

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11287 OF 2018

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| 1. Shri Hanumant Baburao Neharkar, |] | |
| Adult, Age-50 years, Occupation- Agriculturist. |] | |
| 2. Shri Anand Baburao Neharkar, |] | |
| Adult, Occupation - Agriculturist. |] | |
| 3. Shri Baburao Baban Neharkar, |] | |
| Adult, Occupation - Agriculturist. |] | |
| All residing at Village Yedgaon, |] | |
| Taluka Junnar, District Pune. |] | ... Petitioners |

Versus

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| 1. State of Maharashtra |] | |
| Through the Hon'ble Revenue Minister, |] | |
| Revenue & Forest Department, |] | |
| Mantralaya, Mumbai – 400 032. |] | |
| 2. The Addl. Commissioner, |] | |
| Pune Division, Pune. |] | |
| 3. The Addl. Collector alias Deputy Director, |] | |
| Rehabilitation (Land), Pune. |] | |
| 4. The Circle Officer, Junnar Circle, |] | |
| Pune District, Pune. |] | |
| 5. Shri Sadashiv Balshiram Neharkar |] | |
| Aged adult, Occupation – Agriculturist, |] | |
| residing at Village Yedgaon, |] | |
| Taluka Junnar, District Pune. |] | ... Respondents |

Mr. Uday B. Nighot for Petitioners.

Mr. P. B. Shah i/b Mr. K. P. Shah for Respondent No.5.

Ms. S. S. Bhende, AGP for State.

CORAM :- SANDEEP V. MARNE, J.
RESERVED ON :- 18 DECEMBER, 2023
PRONOUNCED ON :- 22 DECEMBER, 2023

JUDGMENT :

1. ***Rule.*** With the consent of the learned Counsel for parties, Rule is made returnable forthwith.

2. By this Petition, Petitioners challenge the order dated 10 April 2018 passed by the Minister (Revenue) in Revision Application filed by the Respondent No.5. By the order, the learned Minister has set aside the orders passed by the Additional Commissioner, Pune, dated 10 July 2017 and Additional Collector, Pune dated 5 February 2015. The Additional Collector, by order dated 5 February 2015, had directed corrections in the order of allotment dated 25 January 1988 to the extent of the names of the allottees. In other words, the alternate land which was earlier allotted in the name of the Respondent No.5, is now shown to have been allotted in the joint names of Petitioners and the Respondent No.5. Aggrieved by the Additional Collector's decision, the Respondent No.5 filed Appeal before the Additional Commissioner, which was rejected. He filed Revision before the Minister (Revenue), who has allowed Revision and has set aside the orders passed by the Additional Collector and the Additional Commissioner. The net result of order passed by the learned Minister is that the alternate land now stands allotted in the exclusive name of the Respondent No.5 and the Petitioners will have no right, title and interest therein. The Petitioners are aggrieved by the decision of the learned Minister and have filed the present Petition.

3. The challenge arises in the light of acquisition of land of original holder Shri Baban Tryambak Neharkar at Village Yedgaon, Taluka Junnar, District Pune. In lieu of acquisition of the land, alternate land at Village Bori (Budruk), Taluka Junnar, District Pune bearing Gat No.393/2 admeasuring 81 R was sanctioned. However, the order allotting the alternate land was issued in the name of Sadashiv Balshiram Neharkar, grandson of Baban Tryambak Neharkar. As a matter of fact, father – Baban had two sons – Baburao and Balshiram. Therefore, in ordinary course, the alternate land should have been allotted in the joint names of Baburao Baban Neharkar and Balshiram Baban Neharkar. However, since the occupancy price was paid by son of Balshiram i.e. Respondent No.5, the allotment of alternate land was made in the sole name of Respondent No.5 vide allotment order dated 25 January 1988. The heirs of other son of Baban i.e. Baburao are aggrieved by such action in allotting the land in the sole name of Respondent No.5 and instituted proceedings before the Additional Collector for correction of the allotment order. The Additional Collector proceeded to allow the application by order dated 5 February 2015 by adding names of Baburao and his two sons in the allotment order. First Revision of Respondent No.5 came to be rejected by the Additional Commissioner by order dated 10 July 2017. The Minister (Revenue) has however reversed the decisions of the Additional Collector and Additional Commissioner by the impugned order dated 10 April 2018, which is the subject-matter of the challenge in this Petition.

4. Mr. Nighot, the learned counsel appearing for Petitioners would submit that the correction carried out by the Additional Collector vide order dated 5 February 2015 was perfectly legal as the Respondent No.5 did not have any right to get the alternate land allotted in his sole name by ignoring the shares of other heirs of deceased Baban Tryambak

Neharkar. That, Baban admittedly had 2 sons namely Baburao and Balshiram and the son of Balshiram alone cannot claim ownership in respect of the acquired land and therefore could not have secured allotment in his sole name.

5. Mr. Nighot would attack the order passed by the learned Minister contending that the order passed by the Additional Collector was passed after granting due opportunity of hearing to the Respondent No.5. That, the learned Minister has erroneously held that Baburao refused to pay the occupancy price without any material to that effect on record. That, mere delay cannot affect the right of the Petitioners. That, this is not a case of challenge to revenue entries but mere case of correction of erroneous allotment order. The learned Minister has erroneously held that the Petitioners ought to have filed a suit when in fact jurisdiction of the Civil Court is barred under the provisions of Maharashtra Project Affected Persons Rehabilitation Act, 1986 or the New Rehabilitation Act of 1999. He would rely upon the Judgment of this Court in the case of ***Tukaram Dhondi Sutar (since deceased) through Legal Heirs Sakharam Tukaram Sutar Vs. Nana Bhau Tibile and others***¹.

6. *Per Contra*, Mr. Shah, the learned counsel appearing for Respondent No.5 would oppose the Petition and support the order passed by the learned Minister. He would submit that the application filed by the Petitioners before the Additional Collector was hopelessly barred by limitation as the same was filed 25 years after issuance of the original letter of allotment. That, the Additional Collector did not have jurisdiction to entertain the application filed by the Petitioners. That, allotment of alternate land is not automatic and such allotment can be made only in favour of a person paying the occupancy price, which in the present case,

¹ 2018(4) Mh.L.J. 397

is admittedly paid by the Respondent No.5 alone. That, all aspects are considered by the learned Minister while allowing the Revision by the impugned order. That such reasoned order passed by the Minister need not be disturbed in exercise of writ jurisdiction. He would submit that in the year 1992, the Petitioner No.1 filed Suit for partition and did not include the land in question for seeking partition, which would clearly debar his legal heirs from turning around and claiming any rights in respect of the alternate land. He would pray for dismissal of the Petition.

7. Ms.Bhende, learned AGP, would appear on behalf of the State and justify the order passed by the learned Minister.

8. Rival contentions of the parties now fall for my consideration.

9. There is no dispute to the factual position that Baban Tryambak Neharkar was the original owner of the acquired land. He had two sons, namely Baburao and Balshiram. The Petition is filed by Baburao and his 2 sons Hanumant and Anand. Balshiram had 4 sons namely Sadashiv, Bajirao, Jalindar and Mangesh. Baban Tryambak Neharkar died on 15 October 1987 by which time it appears that his son Balshiram was already dead. After Baban's death, Mutation entry No. 5933 dated 1 November 1987 was effected to bring on record heirs of deceased Baban on various properties except the acquired property, because the acquisition of acquired land was complete before Baban's death.

