



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

WRIT PETITION NO. 7984 OF 2018

Shaikh Abdul Razak S/o Shaikh Ahmed,
Age : 69 Years, Occu. : Business,
R/o Survey No. 408/1, Income Tax Colony,
Old Jalna, Tq. and Dist. Jalna. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32.
2. The Collector, Jalna,
Tq. and Dist. Jalna.
3. The Tahsildar,
Jalna, Tq. and Dist. Jalna.
4. Shaikh Yunus Shaikh Ahmed,
Age : 51 Years, Occu. : Business,
R/o Sanjay Nagar, Lane No. 21,
Baijipura, Aurangabad.
5. Salim Abdul Rashid Hamdule,
Age : 45 Years, Occu. : Business,
R/o Zafar Khan Chawl, Adjoining
Saraswati Bhavan School,
Old Jalna, Tq. & Dist. Jalna.
6. M/s Sumer Industries,
Sumersingh Khushalshingh Thakur,
Age : 32 Years, Occu. : Business,
R/o Rana Bhavan, Chhatrapati
Colony, Old Jalna, Tq. and
Dist. Jalna.

7. Shaikh Abdul Rashid Abdul Gaffar,
Age : 45 Years, Occu. : Labour,
R/o Near Railway Station,
Ambad Road, Jalna,
Tq. and Dist. Jalna.
8. Sayyed Salim Sayyed Ahmed @
Shaikh Salim Shaikh Gulam Ahmed,
Age : 45 Years, Occu. : Labour,
R/o Near Railway Station,
Ambad Road, Jalna,
Tq. and Dist. Jalna.
9. Taluka Inspector of Land Record,
Jalna, Tq. and Dist. Jalna.
10. The Talathi,
Sajja Jalna City, Jalna,
Tq. and Dist. Jalna.
11. The Circle Inspector,
Jalna City, Tahsil Office,
Jalna, Tq. and Dist. Jalna.
12. The Sub Divisional Officer,
Jalna, Tq. and Dist. Jalna.
13. The Director of Land Records,
Pune, Tq. and Dist. Pune.
14. Shaikh Firozlala Shaikh Chunnumiya Tamboli,
Age : 50 years, Occu. : Agril. & Business,
R/o Gitanjali Colony,
Aurangabad Road, Jalna.
15. Wasim Shaikh Dadamia Shaikh,
Age : 52 Years, Occu. : Business,
R/o Rahemanganj, Tq. and
Dist. Jalna.

16. Shehnazbi W/o Shaikh Salim,
Age : 60 years, Occu. : Household,

17. Zublabi W/o Shaikh Shafiq,
Age : 64 Years, Occu. : Household,

Respondent Nos. 16 and 17

Both R/o Behind Moti Masjid, Jalna,

Tq. and Dist. Jalna.

.. Respondents

Shri R. N. Dhorde, Senior Advocate i/by Shri R. L. Kute,
Advocate for the Petitioner.

Shri S. R. Yadav Lonikar, A.G.P. for the Respondent Nos. 1 to 3, 9
to 13.

Shri D. R. Kale, Advocate h/f Shri Umakant P. Chavan and Mr.
R. M. Sayyed, Advocate for the Respondent No. 4.

Shri R. M. Sayed, Advocate h/f Shri M. G. Mustafa, Advocate for
the Respondent Nos. 5, 14 and 15.

Shri Kshitij H. Surve, Advocate for the Respondent Nos. 6 to 8.

Shri Bhargav B. Kulkarni, Advocate for the Respondent Nos. 16
and 17.

Shri S. B. Bakariya and Shri S. S. Kazi, Advocates for the
Intervenors.

**CORAM : S. G. MEHARE AND
SHAILESH P. BRAHME, JJ.**

**CLOSED FOR JUDGMENT ON : 16.01.2025
JUDGMENT PRONOUNCED ON : 20.02.2025.**

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. Heard both sides
finally at the admission stage.

2. The petitioner is invoking jurisdiction of this Court under
Article 226 and 227 of the Constitution of India for challenging
preparation of PR card of land Sy. Nos. 408/1 and 408/2 situated

at Jalna and action of the respondent No. 9/Taluka Inspector Land Records, Jalna. He is seeking prohibitory orders against the respondents from changing record of land Sy. No. 408/2 and disturbing his peaceful possession. He is further seeking direction to initiate action against the Taluka Inspector Land Records and other erring officers for preparation of fabricated and bogus PR cards of Sy. Nos. 408/1 and 408/2.

