IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1671 OF 2024

1. Narayan S/o. Barku Sonawane
Age – 63 years, Occu. Agril.,

2. Namdeo S/o. Barku Sonawane,
Died through her Legal Representative

2-A] Laxmibai W/o. Namdeo Sonawane,
Age - 65 years, Occu. Agril.,

2-B] Arun S/o. Namdeo Sonawane,
Age - 41 years, Occu. Agril.,

2-C] Suresh S/o. Namdeo Sonawane,
Age - 39 years, Occu. Agril.,

2-D] Prakash S/o. Namdeo Sonawane,
Age - 37 years, Occu. Agril.,

2-E] Dipak S/o. Namdeo Sonawane,
Age - 34 years, Occu. Agril.,

3. Dropadabai Harku Sonawane,
Age 70 years, Occu. Agril.,

4. Petras Harku Sonawane,
Age 53 years, Occu. Agril.,

5. Markas S/o. Harku Sonawane,
Age-55 years, Occu. Agril.,

6. Ashok S/o. Harku Sonawane,
Age-53 years, Occu. Agril.,

7. Balu S/o. Harku Sonawane,
Age - 60 years, Occu. Agril.,

Resp. No. 1 to 7 are
R/o. Gadhe Pimpalgaon,
Vaijapur, Dist. Aurangabad

8. Ashabai W/o. Bhaginath Shivnare,

Age-47 years, Occu. Agril.,
R/o. Awalgaon, Tq. Vaijapur,
Dist. Aurangabad.

9. Ramesh S/o. Ramchandra Sonawane,
Died through her Legal Representative

09-A] Anil S/o. Ramesh Sonawane,
Age: 37 years, Occu: Agril

09-B] Sunil S/o. Ramesh Sonawane,
Age: 35 years, Occu: Agril

09-C] Shalubai Ramesh Sonawane,
Age: 55 years, Occu: Agril

09-D] Savita W/o. Babasaheb Tribhuwan
Age: 33 years, Occu: Agril

10. Santram S/o.Ramchandra Sonawane,
Died Through her Legal Representative

10-A] Avinash S/o. Santram Sonawane
Age: 35 years, Occu : Agril.,

10-B] Vandana W/o. Sagar Jagtap
Age: 33years, Occu : Agril.,

10-C] Jyoti W/o. Sachin Chabukswar,
Age: 31 years, Occu : Agril.,

11. Bhanudas S/o.Ramchandra Sonawane,
Age -55 years, Occu: Agril

12. Eknath S/o.Ramchandra Sonawane,
Age -47 years, Occu: Agril
Resp. No. 9 to 12 are
R/o. Gadhe Pimpalgaon, Vaijapur, Dist. Aurangabad

13. Sumanbai S/o. Madhukar Gaikwad,
Age -45 years, Occu: Agril
R/o. Haregaon, Tq. Shreerampur,
Dist. Ahmednagar.

14. Shantabai Raosaheb Tribhuwan,
Age-50 years, Occu: Agril.,

R/o. Shivrai, Tq. Vaijapur, Dist. Aurangabad. ..Petitioners

Versus

1. The State of Maharashtra,
Through Secretary,
Revenue Department, Mantralaya,
Mumbai.

2. The Collector, Aurangabad,
Collector Office, Aurangabad.

3. The Sub-Divisional Officer,
Vaijapur, Dist. Aurangabad

4. The Circle Officer, Mahalgaon,
Tq. Vaijapur, Dist. Aurangabad.

5. The Talathi, Gadhe Pimpalgaon,
Tq. Vaijapur, Dist. Aurangabad

(Copy of respondents Nos. 1 to 5
to be served on Government Pleader,
High Court, Aurangabad).

6. Arun S/o. Anton Sonawane,
Age: 52 years, Occu: Agril,

7. Anand S/o. Anton Sonawane,
Age: 55 years, Occu: Agril,

8. Dwarkabai W/o. Anton Sonawane,
Age: 72 years, Occu: Agril,

9. Vithabai W/o. Dagadu Sonawane,
Age: 75 years, Occu: Agril,

10. Anil S/o. Dagadu Sonawane,
Age: 56 years, Occu: Agril,

11. Shantawan S/o. Dagadu Sonawane,
Age: 62 years, Occu : Agril,

12. Balu S/o. Dagadu Sonawane,
Age: 64 years, Occu: Agril,

13. Sahebrao S/o. Dagadu Sonawane,
Age: 44 years, Occu: Agril,

Resp. No.6 to 13 are
R/o. Gadhe Pimpalgaon,
Tq. Vaijapur, Dist. Aurangabad. ..Respondents

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Advocate for the Petitioners : Mr. V.V. Deshmukh
AGP for Respondents/State : Mrs. A.S. Mantri
Advocate for Respondent Nos.6 to 8 & 10 to 13 : Mr. Shaikh Tarekh Mobin H.

