

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

Writ Petition No.6874 of 2018

Ramchandra S/O Sakharam Mahajan (Since Deceased) Thr. Lrs, Sunil Ramchandra
Mahajan And Others

Vs

The Collector, Bhandara 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 R.P. Joshi, Advocate for the Petitioner/s
Ms H.N. Jaipurkar, AGP for the Respondent/State

CORAM : ANIL S. KILOR, J.

DATED : 07.08.2023

1. Heard.
2. The order passed by the Collector, Bhandara dated 26.04.2018, rejecting the application and further quashing and setting aside the order dated 14.05.1999 passed by the Additional Collector, Bhandara and thereby ordering that the revenue record should be corrected and the name of Forest Department be shown as the owner of the land in question i.e. the land Khasara No.11/1-K in Mouza : Jogikheda (Hamesha), Tahsil : Paoni, District : Bhandara, is under challenge in this petition.
3. An application was preferred before the Additional Collector by the father of the petitioners, who died during the pendency of the said proceeding and the petitioners were brought on record as legal heirs in the said proceeding for correction of revenue entry in respect of land in dispute.

4. It is the case of the petitioner that the ancestors of the petitioners purchased admeasuring 3022.90 acres of private forest land by registered sale deeds and the ancestor of the petitioners namely Sakharam Laxman Mahajan got converted 15 acres of the said land in Khasara No.11/1-K into agricultural land and got permission to allow the said land to be used as agricultural land. Since then the said land is being used for agricultural purpose. However, the revenue record remained to be corrected as regards the users of the land.

5. It is submitted that in exercise of the power conferred by the Proviso to sub-section 3 of section 29 of the Indian Forest Act, 1927 by the Government Gazette dated 05.11.1957, certain forests lands were declared to be Protected Forests. In the said Gazette, the land in question i.e. the land Khasara No.11/1-K was included and the approximate area shown against the said land was 156.38 acres.

6. Thereafter, vide order dated 26.05.1971 passed by the Forest Settlement Officer, Nagpur Circle, Nagpur, the land in question was excluded from the 'Protected Forest'. It is necessary to mention here that out of the area 156.38 of Khasara No.11/1-K, the area excluded from the 'Protected Forest' was 56.19 acres from the northern side.

7. Accordingly, the Taluka Inspector of Land Records (TILR), Pauni vide order dated 14.05.1999 passed on the basis of the spot inspection and on inspection of the record, directed to correct 7/12 extract by entering the name of the father of the petitioners, namely Ramchadra Sakharam Mahajan as owner of the land.

The Deputy Collector, Bhandara prepared a note dated 14.05.1999 wherein he has categorically observed that the corrections proposed by the TILR in relation to the correction of area and map as regards the land in question is just and proper and accordingly, he placed the said note for approval of the Collector.

8. Thereafter, the review application was moved by the Forest Department and vide order dated 19.11.2004, the Deputy Collector, Bhandara cancelled the entry in the name of the Ramchandra Sakharam Mahajan and directed to enter the name of the Forest Department. The said order was the subject matter of the Writ Petition No.6039 of 2004 filed by the father of the petitioners. In the said writ petition, this Court vide order dated 09.09.2015 remanded the matter back to the Collector, Bhandara for taking fresh decision. This Court while remanding the matter, has observed thus:

“13. ... The order dated 14th May, 1999 does not refer to the report dated 6th February, 1999. In the impugned order there is no reference to either of the reports i.e. report dated 27th November, 1998 and 6th February, 1999. The dispute is about the identification of 15 acres of land which according to the petitioner is permitted to be used for agricultural purposes under the order of the Collector dated 27th August, 1947. The claim as made by the petitioner could not have been decided by the subordinate Authorities without there being proper spot inspection report on the record. The relevance of the reports dated 27th November, 1998 and 6th February, 1999 should have been discussed by the Authority while passing the impugned order. It should not be understood that the Authority has to take decision only on the basis of the reports dated 27th November, 1998 and 6th February, 1999. The Authority is required to consider the above referred reports along with other evidence and material on the record and then record the findings. If the evidence on

the record is insufficient, the Authority should take proper steps in the matter so that the issue involved is properly decided.”

