



(1)

WP-1581-2023

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

WRIT PETITION NO. 1581 OF 2023

Chainmal Pannalal Kothari (died) Through Lrs.

1-A Rajesh s/o Chainmal Kothari,
Age:51 Yrs., Occu. Business,

1-B Rupesh s/o Chainmal Kothari,
Age:51 Yrs., Occu. Business,
Both R/o Kushalnagar Jalna Road,
Aurangabad.

...PETITIONERS

(Orig. Respondent Nos.1-A and B)

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Revenue Deptt.
Mantralaya, Mumbai- 400 032.

2. Hon'ble Minister for Revenue,
Govt. of Maharashtra,
Mantralaya, Mumbai- 400 032.

3. Deputy Director, Land Records,
Aurangabad Region, Aurangabad.

4. District Superintendent of
Land Records, Aurangabad.

5. City Survey Officer,
Office of District Collector,
Aurangabad.

6. Mir Mohmood Ali Khan
s/o. Bashrat Ali Khan,
Age: 66 Yrs. Occus. Business,

R/o. Hyderabad through his GPA-
Mujaheed Khan s/o. Samiullah Khan,
Age: 43 Yrs. Occus. Advocate. R/o. Shad Hospital
Dargah Road, Parbhani. Tq. & Dist. Parbhani.

...Resp. No.6 is
Orig. Appellant

7. Smt. Sayyad Tayyaba Fatema

s/o. Mir Ahemad Ali Khan, (Samis)
Through her GPA – Krishnakumar s/o.
Ramulu, Age: Major, Occu. Business,
R/o. House No. 5-3-602, Usmangunj,
Aandhra Pradesh (AP).

8. Sayyed Kurban Hussain

s/o. Sayyad Naseer Hussain, since deceased -

8.1 Sayyed Kurban

s/o. Sayyad Hussain,

8.2 Shaikh Yousuf Ali Khan s/o.

Shaikh Mehendi Ali Khan;

8.3 Zahera Begum

w/o. Sayyad Yawar Ali Mirsa;

8.4 Sayyada Begum

w/o. Mir Akbar Ali;

8.5 Fatema Begum w/o. Mumtaz Ali

Through her GPA-
Sudhakar Dashrath Bhalerao
Age: Major, Occu. Business,
R/o. Aurangabad, Dist. Aurangabad.

9. Sayyad Murtuza Ali

s/o Sayyad Zahed Ali,
Through his GPA – Sujat Hussain Khan
s/o. Wajid Ali Khan, Age: Major,
Occu. Business, r/o. Aurangabad.

10. Subhash Kesarmal Barlota,

Through his GPA – Mohd. Abdul Shakil
s/o. Mohd. Abdul Sami, Age: 53 Yrs.
Occu. Business, R/o. Block No. 16,
Model Colony, Opp. Himayat Baug, Delhi Gate,
Aurangabad.

11. Sayyad Shaha Moin Quadri

s/o. Gulam Mohd. Quadri,
Through his GPA- Abdul Shakil
s/o. Abdul Sami. Age: 53 Yrs.
Occu. Business, R/o. Block No. 16,
Model Colony, Opp. Himayat Baug,
Delhi Gate, Aurangabad.

12. Smt. Humayu Begum

w/o. Aaga Sayyad Abbas Shustari
Through her GPA – Dr. Mohd. Zakir s/o.
Mohd. Zafar, Age: 62 yrs. Occu. Business,
R/o. Plot No.39, Dilras Colony,
Aurangabad, Tq. & Dist. Aurangabad.

13. Mir. Hasham Alikhan

s/o. Mir Bahar Alikhan through his GPA
Kacharu Bhikaji Dabhade,
Age: 50 Yrs. Occus. Business,
R/o. Ramanagar, Kranti Chowk,
Aurangabad, Tq. & Dist. Aurangabad.

14. Chandu Prabhakar Naidu,

Age: 66 Yrs. Occu. Business,
R/o. Aurangabad, Tq. & Dist. Aurangabad.

15. Umbrella Gold Pvt. Ltd.

Through Sayyad Younus
s/o. Sayyad Mohinoddin,
Age: 68 Yrs., Occu. Business,

R/o. Ramnagar, Kranti Chowk,
Aurangabad.

