IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 2258 OF 2022

1) Ashok s/o Chandrashekhar Shahu,
Aged 74 yrs. Occ. Cultivator,
R/o Bilanpura, Achalpur City,
Tq. Achalpur, Dist. Amravati.

.... Petitioner(s)

// VERSUS //

1) State of Maharashtra,
through Divisional Commissioner,
Amravati

2) District Collector, Amravati
MH6H243, Paranjpe Colony,
Amravati 444602

3) Sub-Divisional Officer, Achalpur,
Dist. Amravati (Maha) 431202

4) Pitambareshwar s/o. Chandrashekhar Shahu,
Aged 80 yrs. Occ. Nil.

5) Vijay s/o Chandrashekhar Shahu
Aged 62 yrs. Occ. Labour,
C/o Pitambareshwar Chadrashekhar Shahu, Both R.4 & 5 R/o. Near Shelke Shop, Ramnagar, Kandli, Paratwada,
Tq. Achalpur, Dist. Amravati.

... Respondent(s)

Shri V.S. Bapat, Advocate for the Petitioner
Ms H.N. Jaipurkar, AGP for the Respondent Nos.1 to 3/State
None for the respondent Nos.4 and 5

CORAM : ANIL S. KILOR, J.
DATED : 17th April 2023

ORAL JUDGMENT :

1. Heard.

2. **Rule**. Rule made returnable forthwith. Heard finally by consent by the parties.

3. In this writ petition, the order passed by the Additional Commissioner dated 27.03.2020, confirming the order of the Sub Divisional Officer (SDO), Achalpur, dated 21.01.2017 cancelling the mutation entry No.340 dated 29.11.2006 as regards the land Gut Nos.18 and 22 of Mauza Ambada, by holding that a Will executed in favour of the petitioner is not valid, is under challenge.

4. The learned counsel for the petitioner has pointed out that while cancelling mutation entry No.340 dated 29.11.2006, the SDO has held that the lands in question are not Class-I lands but they are Class-II lands and therefore, without permission, the Class-II land cannot be alienated or even bequeathed by executing a Will.

5. It is submitted that the said findings are without jurisdiction, as the SDO cannot go into the issue about the validity of Will on any count.

6. It is further pointed out that on 16.07.2020, the Naib Tahsildar, Achalpur has recorded that because of a typographical mistake, the lands in question were wrongly recorded as Class-II lands, whereas these lands are Class-I lands. He therefore, directed the concerned Talathi to rectify the said mistake. He therefore, submits that the ground on which the impugned orders were passed, does not survive. Accordingly, he prays for quashing and setting aside the impugned orders.

7. On the other hand, the learned AGP fairly states that the Revenue Authorities have no jurisdiction to adjudicate the genuineness of the documents and they cannot go into the validity of any Will.

8. I have perused the record and the impugned orders.

9. The SDO and the Additional Commissioner, both the authorities have held against the petitioner on the ground that the lands in question are Class-II lands and without permission, those lands cannot be alienated. However, the subsequent to the orders passed by the SDO (dated 21.01.2017) and the Additional Commissioner (dated 27.03.2020), the order dated 16.07.2020, for correction of entry as regards two lands in question, was passed by the Naib Tahsildar, holding that both the lands are Class-I lands and because of the typographical mistake, it was wrongly shown as Class-II lands.

10. Thus, after the order passed by the Naib Tahsildar, dated 16.07.2020, the ground for cancellation of mutation entry No.340 dated 29.11.2006 as regards the land Gut Nos.18 and 22 of Mauza Ambada, does not survive.

11. Furthermore, it is a settled law that the Revenue Authorities cannot go into the question, whether the Will is genuineness or not and in the present matter, while cancelling the mutation entry in question, both the authorities have held that the Will deed is not valid. Thus, I have no hesitation to hold that the both the authorities exceeded their jurisdiction, accordingly, I pass the following order:

(i) The writ petition is **allowed**.

(ii) The impugned order dated 27.03.2020 passed by the Additional Commissioner, Amravati and order dated 21.01.2017 passed by the Sub Divisional Officer, Achalpur, are hereby quashed and set aside.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]

Digitally signed byNIRANJAN DOMAJI THAWRE
Signing Date:18.04.2023 18:45