10. It appears that the acquisition of land at Village Yedgaon, Taluka Junnar, District Pune happened during the lifetime of father Baban Tryambak Neharkar. Therefore, alternate land in lieu of acquired land could have been allotted in favour of Baban Tryambak Neharkar. However

before the allotment could be made, Baban expired on 15 October 1987 and shortly thereafter decision for allotment of alternate land was taken on 25 January 1988. The unique problem in the present case has occurred on account of allotment of land being done after death of the original holder Baban Tryambak Neharkar. If the allotment of alternate land was to be made during the lifetime of father-Baban Tryambak Neharkar, the alternate land would have come to the share of both his sons Baburao and Balshiram. Mere allotment of alternate land after the death of father Baban Tryambak Neharkar, would not alter the position. Thus Baban's both sons would be entitled to a share in the alternate land.

11. Mr. Shah has attempted to contend that the Mutation Entry no. 5933 certified on 19 November 1987 does not cover the acquired land. The said Mutation Entry no.5933 was certified to bring on record heirs of Baban Tryambak Neharkar. Mr. Nighot has pointed out that since the land bearing Gat No.58/4A at Village Yedgaon, Taluka Junnar, District Pune was already acquired for the project, the said land was rightly not included in Mutation Entry No.5933. By the time Mutation Entry No. 5933 was effected on 19 November 1987, the allotment of alternate land was yet to take place. Thus, the other heirs of Baban were made to believe as if their names were mutated in respect of all lands (except acquired land). Respondent No.5 thereafter surreptitiously applied for allotment of alternate land and secured such allotment by order dated 25 January 1988. It appears that the other brother Baburao was not even aware about the allotment of alternate land in the name of Respondent No.5. This could be the possible reason why the alternate land was not included in the partition Suit No.84/1992 instituted by Hanumant Baburao Neharkar.

12. The statutory scheme of Rehabilitation Act, 1986 is such that the entire family will be granted one alternate land. The Act ensures that persons affected by acquisition of their lands for construction of irrigation project are allotted alternate land in the benefited zone. It cannot be that when the family loses its land in the affected zone for execution of irrigation project, only one family member gets a windfall in the form of irrigated land in the benefit zone to the exclusion of other family members. As observed above, if the benefit of alternate land was to be availed by father Baban Tryambak Neharkar, both his sons would have succeeded to the said alternate land after father's death. Therefore, the alternate land allotted in the name of Respondent No.5 was obviously meant for the entire family and not for Respondent No.5 alone. Therefore, seeking allotment of land in his sole name by the Respondent No.5 was an act of misrepresentation and no limitation would apply to set aside an order which is an outcome of fraud and misrepresentation. Respondent No.5 misrepresented the authorities that he alone was entitled for rehabilitation benefit on account of his father's death. Since the order dated 25 January 1988 is an outcome of misrepresentation on the part of Respondent No.5, limitation would not come in the way of the Additional Collector in correcting the error which had occurred on account of misrepresentation by the Respondent No.5.

13. The learned Minister has recorded the finding that the allotment letter was issued in the sole name of Sadashiv as Baburao had refused to pay the occupancy price in respect of the alternate land. He has further held that Sadashiv on the other hand showed willingness to pay the occupancy price of alternate land and this is how the alternate land was issued in the sole name of Sadashiv. However, there is absolutely no material on record to support this finding of the learned Minister. In fact,

while entertaining the application for correction of the name of allottee in the allotment order, the Additional Collector had directed conduct of inquiry through Settlement Officer, Kukadi Project, Junnar. The said Settlement Officer recorded statements of Petitioners and the Respondent No.5. In his entire statement recorded on 18 December 2013, the Respondent No.5 had nowhere stated that Baburao was ever called upon to pay the occupancy price or that he refused to pay the same. Thus, the finding of the learned Minister about refusal on the part of Baburao to pay the purchase price is perverse.