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CORAM : S.G. MEHARE, J.

DATED : MARCH 21, 2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. It has been submitted that now respondent no.9 Vithabai is no more. Learned counsel for the petitioners submits that respondent no.9 was a party in the appeal memo; however, they withdrew his appeal memo. The petitioners approached this Court against the order of the Sub-Divisional Officer dated 17.01.2024. It was a proceeding initiated on an application addressed to the Circle Inspector of Mahalgaon. Respondent No.4 had filed the said application. Therefore, the matter could be heard.

3. Respondent no.6 had applied before the Circle Inspector, Mahalgaon Karyalay, to cancel the Mutation Entry No.5590 and enter the names of their legal heirs in Gat No.119. On 7.9.2023, the Circle Inspector referred the report to the Sub-Divisional Officer, Vaijapur,

for guidance, and on his submissions, the impugned order was passed.

4. Learned counsel for the respondents raised an objection that a statutory remedy is available to the petitioners; hence, the petition could not be entertained. To bolster his arguments, he relied on the case of *Gurudassing Nawoosing Panjwan Vs. State of Maharashtra and Others, (2016) 2 SCC 2131.* He vehemently argued that the Sub-Divisional Officer had jurisdiction under Section 257 of the Maharashtra Land Revenue Code. The said Section empowers the Sub-Divisional Officer to examine the record and pass appropriate orders. Since the powers were conferred upon the Sub-Divisional Officer under Section 257 of the Maharashtra Land Revenue Code, he should have examined the situation and correctly decided the application sent to him by the Circle Inspector for guidance and opinion. He also argued that *prima facie,* illegal mutation entry in favour of the petitioners keeping aside the respondents, who were also the legal heirs and entitled to have their names in the revenue record. The impugned order is legal, correct and proper. The Sub-Divisional Officer did not exceed its jurisdiction. Therefore, this Court cannot exercise the power under Article 227 of the Constitution of India. He prayed to dismiss the petition.

5. Learned counsel for the petitioners would submit that Section 257 of the Maharashtra Land Revenue Code undoubtedly

confers the power upon the Sub-Divisional Officer to order on the application or suo moto examine the orders of the sub-ordinates. However, before passing the orders, he must serve a notice upon the persons who are likely to be affected by the said order. Instead of guiding and expressing his opinion on the submissions of the Circle Inspector, the Sub-Divisional Officer finally adjudicated the dispute without hearing or notice. Since he has exceeded its jurisdiction, though the remedy is available under the Maharashtra Land Revenue Code, this Court may invoke the jurisdiction under Article 226 of the Constitution of India. He also referred to the last proviso to the said Section and argued that the Assistant or Deputy Collector would not himself pass the orders in any matter in which a formal inquiry has been held. He has to submit the record with his opinion to the Collector, who shall pass such order thereon as he may deem fit. On this count, the impugned order is also without jurisdiction. The principle of natural justice has not been followed. The Sub-Divisional Officer has passed the order arbitrarily without application of mind and without considering its effect on the petitioners. Therefore, this is a fit case to invoke jurisdiction under Article 226 of the Constitution of India. He prayed to quash and set aside the impugned order. He would submit that since this order has been passed, the respondents who had preferred the appeal against the said mutation entry have been withdrawn. Therefore, the petitioners also have no scope to put up their case and get the adjudication on merit. At this count also, he prayed to quash and set aside the impugned order.

