



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

Writ Petition (WP) No. 3662 of 2022

Faizan Real Estate Corporation, through Proprietor Mohd. Zakaria S/o
Mohd. Ismail

Versus

State of Maharashtra, through Secretary, Revenue and Forest, Mantralaya,
Mumbai and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri J.J.Chandurkar, Advocate for the petitioner.

Shri N.R.Patil, AGP for the respondent nos. 1 to 3/State

Shri S.S.Deshpande, Advocate for the respondent no.4.

Shri F.T.Mirza, Advocate for the respondent no.5.

CORAM : ANIL S. KILOR, J.

DATED : 7th SEPTEMBER, 2023.

Heard.

2. The impugned order dated 21st March, 2022 passed by the Deputy Superintendent of Land Record, Amravati, cancelling the measurement carried out on 3rd June, 2010 of Survey No. 26/3 on the ground that there were defects in the same is under challenge, in this writ petition.

3. Shri Chandurkar, learned counsel for the petitioner submits that the Superintendent of Land

Record, Amravati has only jurisdiction to entertain such appeal under the Maharashtra Land Revenue Code, 1966 (in short hereinafter referred as 'MLR Code, 1966'). It is submitted that, there is no authority to the Deputy Superintendent of the Land Record to cancel the measurement dated 3rd June, 2010.

4. It is further submitted that though a specific ground was raised as regards jurisdiction of Deputy Superintendent of Land Record, it was not decided and the matter came to be decided on merit.

5. It is further submitted that on the point of delay also, there are no observations made by the Deputy Superintendent Land Record, though the point of limitation was raised. He, therefore, submits that impugned order is erroneous.

6. In addition to above referred submissions, Shri Chandurkar, learned counsel for the petitioner has also raised the question of locus of respondent nos. 4 and 5. The objection as regards the respondent no.4 is that he is no way related with the land in question and as far as the respondent no.5 is concerned, he has sold out the land during the pendency of the present writ petition.

7. On the other hand, Shri N.R.Patil, learned Assistant Government Pleader submits that the order

passed by the Deputy Superintendent of Land Record is under Section 155 of MLR Code, 1966 which relates to correction of clerical errors. He, therefore, submits that the submission of the petitioner that Deputy Superintendent of Land Record has no jurisdiction, cannot be accepted.

8. After going through the record and on perusal of the impugned order, it is evident that the order cancelling the earlier measurement carried out on 3rd June, 2010 cannot be treated as an order correcting any clerical error and therefore it is not an order passed by exercising powers under Section 155 of MLR Code, 1966.

9. Furthermore, on perusal of the impugned order, I find substance in the submission of the learned counsel for the petitioner that the Deputy Superintendent of Land Record has not dealt with the issue of jurisdiction, though it was raised by the petitioner.

10. Similarly, the Deputy Superintendent of Land Record has not dealt with the point of limitation.

11. In that view of the matter, I am of the opinion that the matter needs to be remanded back to the Deputy Superintendent of Land Record for deciding the same afresh after taking into consideration

the point of jurisdiction and limitation and also the locus of respondent nos. 4 and 5. Accordingly, I pass the following order.

- i. Writ petition is partly allowed;
- ii. Impugned order dated 21st March, 2022 is hereby quashed and set aside;
- iii. The matter is remanded back to the Deputy Superintendent of Land Record to decide the same afresh in above terms.

[ANIL S. KILOR, J.]