



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

WRIT PETITION NO. 899 OF 2022

Bhagwan s/o Bhaurao Gunjkar,
Age: 60 years, Occu: Agriculture,
R/o. Fulkalas, Tq. Purna,
Dist. Parbhani

.....PETITIONER
(Ori. Plaintiff)

VERSUS

1. The State of Maharashtra
Through Additional Chief Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai -400 032
[copy to be served on Government
Pleader, High court of Judicature of
Bombay, Bench At Aurangabad]
2. Additional Commissioner,
Aurangabad, Maharashtra
3. The Collector,
Parbhani
4. The Nayab Tahsildar [Revenue],
Purna, Dist. Parbhani
5. The Talathi,
Sajja Fulkalas,
Tq. Purna, Dist. Parbhani
6. Madhav s/o Gyanoba Shirale,
Age:50 years, Occu: Agril,
R/o Fulkalas, Tq. Purna,
Dist. Parbhani
7. Ambadas s/o Gyanoba Shirale,
Age: 40 years, Occu: Agriculture,
R/o. Fulkalas, Tq. Purna,
District: Parbhani.

8. Keshav s/o Gyanoba Shirale,
Age: 45 years, Occu: Agriculture,
R/o Fulkalas, Tq. Purna,
District: Parbhani
9. Nagorao s/o Ramrao Shirale,
Age: 55 years, Occu: Agriculture,
R/o Fulkalas, Tq. Purna,
District: Parbhani
10. Malkarjun s/o Ramrao Shirale,
Age: 45 years, Occu: Agril.,
R/o Fulkalas, Tq. Purna,
District: Parbhani
11. Maharudra s/o Ramrao Shirale,
Age: 40 years, Occu: Agril.,
R/o. Fulkalas, Tq. Purna,
District: Parbhani.
12. Sow. Shakuntalabai w/o Trimbak Shirale,
Age: 60 years, Occu: Ariculture,
R/o. Fulkalas, Taluka: Purna
District: Parbhani

.....**RESPONDENTS**
(Ori. Defendants)

Mr. R. P. Cheble And Mr. S. S. Gangakhedkar, Advocate for
the Petitioner
Mr. V. S. Badakh, AGP for Respondents-State
Mr. A. N. Nagargoje, Advocate for Respondent no.12
Mr. S. K. Chavan, Advocate for Respondent no.10 and 11

CORAM : ROHIT W. JOSHI, J.

DATED : 10TH JULY, 2025

ORAL JUDGMENT :-

. The present petitioner had filed an application dated 09.03.2011 before the Tahsildar, Purna, *inter alia* praying that mutation of land bearing survey no.74-B, admeasuring 5.79HR be recorded in his name by deleting entries in the names of respondent nos.9 to 11.

2. According to the petitioner, the said application was decided in his favour vide order dated 04.07.2011. The petitioner, however, contends that due to some mischief, certified copy of this order, which was passed in his favour, was never delivered to him. In view of the aforesaid, the petitioner contends that in such circumstances, he was required to file a petition being Writ Petition No.2978 of 2012 before this Court. The said petition came to be decided vide order dated 11.04.2012. This Court directed the respondent no.1/Tahsildar to take a decision on the application dated 29.11.2011 filed by the petitioner seeking certified copy of the alleged order dated 04.07.2011, if it was not already decided. After the order came to be passed in the Writ Petition, the Nayab Tahsildar (Revenue), Purna, tookup the application for hearing vide case no.2014/ROR/KAVI. The date of institution

of proceeding is recorded as 02.01.2014 and the application came to be decided vide order dated 19.11.2014. The operative portion of the order records that application filed by the petitioner dated 02.12.2011 was allowed. The Nayab Tahsildar directed to record mutation entry with respect to the disputed property i.e. survey no.74-B (Gut No.198), admeasuring 5.79HR of Mauja Fulkalas, Tahsil Purna, District Parbhani, in the name of the petitioner.

3. Perusal of the order will demonstrate that this order is passed invoking Section 155 of the Maharashtra Land Revenue Code, 1966. However, while deciding the application, reference is also made to the provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950.

4. Aggrieved by this order, the respondent nos.9 to 11 preferred appeal under Section 247 of the MLR Code before the Sub Divisional Officer, Gangakhed being Appeal No.2014/ROR.ACR-55. The said appeal came to be dismissed vide order dated 03.03.2015, on the ground that appeals under the Hyderabad Tenancy and Agricultural Lands Act, 1950, were required to be decided by the Collector and not by

the Sub Divisional Officer. Thus, the appeal came to be dismissed for want of jurisdiction.

5. The respondent nos.9 to 11 filed second appeal before the Collector, Parbhani, which was also dismissed vide order dated 24.09.2015. The Collector has observed that the controversy between the parties was pertaining to alleged tenancy under the provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950, however, the appeal was filed under Section 247 of the MLR Code and as such, the appeal was not maintainable.

