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

WRIT PETITION NO. 388 OF 2017

Shivdas s/o. Vanji Mali,
Age.54 years, Occ. Agriculture,
R/o. Mandal,Tq. Shirpur,
Dist. Dhule.
Deceased through L.R.s. .. Petitioners [original appellants]

A) Tulsabai Shivdas Mali,
Age. 80 years, Occ. Nil,

B) Laxman Shivdas Mali (Sonawane)
Age. 45 years, Occ. Agriculture,

C) Ramkrushna Shivdas Mali (Sonawane)
Age. 42 years, Occ. Agriculture,
R/o. At Post Mandal, Shirpur,
Tq. Shirpur, District Dhule.

VERSUS

1. Sahebrao s/o. Vanji Mali
(Deceased) .. Respondents [1 to 9 original opponents]

2. Ranubai w/o. Dangal Mali
(Deceased)

3. Rambhau s/o. Dhanji Mali
Since deceased through LRs.

4. Durgabai Rambhau Mali,
Aged. Major, Occ. Household,
R/o. Mandal, Tq. Shirpur,
Dist. Dhule.

5. Tukaram s/o. Rambhau Mali,

Aged. Major, Occ. Agriculture,
R/o. Mandal, Tq. Shirpur,
Dist. Dhule.

6. Sambhaji s/o. Rambhau Mali,
Aged. Major, Occ. Agriculture,
R/o. Mandal, Tq. Shirpur,
Dist. Dhule.

7. Raghunath s/o. Dhanji Mali
Aged. Major, Occ. Agriculture,
R/o. Mandal, Tq. Shirpur,
Dist. Dhule.

8. Suka s/o. Gava Mali,
Aged. Major, Occ. Agriculture,
R/o. Mandal, Tq. Shirpur,
Dist. Dhule.

9. Nhanibai Dhabu Mali
Since deceased through LRs.

10. Rajaram s/o. Dhabu Mali,
Aged. Major, Occ. Agriculture,
R/o. Mandal, Tq. Shirpur,
Dist. Dhule.

11. Gangabai w/o. Gulabrao Mali,
Aged. Major, Occ. Agriculture,
R/o. Mandal, Tq. Shirpur,
Dist. Dhule.

12. Kalpanabai w/o. Gulab Mali,
Aged. Major, Occ. Household,
R/o. Mandal, Tq. Shirpur,
Dist. Dhule.

13. Pravatibai Vitthal Mali
Aged. Major, Occ. Agriculture,
R/o. Mandal, Tq. Shirpur,
Dist. Dhule.

14. The Tahsildar,
Tahsil Office, Shirpur,
Dist. Dhule.

15. The Sub-Divisional Officer,
Shirpur, Dist. Dhule.

16. The Additional Collector,
Dhule, Dist. Dhule.

17. The Additional Commissioner,
Dhule.

Mr.D.S. Bagul, Advocate for the petitioners.
Mr.S.N. Kendre, AGP for the respondent-State.
Mr.Mahesh Deshmukh, Advocate for respondent Nos. 4,8, 10 to 12.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 22.10.2024
PRONOUNCED ON : 20.12.2024

J U D G M E N T :-

01. This writ petition is filed against an order dated 28.09.2016 passed by the learned Divisional Commissioner, Nashik Division, Nashik in RTS/Revision/47/2014, thereby rejecting the revision application filed by the present petitioners confirming order passed by the learned Collector. The learned Collector in appeal by respondent Nos. 1 to 13 by his order had set aside an order passed by the learned SDO. Respondent Nos. 1 to 13 are the original respondents in the appeal filed by the petitioners before the Sub-Divisional Officer, Shirpur. Respondent Nos.

14 to 17 are the Authorities of the Government of Maharashtra.

02. The dispute is in respect of mutation entry No. 2056, 2057 and 2058 on land Survey No. 4/1A, 4/2, 4/5, 4/10 and 4/11 taken in the name of the respondents over these lands in the year 1997. The appellants claimed to be successors of one Vanji Mali. The lands were originally belong to one Devchand Kamaji Mali. He had four sons, namely, Vanji, Dhanji, Gabha and Dema. During the lifetime of Devchand, he gave the disputed land to his elder son Vanji in the year 1942-43. Vanji was in possession since prior to 1942-43 and therefore his name was recorded in the revenue record. The names of his children came to be recorded vide mutation entry No. 714 in 1968. It is the claim of Shivdas – husband of petitioner No.1 and father of petitioner Nos. 2 and 3 that they are rightful owners of the property. Respondent No.1 is son of Dhanji. Respondent Nos. 2 to 13 are heirs of brothers of Vanji. Case of the petitioners is that without having any right over the suit-lands, the respondents got their names entered into revenue record vide entries stated above in the year 1997. On realizing this mistake, the petitioners filed an appeal before Sub-Divisional Officer, Shirpur by way of appeal No. 32 of 2011. It is the case that those entries were approved after 10-15 years after death of Dhanji, Gabha and Dema. The entries

were taken without any documentary evidence. This appeal was resisted by respondent Nos. 1 to `3. It is case of respondent Nos. 1 to 13 that the disputed lands are ancestral properties shared by the petitioners and respondent Nos. 1 to 13. Being ancestral properties, their names were rightly taken in the revenue record.

03. The learned SDO, Shirpur vide judgment and order dated 22.01.2013 allowed the RTS appeal setting aside the mutation entries. Against this order the respondents approached the learned Additional Collector by filing Appeal bearing RTS Appeal No. 6 of 2013. The learned Additional Collector set aside the judgment passed by the learned Sub-Divisional Officer vide judgment and order dated 22.01.2013. Thus, there are two concurrent orders against these petitioners. The petitioners aggrieved by the order are before this Court. It is argued that the learned SDO had rightly passed the order holding that Bhivsan Kamaji had no successor. There was partition between Devchand Kamaji and Zipru Kamaji, which was entered in revenue record. During the lifetime of Zipru, Devchand Kamaji died. After death of Devchand, name of Vanji Devchand was rightly entered in the revenue record being elder son. Vanji had four sons from his first wife and three sons and three daughters from second wife. Out of them, Dangal and Sahebrao expired

and there are no legal heirs to them. Dhanji also died leaving behind two sons, namely, Rajaram and Gulab. Gulab expired leaving behind his wife Gamgabai and daughter Kalpanabai. Gabha Devchand also died leaving behind his only son Suka and one daughter Parvatibai. It is further held that after the partition, the properties came to the share of Devchand. After Devchand, name of Vanji is rightly taken in the property. In the said property, there is also undivided share of Dhanji, Gabha, Dhabu in the property and therefore their names are entered in the properties, after death of Dhanji, Gabha and Dhabu. Since the names of Dhanji, Gaba and Dhabu were not recorded in the property, entries could not be taken in the name of their successor. The entries were taken only on the basis of certificate by police patil. It is thus held that the entries were wrongly taken and were set aside.

04. In the appeal by the respondents, the learned Additional Collector held that the property was never given to the exclusive share of Shivdas Vanji ro Vanji Devchand Mali. Other brothers, though their names were not entered in the revenue record, they were having share in the property and allowed the appeal. In the revision, the learned Additional Commissioner held that the entries were rightly taken in the year 1997 and were certified considering the heirship. The appeal before

the SDO was filed after 15 years. He thus held that the judgment and order passed by the learned SDO was not in accordance with law and rejected the revision.

