

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11115 OF 2015

Bhimrao s/o Tulshiram Salve,
Age 48 years, Occu. Business & Agri.,
R/o : 'Rajan-Niwas', Shrikrishna Nagar,
Gangakhed, Tq. Gangakhed, Dist.
Parbhani.
(Died) Through Legal Representatives.

- 1-A. Smt. Manisha w/o Bhimrao Salve,
Age 43 years, occu. Household,
R/o 'Rajan-Niwas', Shrikrishna Nagar,
Gangakhed, Tq. Gangakhed, Dist.
Parbhani.
- 1-B. Rajan s/o Bhimrao Salve,
Age 18 years, Occu. Education,
R/o As above.
- 1-C. Ku. Vaishnavi d/o Bhimrao Salve,
Age 12 years, Occu. Education,
R/o As above.

...Petitioners

VERSUS

1. The State of Maharashtra,
Through Honourable Minister for
the Department of Revenue,
Mantralaya, Fort, Mumbai -32.
2. The Divisional Commissioner,
Aurangabad Division,
Aurangabad.
3. The Collector, Parbhani.
4. The Sub-Divisional Officer/

Deputy Collector, Gangakhed,
Tq. Gangakhed Dist. Parbhani.

5. The Tahsildar, Gangakhed,
Tq. Gangakhed Dist. Parbhani.
6. Mr. Rajkumar s/o Trimbakrao Sawant,
Age 36 years, Occu. Agriculture,
R/o Gangakhed, Tq. Gangakhed
Dist. Parbhani.
7. Smt. Shobhabai w/o Trimbakrao Sawant,
Age 56 years, Occu. Agriculture,
R/o Gangakhed, Tq. Gangakhed
Dist. Parbhani.

...Respondents.

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Advocate for Petitioners : Mr. A. A. Mukhedkar

Advocate for Respondent Nos.1 to 5-State : Mr. K. B. Jadhavar

Advocate for Respondent Nos.6 : Mr. P. R. Katneshwarkar i/b
Mr. P. D. Bachate

Advocate for Respondent No.7 : Mr. V. D. Hon Senior Counsel i/b
Mr. D. S. Bagul

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WITH
REVIEW APPLICATION NO.61 OF 2022
IN WP/11115/2015

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CORAM : ARUN R. PEDNEKER, J.

**Date of Reserving The Judgment :
21/02/2023.**

**Date of Pronouncing the Judgment:
05/06/2023.**

JUDGMENT :

1. The petitioners are challenging the impugned order dated 14/08/2015 passed in Appeal No.2015/Case No.1/J-7, by the Minister for Department of Revenue, Maharashtra State, whereby the Hon'ble Minister has allowed the appeal and regularized the sale deeds in favour of the respondent Nos.6 and 7, in terms of the Government policy.

2. Brief facts leading to the filing of the present petition are summarized as under :

The State of Maharashtra allotted 10 A and 10 R land in favour of one Mr. Tulshiram s/o Mukunda Salve and 10 A 10 R land in favour of Mr. Bhivraji s/o Maruti Awchar from land bearing Survey No.254 situated at Gangakhed, District Parbhani. The lands were allotted to them in the year 1966 as they belong to a special category persons. The State Government had initiated a scheme for landless persons belonging to a backward class community for allotment of agricultural land with condition that the allottee would not transfer or alienate the allotted land without permission of the concerned revenue department. The petitioners are the legal heirs of Tulshiram Salve. In the instant case, Bhivraji Awchar executed sale deeds in favour of respondent No.6 Rajkumar s/o Trimbakrao

Sawant and respondent No.7 Shobhabai w/o Trimbakrao Sawant of 8 Acres land on 13/04/1992 without permission of the State. In the instant case we are concerned with the above sale deeds by the original allottee/owner Bhivraji Awchar executed in favour of respondent Nos.6 and 7.

3. It is the case of the petitioner that out of 10 Acres 10 Gunthas land allotted to them, land admeasuring 6 Acres 32 Gunthas came to be sold by the petitioner and his brother with the prior permission of the Divisional Commissioner, Aurangabad. As such, the petitioner and his brothers remain owners and possessors of remaining 3 A 18 G land in Survey No.254. After passage of time, the land Survey No.254 came to be divided into two parts i.e. Survey No.254/1 and 254/2.