6. Aggrieved by the aforesaid order, the respondent nos.9 to 11 filed a revision under Section 257 of the MLR Code before the Additional Commissioner, Aurangabad. The learned Additional Commissioner has observed that the application pursuant to which the proceeding had commenced was filed for correction of mutation entry. It is held that since, the first application was under Section 155 of the MLR Code, appeal under Section 247 of the Code was maintainable before the Sub Divisional Officer. The learned Additional Commissioner has held that the Sub Divisional Officer and

Collector had erred in observing that the appeal was not maintainable and had thus committed error of jurisdiction in dismissing the appeals on the ground of maintainability and not deciding the appeals on merits. The proceedings were accordingly remanded. The Additional Commissioner has taken into consideration the fact that earlier, the petitioner had filed a suit being Regular Civil Suit No.9 of 2003 against the respondent nos.9 to 11 with respect to 0.81HR land in the disputed property claiming ownership on the basis of adverse possession. It is observed that the said suit was dismissed and dismissal of the suit was maintained up to this Court. The learned Commissioner has observed that the Nayab Tahsildar and also the two Appellate Authorities did not take into consideration aspect of the matter while allowing the application filed by the petitioner and dismissing the subsequent two appeals preferred by respondent nos.1 to 11.

7. In that view of the matter, the learned Commissioner has quashed and set aside order dated 19.11.2014, passed by the Nayab Tahsildar as also mutation entry no.1023 recorded in favour of the petitioner pursuant to the order dated 19.11.2014 passed by the Nayab Tahsildar. It will be pertinent

to mention that the learned Additional Commissioner has also observed that the order passed by the Nayab Tahsildar did not appear to have been passed by him.

8. The petitioners filed second revision application before the State, which is also dismissed vide order dated 17.01.2021. The petitioner is aggrieved by the order of remand passed by the learned Additional Commissioner, which is confirmed by the respondent no.1/State.

9. Perusal of the order passed by the learned Nayab Tahsildar will demonstrate that the Nayab Tahsildar has not taken into consideration the effect of dismissal of Regular Civil Suit No.9 of 2003 filed by the petitioner. The Nayab Tahsildar has proceeded to decide the issue of tenancy with respect to the disputed property. It also needs to be mentioned that according to the respondent nos.9 to 11, the application dated 09.03.2011 filed by the petitioner was already rejected by the Tahsildar vide order dated 11.04.2012. The respondent nos.9 to 11 had contended that they have placed the order dated 11.04.2012 before the Nayab Tahsildar and yet the Nayab Tahsildar who is sub-ordinate to the Tahsildar has passed a

contradictory order.

10. Having regard to such state of affairs, in the considered opinion of this Court, no case is made out for interference with the impugned order of remand passed by the learned Additional Commissioner which in turn is confirmed by the State Government. The petitioner has failed to make out any case to interfere in the matter.

11. The petition is therefore **dismissed** with no orders as to cost.

12. Parties are directed to appear before the Tahsildar, Purna on 04.08.2025. Parties to note that the authority will not issue fresh notice for the appearance in the matter.

13. The Tahsildar is directed to decide the application filed by the petitioner on or before 31.12.2025.

14. At this stage, the learned Counsel for the petitioner draws attention to order dated 03.09.2024 directing the parties to maintain status-quo with respect to mutation entries till the next date of hearing. This, interim order dated 03.09.2024 is extended from time to time and was continued till 08.07.2025. It appears that the order which was being

continued from time to time is not formally extended on 08.07.2025. The interim order was operating almost for a period of 10 months.

15. Learned Advocate for the respondent nos.9 to 11 makes a submission that pursuant to order dated 19.11.2014 passed by the Nayab Tahsildar, mutation was recorded in favour of the petitioner vide mutation entry no.1023. The learned Advocate for the respondent nos.9 to 11 contends that this mutation entry was recorded without notice to the respondent nos.9 to 11. He has produced two certified copies of the said mutation entries, one which does not indicate that the mutation entry is recorded after notice to respondent nos.9 to 11 and another bearing an endorsement that the notices issued were refused to be accepted by the respondent nos.9 to 11. All these mutation entries reflect the date 11.03.2015 and are recorded at the same number i.e.1023.

16. The learned Advocate for the respondent nos.9 to 11 also submits that in the appeal preferred before the Sub Divisional Officer, interim order was granted on 10.03.2015 and the mutation entries recorded thereafter on 11.03.2015.

Be that as it may, the mutation entry is recorded in the name of the petitioner since the year 2015. The interim order passed by this Court is operating almost for a period of 9 months. In such circumstances, it will be expedient that, in the other rights column, names of the respondent nos.9 to 12 are recorded mentioning particulars of the sale deeds executed in their favour. The 7/12 extract to be issued hereinafter should positively reflect the same. This arrangement shall continue till decision of the application by the learned Tahsildar.

17. Both parties are directed not to create any third party interest over the suit property till decision of the application by the Tahsildar. All points are kept open. It will also be open for the respondent nos.9 to 12 to contend that the application was already decided by the Tahsildar vide order dated 11.04.2012 and that the said order shall operate as *res-judicata*.

18. Civil Application, if any, stands **disposed** of.

(ROHIT W. JOSHI, J.)