



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

WRIT PETITION NO.1539 OF 2018

Vijay Narayan Admane (since deceased) Thr. L.Rs. Smt Lata Vijayrao Admane, Zenda Chowk,
Mahal, Nagpur and ors.

-vs-

State of Maharashtra, Thr. Secretary, Ministry of Home Affairs, Mantralaya, Mumbai and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and the Registrar's orders.

Court's or Judge's Orders.

Shri Shadan Khan, Advocate for petitioner.

Shri S. M. Ghodeswar, Assistant Government Pleader for respondents.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : August 26, 2024

P. C.

1. We have heard the learned counsel for the parties.
2. The challenge in the petition is to the Circular dated 07/12/2012 to the extent Clause-4.6 issued by respondent No.1 and also to the order dated 28/11/2016 passed by respondent No.4.
3. The facts necessary for deciding the petition are as under :

It is the case of the petitioner that they are owner of land bearing Khasra No.88 (Old Khasra No.71) admeasuring 4.50 HR at mouza Tarodi, Taluka Kamthi, District Nagpur. According to him, in execution of consolidation scheme, his holdings are reduced to 4.10 HR. As such he would claim that the consolidation scheme is incorrectly executed whereby the holdings are reduced from 4.50 HR to 4.10 HR thereby

causing loss to the petitioner as regards his holdings which violates his constitutional right under Article 300(A) of the Constitution of India. His further contentions are the respondent vide the impugned order has rejected his such prayer based on the impugned circular dated 07/12/2012 particularly clause 4.6 thereof for which there is no legal basis.

4. The learned counsel for the petitioners would urge that in the matter of implementation of consolidation scheme, variation of measurement to the extent 5% which is said to be permissible, cannot be said to be having any legal foundation and basis. That being so, clause 4.6 goes contrary to the mandate provided under Article 300(A) of the Constitution of India. That being so, it is claimed that not only the impugned order but also clause 4.6 of the circular dated 07/12/2012 is liable to be quashed and set aside.

5. As against above, the learned Assistant Government Pleader Mr S. M. Ghodeswar would strenuously urge that execution of consolidation scheme is as per the statutory provisions. According to him, the execution of consolidation scheme is carried out by measuring the land either by adopting cadastral or Vasalewar method. He would claim that in consolidation scheme the Authorities while measuring the land are required to be sensitive to allegiance and de-allegiance for addition of land or the land being reduced because of heavy rains or

natural calamities etc. In such an eventuality, he would claim that it is reasonable to give latitude to the Authorities while measuring the land by adjusting up to 5% of the measurement. As such he would urge that the petition is liable to be dismissed.

6. We have appreciated the submissions.

7. It is not in dispute that in 7/12 extract land shown in the name of the petitioner was initially 4.22 HR as against his claim of having possession of 4.50 HR. The petitioner might have claimed possession over 4.50 HR. However, possession over and above 4.22 HR is either by way of addition or otherwise by way of encroachment.

8. Be that as it may, the petitioner can always claim that he has right and title in regard to 4.22 HR land. In the matter of implementation of consolidation scheme, the measurement varies based on the existence of land on the spot. In the measurement of the land of the petitioner at spot the land was found to be 4.10 HR and the reduction according to the petitioner is of 0.12 HR. Such reduction of 0.12 HR is within the permissible limit as is reflected in aforesaid guidelines/circular.

9. The fact remains that variance to the extent of 5% in the matter of measurement of land is permissible which is based on the statutory

provisions. In such an eventuality, reliance can be placed on the provisions of Section 106 of the Maharashtra Land Revenue Code.

10. In that view of the matter, the contention of the counsel for the petitioner or that of the petitioner that clause 4.6 of the circular goes contrary to his constitutional right or reduction in his holdings has adversely affected his enjoyment to the property cannot be said to be justified as it is by virtue of statutory reason i.e. implementation of consolidation scheme that holdings of the land owned by the petitioner stood to be reduced within limit of 5%.

11. It is out of natural phenomenon that the land holdings at a particular spot can be said to be reduced or at some other place it is added.

12. In the aforesaid background, we see no reason to cause interference in writ jurisdiction. The petition in our opinion is devoid of merits and it is liable to be dismissed.

13. The writ petition is accordingly dismissed with no order as to costs.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J.)