

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8052 OF 2022

**SANTOSH
SUBHASH
KULKARNI**

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Raakesh Rajendrakumar Agarwaal

...Petitioner

Versus

**The Additional Commissioner, Konkan
Division, Mumbai and ors.**

...Respondents

**Mr. Kishor Patil, a/w Amol Mhatre and Smeer Mhatre,
Petitioner.**

Mr. S. D. Rayrikar, AGP for the State.

**Mr. Girish Godbole, Senior Advocate, a/w Shon Gadgil,
Gaurav Gokul and Mohit Gayal, i/b Wadia Ghandy &
Co., for Respondent No.4.**

Ms. Prerna Shukla, Applicant – Intervenor.

CORAM: N. J. JAMADAR, J.

DATED : 10th AUGUST, 2023

ORDER:-

1. The challenge in this petition is to an order dated 10th May, 2022 passed by the Minister (Revenue) in RTS Revision No.27A22/Case No.121/J-4A, whereby the revision application preferred by the petitioner came to be rejected affirming the order passed by the Additional Commissioner, Konkan Division, Mumbai, in Appeal/Desk/RTS/Riv/No.880 of 2018, whereunder the judgment and order passed by the Additional Collector in RTS Appeal No.29 of 2017 was set aside and directions were given to correct the record of right on the basis of actual cultivation of the parties.

2. The genesis of the proceedings is in an order dated 29th October, 2013 directing the correction of the area of Survey No.71 of village Bapane ("the subject land") in the record of right. By the said order, the Tahsildar allowed the application preferred by respondent No.4 Badruddin Abbas Patel and respondent No.15 Mustafa Ibrahim Nadiadwalla and directed that the area of Survey No.71 be corrected as per the report of the Superintendent of Land Records after actual measurement of the subject land.

3. The aforesaid order was assailed by Yusuf Parmar – respondent No.5 as well as Talathi and Tahsildar, Vasai, before the Sub-Divisional Officer. By an order dated 24th July, 2015 the Sub-Divisional Officer dismissed the appeal preferred by respondent No.5 - Yusuf Parmar and partly allowed the appeal preferred by the Tahsildar, Vasai, thereby directing the modification of 7/12 extract of the subject land as per the chart mentioned in Clause (3) of the said order.

4. Respondent No.4 - Badruddin Patel preferred an appeal before the Additional Collector, Palghar. By a judgment and order dated 14th August, 2018, the Additional Collector, Palghar, partly allowed the appeal and directed the Sub-Divisional Officer to conduct a fresh enquiry so as to ascertain whether

there was clerical error which warranted correction under Section 155 of the Maharashtra Land Revenue Code, 1966 (“the Code, 1966”) and submit an appropriate proposal to the District Collector, Palghar, for rectification of error, if any.

5. Being aggrieved, the petitioner preferred revision before the Additional Commissioner, Konkan Division. By a judgment and order dated 18th February, 2020, the Additional Commissioner found that the order passed by the Additional Collector was required to be interfered with and the revision allowed, yet, refrained from granting reliefs to the petitioner and instead directed the authorities to correct the record of right by ascertaining area as per actual cultivation.

6. Being further aggrieved, the petitioner preferred second revision before the State Government. By the impugned order, the Minister (Revenue) declined to interfere with the order passed by the Additional Commissioner and dismissed the revision. Thus, the petitioner has invoked the writ jurisdiction.

7. I have heard Mr. Kishor Patil, the learned Counsel for the petitioner, and Mr. Godbole, the learned Senior Advocate for respondent No.4. With the assistance of the learned Counsel for the parties, I have perused the material on record including the orders passed by the authorities below.

8. Mr. Patil, the learned Counsel for the petitioner, submitted that the Additional Commissioner despite having recorded a categorical finding that correction in the record of right as ordered by the Additional Collector was beyond the ambit of Section 155 of the Code, 1966 and set aside the said order, committed a manifest error in directing the authorities to correct the record of right as per actual cultivation. Such a course of action, according to Mr. Patil, is wholly impermissible.

9. Section 155 of the Code reads as under:

“Section 155. Correction of clerical errors

The Collector may, at any time, correct or cause to be corrected any clerical errors and any errors which the parties interested admit to have been made in the record of rights or registers maintained under this Chapter or which a Revenue Officer may notice during the course of his inspection:

Provided that, when any error is noticed by a Revenue Officer during the course of his inspection, no such error shall be corrected unless notice has been given to the parties and objections, if any, have been disposed of finally in accordance with the procedure relating to disputed entries.”

10. Evidently, the remit of Section 155 is to correct any clerical error or any error which the parties interested admit to have been made in the record of rights or registers or which a Revenue Officer may notice during the course of inspection. In the order dated 18th February, 2020, the Additional Commissioner has, in terms, observed that there has been no correction in the record of right by the Land Records

Department and there cannot be substantive correction in the record of right by resorting to the provisions contained in Section 155 of the Code, 1966, as what was permissible under the said section was correction of clerical errors. It was, therefore, impermissible to resolve the conflict amongst the holders of various sub-division of a land as to the actual area under cultivation. Yet, the Additional Commissioner declined to grant relief to the petitioner despite having been persuaded to set aside the order impugned before him, passed by the Additional Collector, and the orders passed by the Sub-Divisional Officer and Tahsildar. The Additional Commissioner directed the measurement of the sub-divisions and thereafter correction in the record of right by the Land Records Department in accordance with the actual possession and cultivation, if the parties were agreeable thereto. If the parties were not agreeable, they should be left to work out the remedies before the Civil Court.

11. In the face of the aforesaid nature of the order where the Additional Commissioner found the order passed by the Additional Collector unsustainable on the premise that the correction in question in the record of right was beyond the remit of Section 155 of the Code, 1966, and allowed the revision

application, appropriate consequential orders ought to have been passed. Faced with the aforesaid situation, upon being suggested by the Court, the learned Counsel for the petitioner and respondent No.4, the contesting respondent, agreed that the revision application be remitted back to the Additional Commissioner, Konkan Division, for afresh determination.

12. The petition stands partly allowed.

13. The impugned order as well as the order passed by the Additional Commissioner in Appeal/Desk/RTS/Revision No. 880 of 2018 stand quashed and set aside.

14. Appeal/Desk/RTS/Revision No.880 of 2018 stands restored to the file of the Additional Commissioner, Konkan Division, for a fresh decision in accordance with law.

15. All contentions of all the parties are kept open for consideration and the Additional Commissioner shall decide the Revision Application on its own merits without being influenced by any of the observations made by this Court, as expeditiously as possible, after providing an effective opportunity of hearing to the parties.

16. The parties shall appear before the Additional Commissioner on 1st September, 2023.

17. Petition stands disposed.
18. No costs.

[N. J. JAMADAR, J.]