4. It is the contention of the petitioner that the land owned by the petitioner and his brothers is in Survey no.254/1. After the demise of Bhivraji, names of his sons namely Ashok, Kishor and Maruti were recorded as owner and possessors of land bearing Survey No.254 admeasuring 10 A 10 G. It is the contention of the petitioners that both the allotted lands are adjacent to each another.

5. It is the case of the petitioners that Bhivraji Awchar, while he was alive, in the year 1992, illegally sold part of the land allotted to him admeasuring 8 Acres without obtaining prior permission to do so from the Divisional Commissioner at Aurangabad. The said land was sold to Cooperative Society namely Shahu Chhatrapati Sahakari Magasvargiya Mahila Kukkut Palan Sanstha. Three different registered sale deeds were executed by late Bhivraji Awchar in favour of the said society.

6. It appears that the society in whose favour the land was transferred did not receive any financial aid from the State. As such, the society could not proceed further for the purpose it was founded, and it seems that entire amount of sale transaction was given by the Chairman and also the expenses were incurred by the Chairman for purchase of the land from his own pocket. Thus by on judicial order of Civil Court, (Compromise decree) the transfer was directed to be recorded in favour of the Chairman. On 25/06/1996 Bhivraji Awchar expired due to cancer.

7. After the decree of compromise the respondent Nos.6 and 7 along with legal heirs of Bhivraji Awchar sought regularisation of the transfer of the property sold in the above sale deeds, in view of the

Government policy reflected in Government Resolution dated 08/09/1983, permitting post sanction on payment of fees.

8. It appears that the Collector had forwarded the proposal of regularisation of sale to the Commissioner and the Commissioner had not decided the same up till the year 2010.

9. The respondent Nos.6 and 7 again moved another application before the State under Section 257 of the Maharashtra Land Revenue Code for regularisation of the above sale transaction. On 01/06/2011, the Minister for Revenue and Forest allowed the application for regularisation of the sale transaction by applying the Government Resolution dated 08/09/1983.

10. The petitioner challenged the regularisation of the sale deeds before this Court. This Court by Judgment and order dated 22/03/2012 in Writ Petition No.4733 of 2011 was pleased to quash and set aside the order dated 01/06/2011 of the Minister granting regularisation. However, this Court also granted liberty to reapply for regularisation, if the law permits.

11. In a fresh application by respondent Nos.6 and 7 for regularisation of the sale deeds, the respondent No.2 rejected the

application for regularisation on 12/09/2014. The order of respondent No.2 was challenged before the Hon'ble Minister under Section 257 of the Maharashtra Land Revenue Code. During the pendency of the proceedings before the authorities, this Court had protected the possession of the transferred lands in favour of the respondent Nos.6 and 7.

12. On 07/04/2015 the Hon'ble Minister by interim order directed to measure the land in Survey No.254 in order to ascertain whether the land transferred was available with the original owner at the time of the execution of the sale deed. The land was accordingly measured and a panchanama was prepared. On 14/08/2015 the Minister regularized the sale deeds by passing the impugned order which is challenged in the present petition.

CONTENTIONS OF PETITIONERS :

13. By the present petition, the petitioner is challenging the order passed by the Hon'ble Revenue Minister. The contentions of the learned Counsel of the petitioner Mr. Mukhedkar is, that the regularisation of the sale deed was rejected on merits by this Court in the earlier round of litigation and the liberty given for approaching

the authorities was only if the law permits.

14. The learned Advocate for the petitioner submits that once the sale deeds are adjudicated on merits, that the sale deeds cannot be regularised, it was not available for the authorities to grant regularisation of the sale deeds.

15. It is the contention of the petitioner that both the lands of the petitioner and the respondents are adjoining and Bhivraji Awchar has sold his entire land and in excess of what is allotted to him. On the basis of the sale deeds the land of 3 A 18 G in possession of the petitioner is claimed by the respondent Nos.6 and 7. On the basis of the sale deeds respondent Nos.6 and 7 are asserting title on the part land allotted to the petitioner to the extent of 3 A 20 G.

