

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

WRIT PETITION NO. 5707 OF 2019

Rameshwar s/o Rangnath Murkut,
 Age 42 years, Occ : Agriculturist,
 R/o. Dhorvhi, Post : Malkapur-Pangra,
 Tq. Sindkhed Raja,
 District-Buldana.

.. Petitioner
 (Ori. Applicant)

.. Versus ..

1. Sau. Radha w/o Sanjay Murkut,
 Age 40 years, Occupation-Service,
 R/o. Dhorvhi, Post-Malkapur-Pangra,
 Tq. Sindkhed Raja, District-Buldana.

2. Vishnu s/o Haribhau Pawar,
 Age 32 years, Occ : Agriculturist,
 R/o. Wakad (Jahagir), Tq. Sindkhed Raja,
 District-Buldana.

3. Collector, Buldana.

4. Sub-Divisional Officer,
 Sindkhed-Raja, Tq. Sindkhed-Raja,
 District-Buldana.

.. Respondents
 (Ori. N.As. 1 & 2)

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 Shri Anil J. Thakkar, Advocate for the petitioner,
 Shri J.B. Kasat, Advocate for respondent nos.1 and 2,
 Ms. N.P. Mehta, AGP for respondent nos.3 and 4.

CORAM : MRS. VRUSHALI V. JOSHI, J.
DATE : 22.02.2023.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard the matter finally at the stage of admission.

2. The petitioner has challenged the order passed by the Collector, Buldhana granting permission to review the order passed by the Sub-Divisional Officer. The learned Sub-Divisional Officer, Sindkhed-Raja has passed the order under the Maharashtra Prevention of the Fragmentation and Consolidation of Holdings Act, 1947. Thereafter, Sub-Divisional Officer realised that at the time of passing of the order, though the written argument of non-applicant was there on record, he has not considered it and, therefore, he has filed the application before the Collector to review his own order for correcting his mistake.

3. The learned counsel for the petitioner has stated that under the provisions of the Maharashtra Prevention of the Fragmentation and Consolidation of Holdings Act, there is no provision of review. He has filed this application under Section 258 of the Maharashtra Land Revenue Code, 1966 which is not applicable in this case. The Collector

has granted permission to review the order under Section 258 of the Maharashtra Land Revenue Code. Therefore, the petitioner has filed this petition to set aside the order passed by the Collector, Buldana i.e. Respondent No.3.

4. Learned counsel for the respondent nos.1 and 2 has stated that it is an administrative order and as inadvertently written submission was not considered by the Sub-Divisional Officer, the Collector has granted permission. The order is passed without considering the written submission of the non-applicant, the said order itself is perverse and hence, prayed to set aside both the orders passed by the Sub-Divisional Officer and the Collector and remand the matter to the Sub-Divisional Officer to decide it a fresh.

5. Learned Assistant Government Pleader appearing for respondent nos.3 and 4 also requested that already the order passed by the Sub-Divisional Officer is without considering the written submission made by the respondents, hence requested to set aside both the orders and remand back the matter to the Sub-Divisional Officer for fresh consideration.

6. Heard the learned counsel for the parties.

7. The order passed by the Sub-Divisional Officer on 09.12.2016 is in favour of the petitioner. There is no provision under the Maharashtra Prevention of the Fragmentation and Consolidation of Holdings Act, 1947 for review. Therefore, there is no question to review the order of the Sub-Divisional Officer. The non-applicants have remedy to challenge the order passed by the Sub-Divisional Officer, hence there is no question of setting aside the said order and remanding back the matter. The order dated 20.01.2017 passed by the Collector granting the permission to the Sub-Divisional Officer to review its own order, which is without any provision under the law, is required to be set aside and is set aside.
8. The petition is allowed and disposed of in aforesaid terms.

[MRS. VRUSHALI V. JOSHI, J.]

Gulande