue entries respondent No.6 is likely to create third party interest in the suit property. Parties are still free to move the civil court by way of proper application. A care can be taken by directing respondent

No.6 not to create third party interest, till such suit is decided by the civil court. It is expected from the learned CJJD, Pathardi to expedite the civil suit looking to the fact that suit is pending since 2014. Needless to say that civil court shall not be influenced by any of the orders passed by the authorities.

8. With this, both the writ petitions stand disposed off.

[KISHORE C. SANT, J.]

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