14. No doubt, there was delay on the part of the Petitioners in approaching the Additional Collector for seeking correction of the allotment order. In ordinary course, such correction could not have been made after lapse of 25 long years. However, in the present case, there appears to be a glaring error in allotting the alternate land in favour of one of the several legal heirs, which has arisen on account of misrepresentation on the part of Respondent No. 5. There is no justifiable reason for excluding the branch of Baburao from allotment of alternate land. There is nothing on record to indicate that Respondent No.5 ever informed by his brother that alternate land could be allotted for the family in lieu of acquisition of their father's property or that any share in occupancy price needed to be paid by Baburao. Respondent No.5 has scrumptiously applied for allotment of alternate land, which allotment was meant for the entire family and not solely for him. He took disadvantage of father's death and applied alone for allotment of alternate land. The allotment of alternate land is in lieu of acquired land. The net effect of the actions of Respondent No. 5 is that he has succeeded alone to the acquired land in the form of allotment of alternate land to the exclusion of his brother. Thus procurement of alternate land in his sole

name was an act of misrepresentation and fraud on the part of Respondent No. 5. It is well settled law that an order obtained by misrepresentation is nullity. This judgment need not be burdened by discussing various judgments repeatedly expounding the law that an order or decree obtained by fraud or misrepresentation is a nullity. Since such order or decree does not have any existence in the eyes of law, mere limitation cannot be the reason for saving the effect of nullity of such order. It would be apposite to refer to the following observations of the Apex Court in recent judgment in ***Raj Kumar Vs. State of UP***².

“21. This Court, in the case of S.P Chengalvaraya Naidu (Dead) By LRs. Vs. Jagannath (Dead) by LRs and others has held that non-disclosure of the relevant and material documents with a view to obtain an undue advantage would amount to fraud. It has been held that the judgment or decree obtained by fraud is to be treated as a nullity. We find that respondent No.9 has not only suppressed a material fact but has also tried to mislead the High Court. On this ground also, the present appeal deserves to be allowed.”

15. This Court cannot be a mute spectator to the acts of misrepresentation on the part of Respondent No. 5 in getting the alternate land, meant for the entire family, allotted in his sole name. The correction effected by the Additional Collector only results in reflection of name of Baburao and his 2 sons in the list of allottees. Thus, what ought to have been done at the time of issuance of original allotment letter dated 25 November 1988 is now achieved by the order passed by the Additional Collector on 5 February 2015.

16. The learned Minister has recorded another erroneous finding in his order that the Additional Collector had not issued notice to Respondent No.5 before passing order dated 5 February 2015. This is factually incorrect. The Additional Collector had directed the Settlement Officer, Kukadi Project, Junnar to conduct inquiry. The said Settlement

² *Civil Appeal No.4228 of 2022, decided on 28 September 2022*

Officer recorded statement of Respondent No.5. Therefore, it cannot be stated that the Respondent No.5 was oblivious of the proceedings initiated by the Petitioners for correction of the names of allottees in the allotment letter. Curiously, Respondent No. 5 did not take a stand in his statement that he ever informed his brother Baburao about allotment of alternate land or requested him to pay his share of occupancy price.

17. The learned Minister has further held that the Petitioners could not have approached the Additional Collector and ought to have filed appeal before higher authority for correction of error in the allotment letter. In my view, what was filed by the Petitioners was not in the nature of appeal against any decision of the Additional Collector. The allotment letter dated 25 January 1988 was issued by the Additional Collector, Deputy Director of Settlement (Land), Pune. There was no challenge to the grant of alternate land. The only error that was sought to be corrected was in respect of the names of allottees. Since there was obvious error in showing name of Respondent No.5 alone in the allotment letter, the Additional Collector has exercised power to correct the obvious error in the allotment letter. Therefore, the power exercised by the Additional Collector is not in the nature of appellate authority. Under the provisions of Section 21 of the General Clauses Act, 1897, an authority passing an order also has authority to rescind or modify the same.

“21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.---

Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary or rescind any notifications’ orders, rules or bye-laws so issued.

18. In absence of any specific power conferred under provisions of Rehabilitation Act on any higher authority to correct the error in order

of inferior authority, powers under Section 21 of the General Clauses Act can be exercised for correcting an obvious error in the order passed by the Additional Collector.

