

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 288 OF 2022
IN
WRIT PETITION NO. 3035 OF 2021

Hamid Hussain Pathan & Others

...Applicants

VERSUS

State of Maharashtra & Others

...Respondents

.....

Mr. R.B. Dhakane, Advocate for applicants.

Mr. S.K. Sawangikar, Advocate for respondent No. 6.

Mr. P.G. Borade AGP for respondent-State.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 8th SEPTEMBER, 2023
PRONOUNCED ON: 13th OCTOBER, 2023

ORDER :

1. This application seeks review of clause (d) of the operative order passed by this Court in Writ Petition No. 3035 of 2021.

2. Applicants/petitioners filed writ petition challenging the order passed by respondent No. 1. Writ petition was allowed by this Court by judgment and order dated 15.09.2022. Clause (d) of the operative part of the order reads thus:-

"(d) Names of the petitioners be recorded to the said land to the extent of 10 anna 8 ps share (i.e. 11 Acre 11 Are)."

3. It is the case of applicants that land Gut No. 581, situated at village Jat Nandur, Taluka- Patod (for short 'suit property'), which was subject matter of writ petition was totally admeasuring 16 Acre 37 Are. Applicants father had 1 anna 8 ps share in the suit property i.e. 11 Acre 11 Are. Daula Santram and Pandit Santaram had 1 anna 4 ps share each. Father of applicants had purchased 1 anna 4 ps (57 Are), from Kondabai Panditrao Dongar, by way of registered sale deed bearing no. 1856/1999 dated 15.10.1999. Pursuant to the sale deed, mutation entry no. 1156 is certified in the revenue record on 01.04.2000.

Similarly, father of applicants had purchased 1.4 anna share (57 Are) from Narayan Daulatram Dongar by way of registered sale deed bearing No. 1027/2000, dated 28.06.2000. Accordingly, his name is mutated in the revenue record by mutation entry no. 1239 on 20.12.2000. These averments are made by applicants in para 5 of the writ petition. It is therefore contention of applicants that these sale deeds and mutation entries escaped notice of this Court while allowing the writ petition, and, therefore in clause (d) applicants name ought to be directed to be recorded to the suit property, to the extent of 14 Acre 0.05 Ghuntas instead of 11 Acre 11 Are.

4. Heard the learned advocate for applicants, learned advocate for respondent No. 6 and learned Assistant Government Pleader for respondent-State at length. Perused the memo of application, annexures thereto and the judgment and order under review.

5. Respondent No. 6 opposed this application contending that in the writ petition challenge is to the order passed by the first respondent and a relief of cancellation of mutation entry is sought and the contention of additional area was never raised in the writ petition either before the revenue authority or before this Court. It is also contended that Narayan and Kondabai were not party to the proceedings.

6. Admittedly, Narayan Dongar and Kondabai Dongar are not party to the writ petition. The record reveals that applicants filed Regular Civil Suit No. 451/2017 against 6th respondent seeking a declaration in respect of suit property, to the extent of total 5 Hectare 56 Are. In the suit specific pleading is raised that in the suit property 10 anna 8 ps is ancestral property and 2 anna 8 ps land was purchased from Narayan and Kondabai and applicants are owners and possessors of the suit property.

It is also a matter of record that father of applicants had purchased 1 anna 4 ps share (i.e. 57 Are land) from Kondabai Dongar by way of registered sale deed bearing no. 1856/1999, dated 15.10.1999, of which mutation entry no. 1156 is certified on 01.04.2000. It is also a matter of record that father of applicants had purchased 1.4 anna share (i.e. 57 Are land) from Narayan dongar by way of registered sale deed bearing no. 1027/2000, dated 28.06.2000, of which mutation entry no. 1239 is certified on 20.12.2000. These averments are made by applicants in para 5 of the writ petition. Therefore, applicants are right in contending that these aspects escaped notice of this Court while allowing the writ petition.

7. Since, these aspects escaped notice of this Court, applicants have made out a case for review. Decision of Apex Court in *Food Corporation of India and Anr. vs. M/s. Seil Ltd. and Ors.*, AIR 2008 SC 1101, supports the case of applicants.

8. In "*Board of Control for Cricket in India and Another Vs Netaji Cricket Club and Others*" reported in (2005) 4 SCC 741, it is held that, "*misconception of law or fact by Court can also be held to be a ground for review*".

9. Reliance placed by learned advocate for respondent No. 6 on *Jai Singh vs. Union of India and others*, (1977) 1 SCC 1 is misplaced and misconceived. Said decision is on Article 226 of the Constitution of India, wherein it is held that; "In a petition involving disputed questions of fact, High Court should not grant relief when an alternative remedy by suit exists. Parallel remedies in respect of the same matter cannot be pursued at the same time." By relying on this decision, an argument is advanced that since suit is pending, this review application is not liable to be entertained.

This ruling is not applicable to the facts of the present case.

10. For the aforestated reasons, applicants have made out sufficient ground for review. Review application is therefore allowed by reviewing clause (d) of the operative part of the order. Clause (d) of the operative part of the order is substituted as follows:-

"(d) Names of the petitioners be recorded to the said land to the extent of 14 Acre 0.05 Ghuntas."

[NITIN B. SURYAWANSHI, J.]