CONTENTION OF RESPONDENT NOS.6 AND 7 :

16. Per contra, the learned Senior Counsel appearing on behalf of respondent Nos.6 and 7 Mr. V. D. Hon and Mr. P. R. Katneshwarkar submits that the petitioner is nowhere concerned with the lands sold by Bhivraji Awchar. Their lands are distinct and different. The earlier order of the Minister granting regularisation of sale deeds was not set aside on merits but for technical reasons that the Minister had

not ascertained that there was actually land available for sale in the hands of the original owner, so also the revenue collected was less than what is quantified under the Government Resolution, and as such, there was loss to the State. However, the Hon'ble Single Judge while dismissing the Writ Petition had also granted liberty to approach the authorities for regularisation of sale deeds if the law permits.

17. The learned Counsel submits that since the Judgment of the Single Judge does not hold that there cannot be a regularisation of the sale deeds, and the order of the Minister were set aside merely for the compliance of procedural aspects, the second application for regularisation is maintainable and the High Court had granted liberty to the fresh application for regularising of sale deeds. The same was also further clarified in the review order. The learned Counsel for the respondent Nos.6 and 7 further submits that while dismissing the Letters Patent Appeal also the observations are made by the Division Bench that the respondents are permitted to approach the authorities.

18. The learned Advocate for the respondent Nos.6 and 7 further submits that the Minister had called for a survey report through

appropriate authority and ascertained that the land in question was actually available with the original owner for the purpose of sale.

19. The Minister while passing the order dated 01/06/2011 has also directed to recover the Nazrana as contemplated in the Government Resolutions.

20. The learned Advocate for the respondent Nos.6 and 7 further submits that Rs.14 lakh has already been deposited with the Government as Nazrana for a long period of time and the respondent Nos.6 and 7 are in possession of the land. The respondent Nos.6 and 7 further submits that the contention of the petitioners that respondents are ascertaining their right over 3 A 18 R land belonging to the petitioners, is erroneous as there is a specific finding recorded by the Minister on the basis of the survey conducted by the Superintendent of Land Records, that the petitioners land are distinct and different from the respondents land and that they are not adjoining one another.

21. The learned Advocate for the respondent Nos.6 and 7 further submits that the land allotted in favour of Tulshiram Salve to the extent of 10 A 10 R in a partition suit is distributed between the

legal heirs and certain portion of the land was encroached upon by the Jaikwadi Rest House which is specifically admitted in the compromise decree in the partition suit, and as such there is no land available with the petitioners to the extent claimed.

CONSIDERATION AND CONCLUSION :

22. Having heard the rival contention, the regularisation of sale deeds in favour of respondent Nos.6 and 7 was granted by the Revenue Minister in its earlier order dated 01/06/2011 and the same was set aside by this Court by order dated 22/03/2012 in Writ Petition No.4733 of 2011. The relevant portion of the order of this Court is as under : -

"5) In the light of the above referred Government Circular dated 8.9.1983, it was incumbent on the Hon'ble Minister to have followed the same in its letter and spirit and to have directed the learned Collector to evaluate the difference between the current market price of the restricted tenure land and the difference of sale-deed value prevalent in the year 1992. No such exercise has taken place. The Government exchequer has been put to loss.

8) The factual position enumerated in the

present case is, without there being availability of the land beyond 5 acres 19 gunthas, learned Minister has accorded permission to alienate 8 acres of the property. The rights claimed by the petitioner are again addressed, agitated in view of the communication from the Executive Engineer of Jayakwadi Project, that they have not caused any encroachment on the property belonging to the property. Consequently, the petitioner has every right and interest in the property asserted by Respondent Nos.6 and 7, of which, they have got above referred relaxation from the learned Minister.

10) The representations of the petitioner were pending before the learned Commissioner dated 3.5.2011 and it was so indicated to the learned Minister to withhold the permission pending issue before Additional Commissioner. However, the learned Minister did not bother to the details enumerated by the petitioner and has passed the impugned orders, without affording any hearing to the petitioner.

13) Heard. The order is stayed up to 30th April, 2012. Heard. Mr.Bachate desires to reopen the issue with the competent authorities. If law permits, liberty. However, it will, all throughout, be under prior notice to the

petitioner and the aggrieved parties.”