3. The subject matter of the writ petition is part of original land Sy. No. 408 situated at Jalna, Tq. and Dist. Jalna and more particularly as follows :

Sr. No.	Land Survey No.	CTS No.	Subsequent CTS No.	Alleged owner and occupant
1.	408/1	9669/B	14447	Respondent No. 7
2.	408/2	9669/A	14448	Respondent No. 6

4. It is the case of the petitioner that original owner of Sy. Nos. 408/1 and 408/2 was Khanderao Deshpande, who had sold 3A 25G to the petitioner's grandfather which was numbered as Sy. No. 408/2. Remaining 3A 24G land was sold to Ramji Umaji, which was numbered as Sy. No. 408/1. Ramji Umaji further alienated it to Bhanekhan. Petitioner's grandfather Shaikh Amir was tenant of Bhanekhan of land Sy. No. 408/1. Lateron, he was issued with purchase certificate on or about 04.03.1963.

5. There is a checkered history of litigation of the subject matter. To decide the controversy, it is suffice to mention that petitioner's brother Shaikh Yunus had filed suit R.C.S. No. 381 of

2002 for administration of estates in respect of land Sy. No. 408/2. It was decreed on 28.03.2007. Being aggrieved, petitioner had filed R.C.A. No. 83 of 2007. It was dismissed. Then Second Appeal No. 322 of 2013 was filed, which was also dismissed and special leave petition against that was also dismissed by the Supreme Court. The respondent No. 4 is yet to execute the decree.

6. The respondent No. 7 had filed R.C.S. No. 275 of 2005 for declaration and injunction on the basis of sale deed executed by Banekhan in his favour for land Sy. No. 408/1. It was dismissed for default. After gap of considerable period the respondent No. 7 challenged mutation entry No. 3947 of land Sy. No. 408/1. The delay caused in preferring appeal was condoned by the Sub Divisional Officer. Being aggrieved, the petitioner preferred Writ Petition No. 8168 of 2013, which is still pending.

7. It is further case of the petitioner that at the instance of respondent No. 7 Sy. No. 408/1 bearing CTS No. 9667/B and at the instance of the respondent No. 6 Sy. No. 408/2 bearing CTS No. 9669/A bogus PR cards were prepared. The said action was challenged by the petitioner by preferring Writ Petition No. 1872 of 2011. The Deputy Superintendent of Land Records filed reply admitting the mistake. By order dated 17.07.2013, considering the reply and considering the statement on oath that enquiry for preparation of PR card was under way, the petition was disposed of with a direction to conclude the enquiry.

8. In furtherance of the directions, the District Superintendent of Land Records passed an order on 20.12.2013 setting aside PR cards of 9669/A and 9669/B. Being aggrieved, the respondent No. 7 had filed Appeal No. 85 of 2015 before the Deputy Director of Land Records. Appeal was dismissed vide order dated 16.11.2015, but he was granted liberty to submit application for getting PR cards of land Sy. No. 408/1 and 408/2 before the Deputy Superintendent of Land Records, Jalna.

9. Accordingly, the respondent No. 7 submitted an application before the District Superintendent of Land Records. Then order was passed on 05.12.2015 directing to prepare PR card of Sy. No. 408/1 in the name of the respondent No. 7 by giving subsequent CTS No. 14447 and that of Sy. No. 408/2 in the name of the respondent No. 6 by giving subsequent CTS No. 14448. In view of these directions, the respondent No. 9/Taluka Inspector of Land Records prepared PR cards. This action is questioned by the petitioner.

10. Learned senior counsel Mr. R. N. Dhorde instructed by Mr. R. L. Kute, learned counsel for the petitioner submits that impugned action of the respondent No. 9 and preparation of PR cards are against the principles of natural justice. No notice was issued to the petitioner. The previous orders and the record were not placed before the authority. It is submitted that order dated 05.12.2015 was not in existence and the entire conduct of the respondent No. 9 and other officers is suspicious and objectionable. For that purpose our attention is adverted to the

orders passed in Writ Petition No. 7984 of 2018.

11. He would further submit that the affidavit in reply and the order passed in Writ Petition No. 1874 of 2011 were overlooked. On the earlier occasion same mischief was played by the respondent Nos. 7 and 8 in collusion with the revenue officers, which was rectified by cancelling PR cards vide order dated 20.12.2013 passed by the District Superintendent of Land Records.