05. Learned Advocate Mr. Bagul for the petitioners vehemently argued that the learned Additional Commissioner an committed error by confirming order passed by the learned Deputy Collector. The learned SDO had rightly passed an order cancelling mutation entries as the entries were taken illegally taken. It is clearly observed that at no point of time, the names of other brothers were appearing in the revenue record. The entire properties were shown in the name of Vanji. While taking entries, no procedure was followed as given in the Maharashtra Land Revenue Code. He, thus, prays for allowing the writ petition. He relies upon following judgments :-

- **(i) Santoshkumar Shivgonda Patil and Ors. Vs. Balasaheb Tukaram Shevale & Ors., (2009) 9 SCC 352.**
- **(ii) Kamal Krishan Rastogi & Ors. Vs. State of Bihar and Anr., (2008) 15 SCC 105.**
- **(iii) Ragho Singh Vs. Mohan Singh & Ors., (2001) 9 SCC 717.**
- **(iv) Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, (1997) 6 SCC 71.**
- **(v) M/s. Magadh Sugar & Energy Ltd. Vs. The State of Bihar & Ors., Civil Appeal No. 5728 of 2021 (Hon’ble Supreme Court).**

06. The learned Advocate Mr. Mahesh Deshmukh appearing for the respondents vehemently opposed the petition. He submits that the learned SDO entertained the appeal after 15 years of taking the entries. The entries were taken by considering heirship. The name of Vanji was also appearing in the revenue record only because he happened to be elder son in the family. At no point of time, the lands were divided or partitioned. The lands were always held to be a joint family properties. The learned Additional Collector and the learned Commissioner have rightly appreciated this aspect. From the affidavit in reply, it is stated that the mutation entries were not challenged for more than 15 years. There was declaration deed executed between Rajaram Dhabu and Gulab Dhabu i.e. sons of deceased brother of Vanji on 21.11.1978, wherein his sons are shown as vendee and Vishwanath Daga, Kashinath Daga, Nimba Daga, Dangal Vanji and Shivdas Vanji as vendor in relation to land Survey No. 4/1/A. The said deed is signed by Shivdas also. Now the petitioners have no concern with the property Survey No. 4/1/A. The learned SDO did not consider this declaration deed and set aside the mutation entries. The declaration deed is placed on record along with affidavit in reply. He also argued that against the order passed by the learned Commissioner, remedy is provided to approach the State

Government, however, no revision is preferred to the State. He relied upon following judgments:-

(i) Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority and Ors., 2023 SCC OnLine SC 95.

(ii) Gurudassing Nawoosing Panjwani Vs. State of Maharashtra & Ors., 2015 AIR SCW 6277.

07. In the case of **Santoshkumar (supra)** the Hon'ble Apex Courrt held that under section 257 of the Maharashtra Land Revenue Code, though no time limit is prescribed for exercising the powers of limitation, however, the same needs to be exercised within reasonable time, which would be ordinarily three years. In that view the revisional order was set aside by the Hon'ble Apex Court.

. In the case of **Kamal Krishan Rastogi (supra)**, the Hon'ble Apex Court held that when setting aside an illegal order would lead to another illegal order, in such case the High Court should not exercise the jurisdiction.

. In the case of **Ragho Singh (supra)**, the Hon'ble Apex Court specifically considered section 5 of the Limitation Act. It is held that the delay cannot be condoned in absence of any such application. In that case appeal was filed before the Additional Collector beyond limitation period with delay of 10 days. There was no application for condonation of delay and still the Authority entertained the appeal. In that view, the Hon'ble Apex Court set aside the order passed by the Appellate Authority in that appeal.

. In the case of **Mohamad Kavi Mohamad Amin (supra)**, the case was under the Bombay Tenancy and Agricultural Lands Act. The Mamlatdar suo-motu had initiated an enquiry. It was held that though there is no limitation period provided for exercise of such power, still it should be exercised within a reasonable period i.e. three years.

. In the case of M/s. Magadh Sugar (supra), the High Court had declined to entertain the writ petition on the ground that the dispute was factual in nature requiring adjudication under the provisions of Bihar Electricity Duty Act, 1948. In that case the appellant had approached the High Court challenging imposition of electricity duty and penalty on the electricity supply by the Bihar State Electricity Board. The Hon'ble Apex Court held that this was mere question of law and set aside the order passed by the High Court and restored the petition for fresh disposal on remand.