...RESPONDENTS

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Mr.S. S. Thombare Advocate for the Petitioners.

Mr.K. B. Jadhavar, AGP for Respondent-State.

Mr.V. D. Sapkal Senior Advocate i/by Mr. S. R. Sapkal a/w

Mr.A. D. Khedkar and R. N. Patil, Advocates for Respondent No.6.

Mr.M. M. Manjramkar Advocate for Respondent No.7.

Mr.Quadri T. R. Advocate for Respodnent Nos. 10 and 11.

Mr.R. P. Bhumkar Advocate for Respondent Nos. 13.

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CORAM : KISHORE C. SANT, J.

RESERVED ON : 14th JANUARY 2025

PRONOUNCED ON : 21st FEBRUARY 2025

ORDER :-

1. The present Writ Petition arises out of Judgment and Order date 30th January 2023 passed by the Hon'ble Minister-Respondent No.2 in Appeal 2022/Pra. Kra.106/J-7.

2. The learned Minister by way of impugned Judgment and Order, rejected the application of the present petitioners confirming the order dated 12th October 2022 passed by the learned Deputy Director Land Record, Aurangabad (Respondent No.3).

3. The Deputy Director Land Record, Aurangabad by way of his judgment and order dated 12th October 2022 has confirmed the order passed by the learned District Superintendent Land Record, Aurangabad (Respondent No.4). The proceeding was started by present respondent No.6 by filing an appeal under Section 247 of the Maharashtra Land Revenue Code, (for short MLRC) against the mutation entry in the name of the petitioners on land Survey No.3, CTS Nos.14844/A and 14844/B situated at Bagsherjung Daudpura, Aurangabad in 2015.

4. It is the case of the respondent No.6, who claims to be the owner of the property, filed the said appeal seeking cancellation of the mutation entry taken in the name of the petitioners and their father. It is the case that, one Nawab Salarjung III of Hyderabad was the original owner of the property i.e. Survey No.3 situated at Bagsherjung Daudpura, Aurangabad. After the death of Nawab Salarjung III, the respondent No.6 namely, Mir Mahmood Ali Khan S/o. Basharat Ali Khan came on record being legal heir. In a suit filed in the Hon'ble High Court at Andhra Pradesh bearing Civil Suit No.13 of 1958 as Defendant No.112. It is the case that, after the death of Salarjung III, his estate was taken

over by Central Government Resolution Act and was managed by Salarjung Estate Committee under Salarajung Estate Regulation No.13/1358 *Fasli* and thereafter under Nawab Salarjung III Bahaddur (Administration of Assets) Act, 1950. The suit was filed in the Andhra Pradesh High Court for Administration of Estate and for partition and separate share against the Salarjung Estate Committee, Government of India. In the suit, the parties had settled their dispute. A preliminary decree came to be passed by the Andhra Pradesh High Court. Scheme of partition was prepared. The property was divided in various blocks and was allotted the share to the respective parties.

5. It is further case that by this period, some people got their names entered into revenue record without any right on the properties belonging to Salarjang. Present suit property is one of such properties. There are criminal cases also filed against the respondent for the offences like forgery, conspiracy etc. Whereas, the petitioners claim their title through a transaction dated 15th January 1971 from one Tribhuwandas as per the Respondent namely, Moodali. The present petitioners got right through the said sale-deed. It is the case that entries

taken in the revenue record.

6. The petitioners appeared and filed their say. It is their case that the respondents approached after much delay of around 43 years. There is no sufficient cause shown for condonation of delay etc. It is submitted that already case No.432 of 2015 filed by one Nawab Behbood Ali Khan was rejected by the learned District Collector, Aurangabad on the ground of limitation. There was one more proceedings filed by one Mir Sadat Khan against the present petitioners in respect of the same property. The said appeal was rejected on the ground of delay. Against that, the appeal was preferred before the learned Deputy Director Land Record (short short "DDLRL"). The said appeal also came to be rejected. The same authority now cannot condone the delay in this case. The Collector has already passed an order stating that any person claiming interest in the property through Salarjung has to get his right decided first from the Competent Authority and only thereafter can claim the ownership and can get the names entered.