19. Another factor considered by the learned Minister and on which much emphasis is laid by Mr. Shah is about filing of Suit by Petitioner No.1 for partition without including the alternate land. The Complaint in RCS No.84/1992 is placed on record. The suit was filed by the Petitioner No.1 against his father Baburao (Petitioner No.3) and against Respondent No.5 Sadashiv. In the suit, the Petitioner No.1 sought partition of the suit property. Admittedly, the alternate land was not included in the complaint. However, it is doubtful whether the Petitioner No.1 could have included the alternate land in the said RCS No.84/1992. Firstly, at the time of filing of the said suit, the alternate land stood allotted in the sole name of Respondent No.5. Mr. Nighot has submitted that the allotment was surreptitiously procured by Respondent No. 5 in his sole name and that Baburao or his son were not even aware of such allotment in the year 1992. Also, without his father's name being added in the allotment order, Petitioner No. 1 could not have sought partition of alternate land. These could be the possible reasons for non-inclusion of alternate land in partition suit. Secondly, there is a specific bar of jurisdiction on Civil Court under the provisions of Section 24 of the Rehabilitation Act, 1986. Therefore, error in allotment of land in favour of only one sharer cannot be made subject-matter of suit in view of bar under Section 24 of the Rehabilitation Act, 1986. In this fact, reliance of Mr. Nighot on the Judgment of this Court in *Tukaram Dhondi Sutar* (*supra*) appears to be apposite. This Court held in paragraph 34 of the Judgment as under :

“34. Thus, if the entire scheme of the Rehabilitation Act is perused, it is clear that this Act creates special rights for the project affected persons. Adequate and sufficient remedies are provided under the Act itself by laying down subordination of officers and servants in section 8 of the Act, which makes it clear that, for the purposes of this Act, the Collector, the Project Authority and all other officers and servants appointed under the Act shall be subordinate to the Commissioner. As per section 3 of the Act, as stated above, the Chief Controlling Authority in all these matters connected with the rehabilitation of affected persons in a Revenue Division vests in the Commissioner, but it is also subject to the superintendence, direction and control of the State Government. Thus, hierarchy is laid down for the aggrieved person to approach the various authorities. If any person is aggrieved by the order of the Project Authority or the Collector, he is having remedy to approach the higher authority like the Commissioner and thereafter the State Government also. Thus, the remedies provided under the Act are adequate and cannot be called as inadequate or insufficient for the aggrieved party to take recourse to the Civil Court or for the Civil Court to invoke its jurisdiction.”

20. I, therefore, do not see non-inclusion of the alternate land in the suit for partition filed by the Petitioner No.1 to be a reason for not entertaining the application for correction of the allotment order. The finding by the learned Minister about non-filing of the suit by the Petitioner in Civil Court with regard to error in the allotment order cannot be sustained for the very same reason.

21. After considering the overall conspectus of the case, I find that the Additional Collector had not committed any glaring error in correcting the names of allottees in the allotment order dated 25 January 1988. In fact his Order has ensured that the entire family is benefited by grant of rehabilitation benefit in the form of alternate land, which is the objective behind the Act. The Additional Commissioner had rightly rejected the first Revision filed by the Respondent No.5. The findings recorded by the Minister (Revenue) are perverse and cannot be sustained.

22. I, therefore, find the order passed by the Minister (Revenue) to be indefensible. The Petition accordingly succeeds. The order dated 10

April 2018 passed by the Minister (Revenue) is set aside and the order passed by the Additional Collector on 5 February 2015 is confirmed.

23. Writ Petition is accordingly allowed. Rule is made absolute. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

24. After the Judgment is pronounced, Mr. Shah, learned Counsel appearing for Respondent No.5, requests for continuation of order dated 20 February 2019 by which both the parties were directed to maintain *status-quo* in respect of the land. The request is opposed by the learned Counsel for the Petitioners. The order dated 20 February 2019 directing both the parties to main *status-quo* in respect of the land is continued for a period of 6 weeks from today.

(SANDEEP V. MARNE, J.)