



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4745 OF 1997

Nasiruddin s/o. Karimuddin (Died),

Through L.Rs. :-

1. Masiuddin s/o. Nasiruddin
2. Fasiuddin s/o. Nasiruddin
3. Hamiduddin Nasiruddin
4. Zakiuddin Nasiruddin
5. Bibihood Nasiruddin
6. Arzana Begum Bademiya
7. Ruksana Begum Ahmed
8. Mahazana Begam Sadique
9. Anneka Begam Shafik
10. Tabassum Begam w/o. Qadeer,
11. Sultana Begam d/o. Nasiruddin
12. Zarina Begam d/o. Nasiruddin
13. Mrs. Nazima Begam d/o. Nasiruddin
Minor daughter under the guardianship
of mother Bibihood w/o. Nasiruddin Inamdar
All Age Major, Occu. Agri., R/o. Kaij,
District Beed

.. Petitioners

Versus

1. State of Maharashtra
2. Principal-Secretary,
Relief & Rehabilitation & Officer
on Special Duty (Appeals),
Mantralaya, Bombay - 32
3. Additional Commissioner,
Aurangabad
4. Additional Collector,
Beed
5. Sub-Divisional Officer,
Ambajogai, Tq. Ambajogai,
District Beed
6. Tahasildar, Kaij

7. Bahuddin Ameeruddin,
Age Major, Occu. Agri.,
R/o. Kaij, District Beed
At present Kaij Motor Owner
Behind Hindustani Patrak Chawal,
Baicullah, Bombay .. Respondents

Mr. T. M. Venjane, Advocate for Petitioners;

Mrs. R. R. Tandale, A.G.P. for Respondent No.1;

Ms. Rekha Choudhari, Advocate holding for Mr. S. S. Choudhari,
Advocate for Respondents No.2 to 6;

Mr. Ajit D. Kasliwal, Advocate for Respondent No.7

CORAM : S. G. MEHARE, J.
Reserved on : 10-01-2024
Pronounced on : 16-02-2024

JUDGMENT :-

1. Heard the learned counsel for the parties.
2. The petitioners have impugned the orders of respondent No.2, the Principal Secretary (Relief and Rehabilitation) and Officer on Special Duty (Appeals), dated 11.06.1997, passed in Case No. RTS/3996/CR.26/L-6/CR-472/96/A and R.
3. Facts of the case in brief are that Nasiruddin was the Inamdar of Dargha Khaja Mohjeebuddin, Kaij, Taluka Kaij, District Beed. He died on 04.07.1996. The petitioners are his legal representatives. Respondent No.7 applied to the Tahsildar on 15.12.1993, claiming that his uncle Ahmed Miya Chunnu Miya died

and his widow Smt. Niyamatbai Ahmed Miya held Survey No.16/E, measuring 7 Acres 38 Gunthas of village Kaij. Since they had no issue, Niyamatbai gave the suit land to him to cultivate. He applied to record his name in the cultivation column of the 7/12 extract. The village Talathi accordingly recorded the entry of his name on 07.09.1995. He submitted the relevant case papers to the Tahsildar for enquiry. The Tahsildar sanctioned mutation entry No.26 on 15.03.1993, holding respondent No.6 in possession for 1993-94.

4. The original Inamdar appealed against the order of Tahasildar before the Sub-Divisional Officer. The Sub Divisional Officer was pleased to dismiss the appeal on 06.06.1994. Therefore, he preferred a second appeal before the Collector, Beed. He also rejected the appeal. Then, he preferred a revision under Section 257 of the Maharashtra Land Revenue Code 1966 before the Additional Commissioner, Aurangabad. The Additional Commissioner held that Tahsildar did not follow the procedure of enquiry in 7/B and it was a violation of Rule 31 of the Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules, 1971 ["Rules", for short]. The Additional Commissioner quashed and set aside the orders of Tahsildar, Sub Divisional Officer and Collector.

5. Respondent No.7 Bahauddin preferred a revision before the

Principal Secretary. He allowed revision, quashed and set aside the order of all authorities below and remitted the matter to the Tahsildar for fresh enquiry and disposal as per the law.

6. Learned counsel for the petitioners argued that the Additional Collector had passed an incorrect order. The learned Principal Secretary had no reason to interfere with the order of the Additional Commissioner as it was legal, perfect and correct. He prayed to allow the writ petition.

7. Mr. Kasliwal, learned counsel for respondent No.7, argued that mutation entry No.26 was sanctioned on 23.05.1994. The remand was only for making the enquiry. No prejudice is caused to the petitioners. The petition has no substance; hence, it may be dismissed.

8. It is a case of a person in possession other than the person who came to be in possession according to the record of rights. Respondent No.7 was found in possession. However, the Talathi found that respondent No.7 was not in possession according to the record of rights. Hence, he has submitted the matter to the Tahsildar. Such a proceeding is called as the 7B proceeding.

9. Rule 31 provides that where the person in possession other than the person who, according to the entire record of rights, is entitled to the land, he shall enter the name of such person in the

register and forward the extract thereof to the Tahsildar for necessary action. On receipt of such a report, the Tahsildar has to visit the village to make an essential enquiry about the possession of such a person mentioned in the register. The Tahsildar has call upon the persons interested to remain present in the village Chavdi along with *Khate Pustika*. The Tahsildar shall hear the person interested and, after holding further enquiry, as he deems necessary, decide the matter. After the resultant entries are made in the record, he shall cause necessary entries to be made in the relevant *Khate Pustika*.

10. The Additional Commissioner has correctly examined the record and opined that the Tahsildar, Sub-Divisional Officer and the Collector did not follow the procedure in Rule 31 of the Rules and correctly set the orders aside. However, he did not remit the matter for final adjudication. Unless the question is resolved finally, there shall be no proper record of rights. Such entries are subject to the notification and legality of the possession of the person other than named in the record of rights. The Principal Secretary only erred in remitting the matter to the Tahsildar for fresh enquiry by setting aside the orders of the Additional Commissioner. He ought to have maintained his order. It was a simple fault in the impugned order. However, the petitioners would not suffer any injury if the enquiry is made appropriately. Therefore, the petition deserves to be partly allowed by way of

modifying the order of the Principal Secretary. Hence, the following order;

ORDER

- i) The writ petition is partly allowed.
- ii) The order of respondent No.2 - the Principal Secretary is modified as follows;

“The revision is partly allowed, the order of respondent No.3 is maintained, and the case is remitted to the Tahsildar, Kaij for fresh enquiry as contemplated under Rules, 1971.”

- iii) Both parties should appear before the Tahsildar, Kaij, on 29.02.2024.
- iv) Respondent No.6 - Tahsildar, Kaij, District Beed shall decide the dispute within three months from the appearance of the parties by strictly following the Rules of 1971.
- v) Rule made partly absolute with no order as to costs.

**(S. G. MEHARE)
JUDGE**

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