7. The learned Deputy Superintendent Land Record (for short DSLR) held that, the earlier orders were passed in the proceeding filed under

Section 257 of the Maharashtra Land Revenue Code, whereas the present proceedings is filed under Section 247 of the said Code. The authority thus exercised the powers under Section 251 of the Code and condoned the delay and directed to register the appeal.

8. This order came to be challenged by the present petitioners before the learned DDLR by filing Revision Application No.1650 of 2016 praying for quashing and setting aside the order passed by the learned DSLR dated 29th June 2016. The learned DDLR, however, confirmed the order passed by the learned DSLR and rejected the Revision Application of the petitioners. Against the said order, the petitioners approached the learned Minister. The learned Minister by way of impugned order dated 30th January 2023, rejected the second Revision Application. The petitioners are thus, before this Court challenging the order passed by the learned Minister.

9. Mr. Thombre, the learned Advocate for the petitioners vehemently argued that the petitioners have become the owners of the land by virtue of sale-deed executed in 1971. The authority had no power to condone the delay of around 44 years. When earlier appeals were rejected, the

order impugned in the said appeal became final in making the entries in the name of the petitioners. Though earlier, the learned DSLR rejected the appeal on the ground of limitation, the same authority has now entertained the application for condonation of delay and has condoned the delay. No reasons are assigned while condoning the delay. The revision by the petitioner before the Minister is still pending and in the meantime, the learned DSLR passed final order. Therefore, even the final order of learned DSLR deserves to be quashed and set aside. There is no finding recorded that the impugned entries were taken illegally. The observations which are made taken on record, earlier the same authority had passed the order stating that the parties should need to get decree from the Civil Court. The Minister now has considered the issue of ownership which is without jurisdiction. The impugned entry in the year 1971 was taken after conducting survey. Though the entry in the name of the petitioner is challenged, the sale-deed in favour of the petitioners is not under challenge. If at all, the respondents want to claim their right over the suit property, it is necessary for them to challenge the sale-deed dated 5th January 1971. So long as the sale-deed stands, the respondent

would not get any land over the property. It is submitted that, in fact, the petitioners are facing civil litigation and now the second appeal is pending in this Court. The second appeal is admitted in this Court. He thus submits that the authorities have mis-directed themselves and have passed erroneous order. In the suit in the High Court at Andhra Pradesh, there is no reference of the present land. In any case, if the respondent No.6 claims any right, he has to get his right established in the Civil Court. He thus prays for allowing the writ petition by setting aside the impugned judgment and order.

10. Learned Senior Advocate Mr.Sapkal appearing for Respondent No.6 vehemently argued that, the petitioners had filed a suit for declaration of ownership bearing No.442 of 1985 in the Court at Aurangabad. A specific issue was framed. The said suit came to be dismissed even the appeal was filed their-against came to be dismissed. Now the petitioner has filed a suit for possession bearing RCS No. 2 of 2024. This clearly shows that the petitioners are not in possession of the property. When the fact of possession itself is against the petitioners, there is no question of having any entries in his name in revenue

register. The suit was filed in the year 1985. The Court has specifically recorded the findings that the petitioners could not prove the ownership even of his vendor. It is held that the properties are of Salarjung. The said suit was dismissed by order dated 24th December 2010. The appeal was filed bearing RCA No. 62 of 2011. The said appeal also came to be dismissed for default. This fact is not brought to the notice of the Court. He submits that when the rights are concluded, the revenue entries are required to be restored to original status. It is also pointed out that against the petitioners, there is prosecution lodged. The right of the present respondent No.6 is arising out of original suit in the Court of Andhra Pradesh High Court where the respondent is defendant. Once the Civil Court has recorded a finding that the petitioners have failed to prove his right over the property, there is no question of having the entries in the name of petitioners. The petitioners do not have any locus. Now, in the fresh suit, the petitioners have approached the civil court. However, their injunction application is refused. He submits that the learned DDLR and the Minister have considered all these aspects and have passed the order which does not require any interference at the

hands of this Court. For suppression of the facts also the petition deserves to be dismissed.

11. The learned Advocate Mr.Manjramkar appearing for Respondent No.7 opposes the petition. Mr. Quadri, the learned Advocate for the respondent Nos.10 and 11 also opposed the petition submitting that the petitioners are not owners. They claim that even respondent No.6 has no right over the properties, he claimed right on the strength of the decision of the decree passed by the High Court of Andhra Pradesh.

12. Mr.Bhumkar, the learned Advocate appearing for Respondent No.13, who also claim to be legal heir of Salarjung opposes the petition as well as rights of respondent No.6. He submits that there is one more civil suit between the parties and that is pending.

13. The learned Advocate for the Petitioners relied on the judgments in the case of *State of Gujarat Vs. Patil Raghav Natha*¹ and *Karansing Vs. The State of Maharashtra and Ors.*²

14. The Hon'ble Apex Court in the case of *State of Gujarat Vs. Patil Raghav Natha* (supra), long back has considered the provisions of

1 1969 AIR (SC) 1297

2 MANU/MH/0697/2016

Sections 65 and 211 of the Bombay Land Revenue Code, which does not provide limitation period for exercising the powers of revision by the Commissioner. Section 65 of the said Act provided for three months period for the Collector to decide the matter. It was held that considering the provisions, the Commissioner was also expected to decide the revision within few months of the order of the Collector. This Court does not find that the said judgment is applicable in the present case. In the present case, there is no such issue raised. There is no issue about time period taken by the Commissioner to decide the revision. So far as the judgment in the case of *Karansing Vs. The State of Maharashtra and Ors.* (supra) is concerned, this Court has considered the validity of section 52 of the Transfer of Property Act. The petitioner therein was added as party at the stage of appeal. In that case, the Appellate Court held that the sale-deed in favour of petitioner was illegal and hit by Section 52 of the Act. It is held that the Revenue Authorities could not decide the question of title and interest of the parties. It is held that the revenue entries are only for revenue purpose. The Tehsildar in that case had passed an order by giving an opportunity of hearing to the parties. The

Appellate Authority set aside the said order. In the facts of that case it was held that the Appellate Authority had exceeded the jurisdiction by using the power not vested in it. This Court finds even this case is not helpful to the petitioners.

15. In the present case, this Court has to find out as to whether the order passed by the learned Minister suffers from legality or whether the petitioners have established their case showing that their entries are wrongly removed. From the judgment it is seen that the survey was made under Section 126 of the MLRC as per Rules, 1969. Rule 6 provides for inquiry as to title. The entry was taken on the basis of this inquiry. In the said inquiry, the name of father of the petitioners was taken as purchaser of the suit land. As per Rule 7 of 1969 Rules, the entry was taken in the PR card. It is seen that when 1983 again inquiry was held in respect of ownership. After said inquiry, the name of the father of the petitioner was shown as illegal occupant and as an encroacher. Though the property is same, the different *chalta* numbers were given in two different inquiries as 54/1 and 54/2 and thus it is shown in the name of two different persons. The petitioner's father filed

a suit bearing Suit No. 442 of 1985 for declaration of the ownership of land. However, the said suit was dismissed. Considering the decree passed by the Andhra Pradesh High Court, the present Respondent is held to be entitled to share in property. Though in 1983, the inquiry was held, no entries were corrected in the record. Thus, holding all these things, the authorities have decided against the petitioner. This Court finds that no illegality or perversity is shown by the petitioner in the judgment of the Hon'ble Minister. The judgment of the revenue authorities are always subject to outcome of the civil litigation. In the present case, it is seen that the petitioners could not show any judgment or any decisions of the civil courts in favour of the petitioner showing that they are lawful owner of the property.

16. This Court does not find any force in the submissions of learned Advocate for the petitioners whereas the submissions of learned Senior Advocate for the Respondent No.6 finds support from the material on record. This Court does not find any reason calling for interference in the impugned judgment and order and therefore petition deserves to be dismissed. Hence, the following order:-

ORDER

- (i) Writ Petition stands dismissed.
- (ii) No order as to costs.
- (iii) Civil Applications, if any, also stand disposed off.

[KISHORE C. SANT, J.]