



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.13989 OF 2019**

Sau. Indubai W/o Chhagan Waghmare
Age:-60 years, Occu:-Agriculturist
R/o Mouje Kalsambar, Tq. & Dist. Beed ..Petitioner

Versus

1. The State of Maharashtra
Through the Secretary
Revenue and Forest Department,
Mantralaya, Mumbai-32
2. The Hon'ble State Minister
Revenue Department, Maharashtra State
Mantralaya, Mumbai-32
3. The Deputy Director of Land Record
Aurangabad
4. The District Superintendent of Land Record,
Beed
5. Ramhari S/o Dhondiba Karande
Age:-60 years, Occu:-Agriculturist
R/o Mouje Kalsambar, Tq. & Dist. Beed
6. Prabhavati W/o Ramhari Karande
Age:-50 years, Occu:-Agriculturist
R/o Mouje Kalsambar, Tq. & Dist. Beed ..Respondents

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Mr. H. V. Tungar, Advocate for Petitioner.

Mr. S. B. Jadhav, AGP for Respondent Nos.1 to 4.

Mr. M. K. Bhosle, Advocate for Respondent Nos.5 and 6 (through V.C.).

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 20th AUGUST 2024.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By the consent of the parties, matter is taken up for final hearing at the stage of admission.
2. The petitioner impugns order dated 26.08.2019 passed by the Hon'ble State Minister (Revenue) in File No.अपिल-२०१८/प्र.क्र.

४११/ज-७अ and seeks restoration of order dated 12.01.2017 passed by District Superintendent of Land Record, Beed in File No. कॉन/एस. आर/९६०/२०१५.

3. Heard Mr. Tungar, learned Advocate appearing for the petitioner and Mr. Bhosle, learned Advocate appearing for respondent nos.5 and 6.

4. Mr. Tungar, learned Advocate appearing for petitioner submits that respondent nos.5 and 6 instituted proceeding before Settlement Commissioner seeking correction in record of blocks in respect of Gat No.382, which are carved out of Survey No.166A-1 situated at Mauje Kalsambar, Dist. Beed. The land Survey No.166A-1 was re-numbered as Gut No.100/1 in Consolidation Scheme implemented during the period from 1900-91 at village Kalsambar. In pursuance of the proceeding initiated by respondent nos.5 and 6, respondent no.4 had issued Corrigendum under Section 31-A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, thereby reducing area from ownership of the petitioner. The petitioner assailed the order of District Superintendent of Land Record before the Hon'ble Minister. The Hon'ble Minister was pleased to direct parties to appear before Deputy Director of Land Record, Aurangabad for decision on merit, who was pleased to further remand the case to the District Superintendent of Land Record, Beed. The District Superintendent of Land Record directed to carry correction as per Anewari and area available as per Falni Bara measurement. The said order was challenged by respondent nos.5 and 6 before the Hon'ble Minister, who pleased to allow the Appeal by setting aside order and remanded matter back to respondent no.4 for re-consideration.

5. Mr. Tungar would submit that from the reasoning adopted by the Hon'ble Minister, it is difficult to find out purpose of remand. He submits that casual remand of the matter is not permissible. The analogy under Order 41 Rule 23 of the Civil Procedure Code needs to be applied and reasons are required to be recorded. Even while remanding matter back to any Authority, specific points for consideration ought to have been indicated so that concerned Authority shall take further steps in compliance with the directions under remand. Mr. Tungar would further submit that entire material was available before Hon'ble Minister, who could have independently taken decision. He would point out from reasoning part that is simply suggests third party rights are created and those are ignored by respondent no.4. However, no particulars of such rights or prejudices to any party are specified. To buttress his submissions he relies upon the judgment of this Court in case of ***Gangaram s/o Rajaram Ingole Vs. Malkarjun s/o. Gangadhar Hundekar and Ors***¹ and judgment in case of ***Machindra Chandrabhan Dange Vs. Siddhi Cnc Private Limited***².

6. Per contra, Mr. Bhosle, learned Advocate appearing for respondent nos.5 and 6 submits that remand order would not prejudice rights of the parties, but they would get opportunity to put up their stand and respondent no.4 would be in a position to re-examine the matter in depth. He would, therefore, urge not to interfere in the impugned order.

7. Having considered submissions advanced and after perusal of the impugned order passed by the Hon'ble Minister, it can be observed that matter is remanded back only on the ground that third party rights are created in the property and no stock of such

1 2011 (1) ALL MR 874.

2 2014 (5) Mh.L.J. 173.

rights taken while passing order by respondent no.4. It is also observed that possibility of emerging unnecessary disputes and complication cannot be ruled out and matter is remanded back, so as to maintain position of rights as it was existing at the time of implementation of Consolidation Scheme. From aforesaid reasons it is discernible that remand is not for particular purpose. No specific points are framed for attention of respondent no.4. The issue of third party rights would not arise in consolidation proceeding, as it is a matter of record to be maintained as per provisions of Consolidation Act. Already respondent no.4 has caused measurement and detailed report of measurement is available on record. The position at the time of implementation of Consolidation Scheme can be noticed from such measurement report, which has been referred to in the order dated 12.01.2017 passed by respondent no.4.

8. At this stage, reference can be given to the judgment of this Court in case of ***Machindra Chandrabhan Dange*** (supra), wherein giving reference to the earlier judgments in case of ***Shivaji Karbhari Badak Vs. Indian Seamless Metal Tube Ltd.*** [Writ Petition No.10396 of 2012] dated 21.2.2013 and ***Balasaheb Bhanudas Bhosale Vs. Laxmi Saw Mill*** [Writ Petition No.2747 of 2013] dated 8.10.2013, this Court observed that remand cannot be passed in casual manner. If the Court is not agreeing with the view taken by Lower Court, then it can pass independent order. Similarly, in case of ***Gangaram s/o Rajaram Ingole*** (supra) giving reference to the judgment of the Supreme Court of India in case of ***Ashwinkumar K. Patel v/s Upendra J. Patel and others***³ this Court observed that merely because reasoning of Lower Court in some aspect was wrong, remand shall not be ordered, particularly when material is available before the

³ AIR 1999 SC 1125.

Appellate Court and Appellate Court itself can decide the Appeal one way of the other.

9. Applying aforesaid principles of law to the facts of the present case, it is apparent that the order of remand is without justifiable reasons. The Hon'ble Minister could have applied his own mind and decided the proceedings on the basis of material, which is already available on record. Consequently, writ petition succeeds. Hence, the following order :

ORDER

- a. Writ Petition is partly allowed.
- b. The impugned order dated 26.08.2019 passed by the Hon'ble State Minister (Revenue) in File No.अपिल-२०१८/प्र.क.४११/ज-७अ is hereby quashed and set aside.
- c. The Hon'ble Minister is requested to decide Appeal on its own merits on the basis of material already on record preferably within a period of one (01) year from the date of this order.
- d. Parties shall appear before the Hon'ble Minister on 02.09.2024.
- e. Writ Petition is disposed of.
- f. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE