IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 282 OF 2018

Shri. Vishnu Yeshwant Naik (Deceased)
Through Legal Heirs & Ors. ...Petitioners
Versus
The State of Maharashtra & Ors. ...Respondents

AND
WRIT PETITION NO. 11407 OF 2018

Shri. Manoj Vishnu Naik & Ors. ...Petitioners
Versus
The State of Mahrashtra & Ors. ...Respondents

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Mr. Anil Anturkar, Senior Advocate i/by Mr. Tanaji Mhatugade, for Petitioners in both Petitions.

Mr. Anil D'souza a/w Mr. Valentine Mascarenhas, Mr. Ernesh Tuscano for Respondent Nos. 3 to 43 in both Petitions.

Mr. A.P. Vanarase, A.G.P. for Respondent Nos.1 & 2.

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CORAM : SANDEEP V. MARNE, J.
DATE : OCTOBER 20, 2023

P.C.:

1. The challenge in the present Petitions is to the order dated 3 October 2017 passed by the Minister Revenue partly allowing the Revision filed by the contesting Respondents. By his order the Minister Revenue has set aside the Mutation Entry No.17042 and has directed the Tahsildar Vasai to

certify a new mutation entry after issuance of notices to all the concerned parties. However while passing the order, the Minister Revenue has set aside the order passed by the Sub-Divisional Officer, Deputy Collector and Additional Divisional Commissioner.

2. The dispute between the parties is with regard to certification of Mutation Entry No.17042 on 29 April 2008. Mr. Anturkar, the learned Senior Advocate appearing for the Petitioners would submit that the Circle Officer had directed issuance of notices on 29 April 2008 and before the notices could be issued or served on the concerned parties, he proceeded to certify the mutation entry on the same date i.e. on 29 April 2008. Mr. Anturkar would further submit that the mutation entry would show as if the Circle Officer felt bound by an 'order' issued by Tahsildar on 23 April 2008. Inviting my attention to the Tahsildar's 'letter' dated 23 April 2008, Mr. Anturkar would submit that the said 'letter' had merely directed Talathi to take action in accordance with Rules. He would submit that the said letter cannot be construed as an 'order' of Tahsildar in any manner.

3. Perusal of the order passed by the Minister Revenue would indicate that the Minister has essentially accepted the contention of the Petitioners that Mutation Entry No.17042 has been erroneously recorded both

on account of haste in recording the same as well as non services of the notices on the concerned parties. The Minister Revenue has accordingly directed corrective action to be taken by setting aside the Mutation Entry No.17042. While doing so the Minister has further directed the Tahsildar to undertake the exercise of certifying the mutation entry afresh in accordance the Tahsildar's letter dated 23 April 2008.

4. The only grievance that Mr. Anturkar raises is with regard to direction No.2 in the operative portion of the order, where the Minister has proceeded to set aside the decisions of the Sub-Divisional Officer, Deputy Collector and Additional Divisional Commissioner. He would submit that even those Authorities had set aside the Mutation Entry No.17042 and the Minister himself has held in the earlier portion of his order that the findings recorded by the said Authorities are correct. He would therefore submit that there was no occasion or reason for the Minister to set aside the orders of the Sub-Divisional Officer, Deputy Collector and Additional Divisional Commissioner. I do find merit in the said submission of Mr. Anturkar.

5. Mr. D'souza, the learned counsel appearing for Respondent Nos.3 to 43 on the other hand would submit that the order passed by the Additional Divisional Commissioner was required to be set aside on account of the fact

that while directing cancellation of the Mutation Entry No.17042, the Additional Divisional Commissioner had not issued any order for certifying the mutation entry afresh.

6. Be that as it may. Now that the Minister Revenue has directed certification of the mutation entry afresh by setting aside the earlier Mutation Entry No.17042, nothing further needs to be adjudicated in the present Petitions. Accordingly the Tahsildar Vasai and his subordinate officials shall proceed to implement the order passed by the Minister-Revenue. While doing so, the Tahsildar's earlier 'letter' dated 23 April 2008 shall not be construed as an 'order'.

7. All contentions of the parties are left open. Needless to observe that the Tahsildar and his subordinates shall proceed to certify the fresh mutation entry on its own merits by hearing all the parties concerned.

8. With the above clarifications, both the Writ Petitions are disposed of.

(SANDEEP V. MARNE, J.)