6. The first question is whether this Court can exercise its jurisdiction under Article 226 of the Constitution of India where a statutory remedy is available, the Hon'ble Supreme Court, in the case of *M/S. Godrej Sara Lee Ltd. vs The Excise and Taxation Officer Cum-Assessing Authority and Others, 2023 SCC Online SC 95* has examined the situation where the High Court can exercise its power under Article 226 of the Constitution of India, where an alternate remedy is available. It has been observed that the availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. In the said case, the case of *Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai and Others, AIR 1999 SC 22* has been referred to in which the Hon'ble Supreme Court carved out the exceptions on the exercise of writ jurisdiction under Article 226 of the Constitution of India as follows :

(i) where the writ petition seeks enforcement of any of the fundamental rights;

(ii) where there is violation of principles of natural justice;

(iii) where the order or the proceedings are wholly without jurisdiction; or

(iv) where the vires of an Act is challenged.

7. In the case at hand, the petitioners have a specific case that the Sub-Divisional Officer has exceeded its jurisdiction in exercising the powers under Section 257 of the Maharashtra Land Revenue Code. That apart, while passing the impugned order, the principle of natural justice, which includes a hearing, has also not been followed. Therefore, this Court may exercise the writ jurisdiction under Article 226 of the Constitution of India.

8. Section 257 of the Maharashtra Land Revenue Code is about the powers of the State Government and certain other revenue officers to call for and examine the records and proceedings before the subordinate officers. The said Section confers power on revenue officers who are not below the rank of Sub-Divisional Officer. Last but one proviso to sub-section (3) of the said Section provides that the State Government or such officer shall not vary or reverse any order affecting any question or right between private persons without having to the parties interested notice to appear and to be heard in support of such order. The last proviso provides that the Assistant or Deputy Collector shall not himself pass such order in any matter in which a formal inquiry has been held but shall submit the record with

his opinion to the Collector, who shall pass such order thereon as he may deem fit.

9. Surprisingly, the impugned order passed by the Sub-Divisional Officer was not a suo moto power, nor was it on the application of either party. It was just a reference of the Circle Inspector seeking guidance and opinion about dealing with the impugned mutation entry. There is nothing on record to show that before passing the impugned order, notices were served upon the petitioners and they were heard. Though the Sub-Divisional Officer may exercise the power under Section 257 of the Maharashtra Land Revenue Code, there are certain riders. Firstly, he has to issue notice to the person who is likely to be affected and secondly, he shall submit his report to the Collector. At the cost of repetition, it may be stated that the Circle Inspector simply sent a reference to the Sub-Divisional Officer for opinion and guidance. Unfortunately, the Sub-Divisional Officer appears to have passed the impugned order mechanically without applying the mind. He has apparently exceeded its jurisdiction and did not follow the principles of natural justice. Therefore, in view of the ratio laid down by the Hon'ble Apex Court in the case of Whirlpool Corporation (supra), the Court is of the candid opinion that though the alternate statutory remedy is available, this is a fit case to exercise the powers under Article 226 of the Constitution of India. Avoiding the repetition of the illegalities committed by the

Sub-Divisional Officer because those have already been discussed in the above para, the Court finds the impugned order illegal, exceeding the jurisdiction and without following the principles of natural justice. Since it was not the proceeding initiated at the instance of either party, the Sub-Divisional Officer ought to have simply expressed an opinion and furnished the guidance to the Circle Inspector, but he proceeded ahead, deciding the matter on merit that too exparte. In such circumstances, it is not a fit case to remit the matter back to the Sub-Divisional Officer, directing both parties to appear before the Sub-Divisional Officer. Considering the illegalities committed, the impugned order should be quashed and set aside with the liberty to the Sub-Divisional Officer to deal with the reference of the Circle Inspector about the opinion and guidance he sought. Hence, the following order :

ORDER

(i) Writ Petition is allowed.

(ii) The order of the Sub-Divisional Officer, Revenue, Vaijapur, Chhatrapati Sambhajinagar dated 17.01.2024 passed in Outward No.2023/Ma.Ja.Ma.A/Ferfar/Kavi stands quashed and set aside.

(iii) The Sub-Divisional Officer is at liberty to deal with the reference of the Circle Officer, and he may guide and express his opinion on the reference of the Circle Inspector if he desires to do so.

(iv) The right to impugn the mutation entry in question by way of an appeal to respondents nos.6 to 8 and 10 to 13 is left open.

(v) If the respondents reverse the appeal, the orders allowing them to withdraw their earlier appeal would not come in their way.

(vi) No order as to costs.

(vii) Rule is made absolute in the above terms.

(viii) All points are kept open.

(S.G. MEHARE, J.)

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