23. The above order dated 22/03/2012 was further corrected by this Court in Review Petition No.135 of 2012 as under :-

“2] On 22nd March, 2012, Writ Petition moved by Bhimrao s/o. Tulshiram Salve against State and Rajkumar s/o. Trimbakrao Sawant and Smt.Shobhabai w/o. Trimbakrao Sawant was allowed by setting aside regularisation effected by the learned Minister dated 1st June, 2011. In paragraph 1 of the order, the area of predecessor in title Bhiwarji was referred as 10 acres 10 gunthas allotted from Government under Pilot project in 1966. It is also not in controversy that Bhimrao also received 10 acres 10 gunthas under the same scheme. The area acquired for construction of Gangakhed – Kodri road, as per record is 49 R (in the order, it is referred as 1 hectare and 11 R wrongly). So far as long lease of 99 years dated 18th February, 1991 executed by Bhiwarji to one Manik Laxman Mhaske is concerned, by calculation, it is 564 ft. x 124 ft. = 69936 sq. ft and 577 ft. x 25 ft. = 14425 sq. ft. Sum total comes to 84,361 sq. ft. and by conversion the area leased to Manik comes to 2 acres 31 gunthas. In the revenue record, entry of Manik Mhaske shown as 80 ares consequently, in the order dated 22nd March, 2012, the area referred

in respect of lease to Manik as 6 acres, needs correction. Learned counsel for review applicant has submitted, even if property is given on long lease, the title of review applicant survives and continues and learned Minister was competent enough to regularise 8 acres of property in favour of review applicant. I am not required to comment on this aspect sitting in review.

3] The other grievance is, valuation carved out at Rs.14,70,000/ and Government Resolution of 8 th September, 1983. Mr.Mantri submits that there is Government Resolution of 2001 as referred by the Division Bench in the judgment of Trimbakrao Mugutrao Deshmukh Vs. State of Maharashtra, 2009(2)Bom.C.R. 467, and consequently, rules framed by Government in the year 2001 would be applicable.

5] It is for review applicant to approach the appropriate authority for regularisation dated 17th November, 2004 and entitlement, if any, for such regularisation. The order in the Writ Petition is corrected and clarified to the extent of area."

24. The Letters Patent Appeal No.61 of 2013 was filed against the Judgment of the Single Bench. The said Appeal was dismissed as not maintainable.

25. This Court had held that the Minister had not ascertained whether land was available with the original allottee Bhivraji Awchar at the time of sale deed. So also there was less revenue received by the State towards the regularisation of the land. Liberty was also granted to the respondent Nos.6 and 7 to approach the authority for regularisation if the law permits. There was no declaration granted by this Court that the post facto regularisation of the sale deeds cannot be lawfully granted. The earlier order dated 22/03/2012 of this Court was passed for non compliance of certain legal requirements by the Hon'ble Minister before passing the order of regularisation. Thus, the respondent Nos.6 and 7 were not prohibited from seeking fresh regularisation of the sale transaction in terms of the Government policy as is available.

26. The order dated 12/09/2014 passed by the Commissioner rejecting the regularisation of the sale deeds in favour of respondent Nos.6 and 7, directs that the sale deeds cannot be regularised and the land be reverted back to the State for non observing the condition of transfer. Thus, the order of the commissioner also is clear on the aspect that the land in occupation of Bhivraji Awchar has to be reverted to the State to the extent of the sale deeds.

There is no direction or observation in the order of the Commissioner that the land which is sought to be regularised belongs to the petitioner. The petitioner has also not challenged this part of the observation and in the event impugned the order dated 14/08/2015 of the Hon'ble Minister is set aside, the land in question in the sale deed is directed to be reverted to the State Government.

27. The Hon'ble Minister by interim order had directed the Collector to get the property measured from the Land Survey Department after notice to all the parties. The direction was issued to the Collector to make measurement of the property bearing Survey No.254 through the District Superintendent of Land Records, Parbhani. The Collector was directed to show in its report, sub-share wise area as per map received after measurement and a report was directed to be submitted to the Government. Pursuant to interim direction given by the Hon'ble Minister No. /LANDMEASUREMENT/GOVERNMENT /MO.R.01/15 dtd. 18/04/2015, measurement map was prepared and in the report it was mentioned an area of 3 H 20 R is under possession and tillership right of the respondent Nos.6 and 7.

28. The report submitted further observe that the area of the

petitioner is not adjacent to the area of the respondent Nos.6 and 7. The respondent Nos.6 and 7 in the present writ petition have not made encroachment in the area of the petitioners and the position is not seen in the map. Thus, the Minister relying upon the report of the Collector has held that the petitioner cannot take exception to the application of the respondent No.6 and 7 for regularisation of the sale deeds. The Hon'ble Minister further held that the question of regularisation of sale deeds of the lands allotted by the State, is absolutely a dispute between the Government and the respondent Nos.6 and 7, and that it becomes necessary to verify the request of regularisation as per prevailing Government rules. Thus, the Hon'ble Minister proceeded to pass order as under :-

- "1) Revision application of the applicants is partly allowed.
- 2) Order passed by the Divisional Commissioner Dated 12/09/2004 in proceeding No.2006/MASHAKA /LAND/1/Sub.No.89 is set aside and Government Sanction is granted to regularisation of the unauthorized transfer of the applicants on 3 H 20 R area from survey No.254/2, situated at Gnagakhed Tq. Gangakhed Dist. Parbhani for agricultural purpose.
- 3) As per discussion in the order, the District Collector Parbhani should fix unearned income as per valuation of

Ready Reckoner rates of the year 2011 of the suit property as per rates and by charging amount of direct interest on the said amount from 25/04/2011 till passing order by District Collector, the amount of unearned income plus interest amount and common measurement fees should be recovered from the applicants and to pass self explanatory orders regarding regularisation of transfer of the applicants. While recovering unearned amount from the applicants, the amount if paid by the applicants to the Government prior to this be adjusted.

4) If required, by making enquiry in respect of other unauthorized transfer in survey No.254, the District Collector Parbhani should submit a proposal regarding regularisation of violation of condition to the Divisional Commissioner Aurangabad."

29. The Minister has passed the impugned order after ascertaining that the lands of the petitioners and the respondents are not adjacent to one another and the lands sold were available with the original allottee at the time of the sale. Admittedly the petitioners land are in Survey No.254/1 and the regularisation is granted of the area of 3 H 20 R in Survey No.254/2. As per the report submitted by the Collector, the map prepared does not show that the lands of the petitioner and respondents are adjacent to one another. The findings recorded by the Minister are based on the report submitted

by the Collector.

30. However, it is to be noticed that the finding of the Minister in the impugned order are for the purpose of deciding the regularisation application and for that purpose, the Minister has taken care to call for a report and to ascertain whether the land was available in the hands of the original allottee to transfer the same. These observations are for the purpose of granting post facto permission of sale. The State is concerned with its revenue and thus the State has a policy to grant post facto regularisation of sale deeds on payment of fees as per rules. The petitioner has also transferred part of his land after seeking due permission from the Commissioner. In the instant case, the respondents have taken post facto permission for sale of land. The Minister has complied with the necessary formalities of ascertaining that the land was available with the original allottee to transfer the same and has granted post facto permission for transfer of the land at the price to be determined in terms of the Government Resolution. Thus I do not find any error in the order passed by the Minister granting permission for transfer of the allotted land.

31. However, it is clarified that the finding of the Minister in the

impugned order is limited for the purpose of deciding the application for regularisation of the sale transaction of the land allotted to Bhivraji Awchar. In the event, the petitioner is apprehending that on the basis of regularised sale deeds, the respondent Nos.6 and 7 would assert its rights on the petitioners land, the petitioners would be at liberty to demonstrate the same before Civil Court by filing a civil suit. The petitioners would be at liberty to file appropriate civil suit to protect his rights, if already not filed.

32. The observations of the Minister are limited for the purpose of deciding the application for regularisation of the sale deed and that permission granted for sale of the land cannot give any right to the respondent Nos.6 and 7 to assert its proprietary right beyond what was originally allotted to Bhivraji Awchar.

33. Thus the writ petition is dismissed with observations as above. Pending application stands disposed of.

(ARUN R. PEDNEKER, J.)

34. At this juncture, the learned Advocate for the petitioner submits that the pending application to bring on record legal heirs of

deceased petitioner Bhimrao Salve be allowed and also prays for continuance of interim relief, granted during the pendency of the proceedings.

35. This Court by order dated 27/01/2022 has already allowed the application for legal representatives of Bhimrao s/o Tulshiram Salve, thus no further order is required in the application.

36. I have held in this Judgment that the regularisation of sale deeds by the State, will not give the purchasers any right higher than what is granted to the original allottee and in the event, the purchasers asserts proprietary rights on the petitioners land on the basis of the sale deeds, the petitioners are at liberty to defend their title in a Civil Court. Thus the prayer for continuance of interim relief is rejected.

(ARUN R. PEDNEKER, J.)

gawade vj.