9. In pursuance to the said order the impugned order came to be passed by the Collector which is under challenge in this writ petition.

10. The learned counsel for the petitioners submits that the Collector got confused while deciding the matter and treated the application of the petitioners for conversion of the land from forest to agriculture, however, the application was for mutation. He therefore, submits that the judgment of the Hon’ble Supreme Court of India in the case of *T.N. Godavarman Thirumulkpad V. Union of India*¹ and the provisions of the Forest (Conservation) Act, 1980 (for short “the Act of 1980”) would not apply to the present case. It is submitted that, however, by relying on the judgment in the case of *T.N. Godavarman Thirumulkpad* (supra) and the provisions of the Act of 1980, the application came to be rejected.

11. He further submits that the Collector has ignored and discarded the fact that the user of the land was converted as agricultural land long back and since then, the land is being used as the agricultural land and therefore, there is no question of conversion of land, but the only issue of mutation would be there as after the conversion of land as agricultural, the mutation entry for the same was not taken by the ancestors of the petitioners.

1 1997) 2 Supreme Court Cases 267

12. He further submits that the Collector has also ignored and discarded the fact that the land in question was excluded by the Forest Settlement Officer after detail inquiry and even the order of the TILR dated 14.05.1999 shows that he passed the order on the basis of the spot inspection. It is submitted that these two documents are sufficient to show that the matter is not in respect of the conversion, but it relates to only mutation. He therefore, submits that the Collector has not applied his mind to the facts of the case and also the relevant provisions of the law while dealing with the application.

13. He has therefore, pointed out that despite the certain findings recorded by this Court while remanding the matter, vide judgment and order dated 09.09.2015, the same have also not been considered by the Collector. He therefore, prays for quashing and setting aside the impugned order.

14. On the other hand, the learned AGP supports the impugned order and submits that, the Collector has considered the each and every aspects in detail and arrived at the conclusion that the prayer of the petitioners cannot be granted. She therefore, prays for dismissal of the present petition.

15. In the light of the rival contentions of the parties, I have perused the record.

16. It is apparent on the face of the impugned order that the learned Collector has not taken into consideration the order of the Forest Settlement Officer as well as the TILR in right

perspective and wrongly treated the matter as of conversion of land or change of user.

17. In the order of the TILR, it was observed that he had visited the spot and on the basis of the spot of inspection, he recommended the correction in the record.

18. Thus, I find substance in the submission of the learned counsel for the petitioners that, the land was converted long back in the year 1947 as agricultural land and since then, it is being used as an agricultural land. Thus, the only issue involved is about the mutation.

19. The document which is at page 15 of the record book shows that the record in respect of grant of permission as regards the land in question to use as agricultural land vide order 22.08.1947 was destroyed on 21.06.1954. The said document was also not considered by the Collector.

20. In the circumstances, I am of the opinion that the matter needs to be remanded back to the Collector, Bhandara to decide the same afresh, after hearing the petitioners on the following terms of remand. Accordingly, I pass the following order:

- (i) The writ petition is partly **allowed**.
- (ii) The order dated 26.04.2018 passed by Collector, Bhandara, is hereby quashed and set aside.
- (iii) The matter is remanded back to the Collector, Bhandara for deciding the same afresh, after hearing the petitioners.

(iv) The Collector, Bhandara shall take into consideration the observations made in this order and also the earlier order of this Court, while deciding the matter afresh.

(v) All points are kept open, including the applicability of the judgment in the case of *T.N. Godavarman Thirumulkpad* (supra) and the provisions of the Act of 1980.

[ANIL S. KILOR, J.]