12. It is further contended that, PR card of Sy. No. 408/1 of CTS No. 14447 as well as Sy. No. 408/2 of CTS No. 14448 are palpably bogus because PR cards for those CTS numbers are in the name of Mrs. Rekha Kataria in respect of different property. It has been revealed by affidavit in reply of the State Government that original copy of order dated 05.12.2015 is not available and a photo copy is placed on record creating doubt about the order dated 05.12.2015.

13. Learned senior counsel further submits that it is brazen fraud in preparing PR cards of subject matter of the writ petition when the respondent Nos. 6 and 7 have no title. He further submits that the writ petition is maintainable as it is not necessary to resort to alternate remedy. He would further submit that action is necessary against the respondent No. 9 and other erring officers for their indulgence in preparing bogus PR cards repetitively. He relies on following judgments of the Supreme Court.

- I. State of H. P. and others Vs. Gujrat Ambuja Cement Ltd. and another reported in AIR 2005 SC 3936.
- II. Harbanslal Sahnia and another Vs. Indian Oil Corporation Ltd. and others reported in AIR 2003 SC 2120.
- III. Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others reported in AIR 1999 SC 22.
- IV. T. Vijendradas and another Vs. M. Subramanian and others reported in 2008(1) All M. R. 446 (SC).
- V. Ganpatbhai Mahijibhai Solanki Vs. State of Gujrat and others reported in AIR 2009 SC (Supp.) 986.
- VI. Karunakaran Vs. V. padmini and others reported in AIR 2017 SC 2056
- VII. Dr. Vijay Kumar Kathuria Vs. State of Haryana and others reported in AIR 1983 SC 622.

14. The respondent Nos. 4 and 14 have contested the petition by contending that it involves disputed question of facts and law. There is alternate efficacious remedy available to the petitioner. It is further contended that the respondent No. 4 is armed with decree passed in R.C.S. No. 381 of 2002, which is confirmed upto Supreme Court. He was not party to Writ Petition No. 1874 of 2011 as well as to the proceeding before the District Superintendent of Land Records, who passed order dated 20.12.2013. He is the joint owner of the writ lands. It is contended that, the petitioner is falsely representing that he is the owner of the writ land. He had sold his share to the respondent No. 14 by sale deed dated 19.01.2018. The interim

relief granted on 18.06.2018 was not brought to his notice. It is submitted that the petition is not maintainable and liable to be dismissed.

15. The respondent No. 6 to 8 are the contesting parties who have filed the affidavit in reply. They have denied all the contentions and the allegations of the petitioner. It is contended that, the writ petition is not maintainable. There are disputed questions of facts. The petitioner does not have any title over the writ land. The petitioner's Spl. C. S. No. 175 of 2009 was dismissed by the competent Civil Court on 27.03.2019. He is agitating same contentions before this Court. The PR cards which are sought to be challenged are prepared in pursuance of the order dated 05.12.2015 passed by the Deputy Superintendent of Land Records. As per the liberty given to the respondent No. 7 by the Deputy Director of Land Record vide order dated 16.11.2015, application was made him seeking preparation of PR card and accordingly, the CTS record has been mutated in the name of respondent Nos. 6 and 7.

16. It is specifically contended that the respondent No. 7 is the owner of Sy. No. 408/1 and the respondent No. 6 is owner of Sy. No. 408/2. The respondent No. 6 purchased Sy. No. 408/2 vide sale deed dated 12.06.2009 from Maheboobbee. It is further contended that, before recording the writ land in the name of the respondent Nos. 6 and 7 measurements were conducted. Previously, CTS Nos. 9669/A and 9669/B were shown to be part of Sy. No. 411, however, it was found to be government land. The

mistake is rectified by order dated 05.12.2015. The properties were recorded in the name of the answering respondents subject to action U/Sec. 44 of the Maharashtra Land Revenue Code. Lastly, it is prayed that there is no substance in the petition and the same is liable to be dismissed.

17. The respondent No. 5 has also contested the petition who is purchaser of the land from the respondent No. 4. He adopts the submissions of the respondent No. 4. It is contended that, there are disputed questions of fact and the writ petition is not maintainable and it is liable to be dismissed. He relies on the judgment of the Supreme Court in the matter of Jacky Vs. Tiny @ Antony and others reported in *AIR 2014 SC 1615* and the judgment of the Full Bench of this Court in the matter of Motilal Lhamdeo Rokde and others Vs. Balkrushna Baliram Lokhande since deceased through L.Rs. Chandan Balkrishna Lokhande and others reported in *2020(1) Mh. L. J. 110*. He would further submit that order dated 05.12.2015 was appealable, but no appeal was preferred.