08. In the case of **Godrej Sara Lee (supra)**, the questions were whether the High Court was justified in declining to entertain the writ petition on the ground of availability of alternative remedy of appeal,

under section 33 of the Haryana Value Added Tax Act, 2003; secondly, whether it was necessary to remit the writ petition to the High Court for hearing it on merits or to examine the correctness or otherwise of the orders impugned before the High Court. The Hon'ble Apex Court considered the orders passed by the revisional authority, which were impugned in proceeding before the High Court and set aside those orders. The Apex Court held that power of High Court to issue prerogative writes under Article 226 is plenary in nature. Article 226 does not put, in fetter or impose any limitation or restraint on the exercise of power to issue writs. Though exercise of such power may not be made routine matter in the given case, cannot mechanically be construed as ground for dismissal of the petition.

. In the case of **Gurudassing (supra)**, the Hon'ble Apex Court interpreted section 257 of the Maharashtra Land Revenue Code and held that second revision is maintainable before the State Government against the order passed in revision by the Divisional Commissioner.

09. In view of the judgments cited and the arguments advanced, this Court first thinks it proper to consider the question of maintainability of this petition. In view of the submissions of the respondents that this

writ petition is not maintainable for availability of alternative remedy under section 257 in view of **Gurudassing (supra)**, there is no doubt that there is alternative remedy available. However, in view of **Godrej Sara Lee (supra)**, it is seen that the High Court has power to exercise jurisdiction even if there is alternative remedy available, if circumstances exist. At the same time, it is expected that such exercise does not become routine matter. In this case, this Court finds that since the petitioners are before this Court since 2017, now remanding the matter with direction to the parties to approach the Minister after seven years would only amount to one more exercise. The impugned order itself can be examined by this Court. In view of this, this Court proceeds to consider the impugned order, passed by the learned Additional Divisional Commissioner.

10. Before the learned Commissioner, the proceeding had arisen as regards mutation entries. The proceeding initially started before the learned SDO. The learned SDO exercised the jurisdiction and passed order in favour of the petitioners and the same is set aside by the learned Additional Collector and confirmed by the Commissioner.

11. On going through the order passed by the SDO, it appears

that though it was pointed out that the Mutation Entries are challenged after 14 years i.e. after delay of more than 13 years, still the SDO entertained the appeal filed by the petitioners. He entertained the appeal only on the ground that the names of successors of the respondents did not appear in 7/12 extract prior to the Mutation Entries and allowed the appeal of the petitioners.

12. The learned Additional Collector considered all these aspects and also considered that the entries were taken on the basis of orders in the heirship register. The respondents were the heirs of the original owners of the land. There was no illegality in taking mutation entries. He turned down the objection that no procedure under section 150(1) of the MLRC was followed. It is observed that it is not believable that though the petitioners were residing in the same village, they would not get knowledge of the Mutation Entries for 15 years. The learned Collector also considered the factum of possession of the land and set aside the order passed by the learned SDO. The learned Additional Divisional Commissioner observed that though sufficient opportunities were granted to the petitioner, he did not advance any arguments. The learned Commissioner, therefore, passed order on the basis of the say and applications filed from time to time by the present petitioners and by

going through the record. The learned Additional Commissioner further held that there is dispute about the heirship as the owner Vanji Devchand Mali had two wives. It would be, therefore, necessary for the parties to obtain succession certificate from the Court of competent jurisdiction and allowed the revision. Considering the judgments relied upon by the parties, no case is made out by the petitioners calling for interference at the hands of this Court. The writ petition, therefore, deserves to be dismissed and the same is hereby dismissed with no order as to costs.

[KISHORE C. SANT, J.]

snk/2024/dec24/wp388.17