



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

<u>WRIT PETITION NO.424/2024</u>	
<u>PETITIONER</u>	Smt. Bimal Wd/o Mohandas Sicka, Aged about 80 years, Occ. Nil, R/o 1 B, Shahnaz Building, 90, Nepean Sea Road, Mumbai – 400006 Through her Power of Attorney Holder Ajay Harishchandra Agrawal, Aged 55 years, Occ. Business, R/o SBI Colony, Ganesh Nagar, Gondia.
<u>...VERSUS...</u>	
<u>RESPONDENTS</u>	1) State of Maharashtra Through its Secretary, Department of Revenue & Forest, Madam Cama Road, Mantralaya, Mumbai – 32. 2) The Collector, Gondia, Collectorate Gondia, Dist. Gondia. 3) Sub Divisional-Cum-Nazul Officer, Gondia, Dist. Gondia. 4) Municipal Council, Gondia, Through its Chief Officer, Municipal Council Office Tah. & Dist. Gondia. 5) Vishwabhushan Bharat Ratna Parampujya Dr. Babasaheb Ambedkar Sarvajanic Jayanti Utsav Samiti, Gondia Through its President, Amitkumar Bhalerao, Office at Shri Suvichar Digambar Rahul Datta Mandir, T.B. Lane, Lohia Ward, Tah. & Dist. Gondia.

Mr. Sunil Manohar, Sr. Counsel a/b Mr. N.A. Gaikwad, Counsel for petitioner Mr. A.A. Madiwale, AGP for respondent nos.1 to 3 Mr. M.I. Dhattrak, Counsel for respondent no.4 Mr. M.P. Khajanchi, Counsel for respondent no.5
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CORAM : BHARAT P. DESHPANDE, J.

DATE : 21/03/2024

ORAL JUDGMENT

1. Heard Mr. Sunil Manohar, learned senior counsel assisted by Mr. N.A. Gaikwad, learned counsel for the petitioner; Mr. A.A. Madiwale, learned Assistant Government Pleader for the respondent nos.1 to 3; Mr. M.I. Dhattrak, learned counsel for the respondent no.4 and Mr. M.P. Khajanchi, learned counsel for the respondent no.5. Rule. Rule is made returnable forthwith. Heard finally at the stage of admission with consent.

2. Mr. Sunil Manohar, learned senior counsel assisted by learned counsel Mr. N.A. Gaikwad submits that the impugned order is passed in haste and without giving any opportunity to the petitioner either to receive copy of the alleged sale-deed or to argue the matter before the Collector in an application for review of the order of renewing the lease, which was granted in favour of the petitioner.

3. The only aspect, which has been raised in the present petition is that the petitioner was called upon to appear before the

concerned authority on 26/12/2023 and on the same day, the concerned authority i.e. Collector without giving any opportunity to the petitioner as well as without furnishing copy of sale-deed, decided the matter on 28/12/2023.

4. Mr. Dhatrak, learned counsel for the respondent no.4 - Municipal Council and Mr. Khajanchi, learned counsel for the respondent no.5 would submit that first of all the petitioner has suppressed the relevant facts and that she is not entitled to claim the lease for the deceased on the basis of a Will. It is also claimed on behalf of the respondents that opportunity was given to the petitioner and only thereafter the matter was decided.

5. The petition could be disposed of only on a short point that no proper opportunity was given to the petitioner to represent herself before the concerned authority and that too in a review petition.

6. The petitioner is claiming to be a widow of the deceased, who was a lease-holder of a land given by the Government. The petitioner applied for renewal of such lease and accordingly, the report was called from the concerned officer from Nazul Department. On receipt of such report, the lease was renewed

in favour of the petitioner vide order dated 20/12/2023.

7. However, on the same day, a complaint was lodged with regard to grant of lease in favour of the petitioner, stating therein that part of leased land is already sold by the deceased in favour of the Municipal Council and that building exists on the said part of leased portion.

8. The concerned authority issued a notice of review to the petitioner, which is dated 21/12/2023 and kept the matter on 26/12/2023. Roznama dated 26/12/2023 reveals that on behalf of the petitioner, Mr. Ajay Agrawal appeared and requested for copy of sale-deed and also one week's time. However, some arguments were advanced as found in the Roznama itself. The concerned authority thereafter recorded that even though request was made for a date of one week, the request was rejected and the matter was closed for orders. Finally, the order was passed on 28/12/2023, thereby cancelling the entire lease.

9. Mr. Manohar, learned senior counsel would submit that the petitioner was not aware about the fact of sale made by the deceased in favour of the Municipal Council since survey records stand in the name of the petitioner. Even the Municipal Council

failed to apply for mutation entry in view of the sale-deed.

10. Mr. Dhatrak, learned counsel appearing for the Municipal Council now submits that an application for mutation was filed in the year 2014. However, no orders were passed till date and for that purpose even an affidavit is filed before this Court. At this stage, it is necessary to note that the alleged sale-deed in favour of the Municipal Council is of the year 1972. From the date of sale-deed till 2014, the Municipal Council failed to apply for mutation entries. This inordinate delay is not at all explained by the Municipal Council. Be that as it may, the record shows that the name of the deceased is still recorded in the survey records with regard to the entire land including one, which is sold in favour of the Municipal Council.

11. The contention raised by the petitioner that no proper opportunity was given to put forth her case needs to be accepted for the simple reason that the record itself speaks that on a very first day of appearance i.e. 26/12/2023 though a time of one week was sought along with copy of sale-deed, the same was not provided, thereby denying opportunity to the petitioner to represent herself effectively.

12. The matter needs to be remanded to the concerned authority with a direction to give an opportunity to the petitioner as well as to the respondents to place their respective stand before the concerned authority and thereafter to decide the review application in accordance with law.

13. The observations made above may not be considered by the authority for the purpose of deciding the application as well as the matter pending before the survey authority and the said the authority shall decide such matters in accordance with law and on its own merits.

14. The writ petition is partly allowed. The impugned order is hereby quashed and set aside. The matter is remanded to the Sub Divisional Officer, Gondia – respondent no.3 for the purpose of deciding a review afresh.

15. Needless to mention that the respondent no.3 shall afford a reasonable opportunity to both sides and then decide the matter in accordance with law. The respondent no.3 shall decide the said review application within a period of maximum two months. The respondent no.3 to consider the request of the petitioner for grant of renewal of the remaining part, excluding the portion which

is already occupied by the Municipal Council. Till the disposal of the said review application, the parties shall maintain *status quo* as on today.

16. Rule is made absolute in the aforesaid terms. No order as to costs. The parties to act upon the authenticated copy of this order.

(BHARAT P. DESHPANDE, J.)