18. Learned counsel Mr. Bhargav Kulkarni appearing for the respondent Nos. 16 and 17 adopts the submissions of the respondent Nos. 4 and 14. He would submit that, they are the purchasers, but they were not aware of the orders dated 18.07.2018. There are disputed questions of facts and the writ petition is liable to be dismissed.

19. Having heard both sides there appears to be challenge to

property cards prepared by the respondent No. 9. The respondent No. 1 has filed affidavit in reply stating that the original order of 05.12.2015 was not available and photo copy is produced. The petitioner has doubted the existence of order dated 05.12.2015. The photo copy bears signature of the authority. The respondent No. 8 had applied for the copy on 09.12.2015 and he was issued with the said copy by the office of Deputy Superintendent of Land Records. The said order was appealable U/Sec. 247 of the Maharashtra Land Revenue Code (for short "M. L. R. Code").

20. The petitioner has not challenged order dated 05.12.2015 passed by the Deputy Superintendent of Land Records, Jalna. The said order has been placed on record. The petitioner is confronted to the order during the course of hearing. The P.R. cards which are under challenge in the petition also refer to same order. Even one of the respondents raised objection but no endeavour has been made by the petitioner to challenge the said order. The petition challenging PR card of the writ land cannot be entertained unless order dated 05.12.2015, on the basis of which the property extract cards are prepared is challenged. The petitioner has alternate efficacious remedy under the M. L. R. Code to challenge the order dated 05.12.2015. We are unable to grant any relief to the petitioner, when the order dated 05.12.2015 is still in tact.

21. The petitioner is claiming ownership over Sy. No. 408/1 and 408/2, which is hotly disputed by the respondents. There are

rival claims by the parties over the ownership and the possession of the subject matter. The respondent No. 4 had filed R.C.S. No. 381 of 2002 for administration of the estate which was decreed and the decree is confirmed upto the Supreme Court. The said decree is yet to be executed. The petitioner had also filed Spl. C. S. No. 175 of 2009 challenging the sale deed dated 12.06.2009 executed by Maheboobbee to the respondent No. 6 and for the relief of injunction. It was dismissed by decree dated 27.03.2019. No appeal has been preferred against the same. The respondent No. 5 had also filed R.C.S. No. 258 of 2019 for injunction and declaration. It was dismissed on 22.10.2021 and appeal against it bearing R.C.A. No. 40 of 2022 is still pending.

22. The parties have been litigating over the record of rights and there are multiple orders passed by the authorities under the M. L. R. Code. Though the decrees have been passed, the petitioner is disputing title and possession of the subject matter. Under these circumstances, this Court is not in a position to hold that the petitioner is the owner of the subject matter of the writ petition. It would be upto the litigating sides to get adjudicated their right to tile and possession from the competent Courts.

23. The respondents have rightly contended that there are disputed questions of facts. There is a checkered history of litigation between the parties. Few proceedings are still pending before the Civil Court. It is also informed by the petitioner that Writ Petition No. 8168 of 2013 is pending in this Court, which is emanating from challenge to the mutation entry No. 3947. We

have also come across the submissions of the respondents challenging very existence of certificate U/Sec. 38 of the Hyderabad Tenancy and Agricultural Lands Act. Thus, we find that intricate questions of facts are involved in the present case and we cannot accept the claim of the parties before us.

24. For the reasons mentioned above, we pass following order.

O R D E R

A. The Writ petition stands dismissed. However, the petitioner shall be at liberty to challenge the order dated 05.12.2015 passed by the Deputy Superintendent of Land Records, Jalna before the competent forum as is permissible in law.

B. Rule stands discharged. There shall be no order as to cost.

[SHAILESH P. BRAHME, J.]

[S. G. MEHARE, J.]

25. After pronouncement of the judgment, Mr. Kute, learned counsel appearing for the petitioner prays for continuation of the order of interim relief, which was granted on 18.07.2018.

26. Mr. D. R. Kale, learned counsel appearing for respondent No. 4 opposes the prayer of the petitioner.

27. We have already recorded that the petitioner chose not to

challenge the order dated 05.12.2015 in the present petition. The impugned P.R. cards were founded on the said order which is not challenged in the petition. We have even granted liberty to the petitioner to approach before appropriate forum. Under these circumstances, the petitioner would be at liberty to claim the *interim relief* before the competent forum. Therefore, the request is rejected.

[**SHAILESH P. BRAHME, J.**]

[**S. G. MEHARE, J.**]

bsb/Feb. 25