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IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO.5355 OF 2020

1. Appasaheb Pandharinath Shinde PETITIONERS
Age – 57 years, Occ – Agriculture
R/o Varudi Taluka – Badnapur
District – Jalna

2. Kakasaheb Pandharinath Shinde
Age – 42 years, Occ – Agrculture
R/o Varudi Taluka – Badnapur,
District – Jalna

3. Nivrutti Abarao Shinde
Age – 77 years, Occ – Retired Teacher
R/o Varudi, Taluka – Badnapur
District – Jalna

VERSUS

1. The State of Maharashtra RESPONDENTS
Through Secretary to the
Revenue and Forest Department
Mantralaya, Mumbai

2. The Additional Divisional Commissioner
At Aurangabad

3. The Collector at Jalna

4. The Superintendent of Land Record
Jalna

5. Chandrakala Damodhar Jadhav
Age – 62 years, Occ – Household
R/o Varudi, Taluka – Badnapur
District - Jalna

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Mr. S. G. Dodya, Advocate for the Petitioners
Mrs. A. S. Mantri, AGP for Respondent - State
Mr. C. R. Thorat, Advocate for Respondent No.5

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[CORAM : MANJUSHA DESHPANDE, J.]

DATE : 14th JANUARY, 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Advocates for the parties.

2. By this Petition, filed under Articles 226 and 227 of the Constitution of India, the Petitioners have assailed order dated 2nd February, 2018 passed by Respondent No. 3 - Collector, Jalna in Application No. Gut No. 273 (S. No. 113)/Area Correction/P.K. - 5/2016, as well as order dated 21st February, 2020 passed by Respondent No.2 - Additional Divisional Commissioner, Aurangabad in Revision No. 2018/ROR/REV/152.

3. Facts, in nutshell, are that, present Respondent No. 5 had filed an application before the Collector, Jalna under section 106 of the Maharashtra Land Revenue Code, for correction in his land holding which is reduced while implementing the consolidation scheme. According to Respondent No.5, a mistake has occurred while implementing the consolidation scheme, as a result, though her actual land holding is 23 Acre and 1 Guntha, after implementation of the consolidation scheme, the same has been reduced to 15 Acre 9 Guntha. Respondent No.5, therefore, filed an application before Collector, Jalna on 21st April, 2012 seeking

correction in revenue record and seven twelve extract. It is specifically contended by Respondent No.5 that an error was committed while taking entry in revenue record in respect of land Gut No. 273, therefore, a request was made to conduct measurement of the land and take correct entries to the extent of 23 Acre and 1 guntha land in the revenue record.

4. The Petitioners opposed the application and filed their objection to the application filed by Respondent No.5, on 14th November, 2017. Relying on section 31A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, the Petitioners have objected to the maintainability of the application before Collector. It was contended that the power to correct mistakes occurred while implementing consolidation scheme lies with the Settlement Commissioner and not with Collector. It was, therefore, contended by the Petitioners that, Collector does not have the powers to decide the said application. Section 31A of the said Act, reads thus-

> *"31A If, after a scheme has come into force, it appears to the Settlement Commissioner that the scheme is defective on account of any clerical or arithmetical mistake or error arising therein from any accidental slip or omission and he is satisfied that the correction of such mistake or error would not vary the scheme in any material particular, he may by order in writing correct such mistake or error and publish his order in his prescribed manner."*

5. Upon hearing the respective parties on the objection application filed by the Petitioners, the matter was closed for orders on 19th December, 2017. Petitioners rely on the extract of Roznama annexed to the Writ Petition at page 49 and contend that the Roznama indicates that on 19th December, 2017, the matter was closed for orders on the objection application filed by the petitioners about maintainability of the application filed by Respondent No.5 before the Collector.

6. Referring to Civil Suit No. 386 of 2000 and the order passed therein, the Collector, Jalna allowed the application filed by Respondent No.5, observing that since the name of the plaintiff did not appear in the seven twelve extract, the suit filed by the plaintiff in respect of Survey No. 113 i.e. Gut No. 273 has been dismissed by the Civil Court and while dismissing the suit, the Civil Court had observed that the plaintiff has come with a case that area of Gut No. 273 is more than actually shown in seven twelve extract, however, the mistake committed by the Consolidation Officer cannot be entertained in the suit for correcting entries. Therefore, relying on the said observations, the Collector has allowed the application filed by Respondent No.5.

7. Being aggrieved by the said order, the Petitioners had

preferred Revision before the Additional Commissioner, Aurangabad. The Additional Commissioner, Aurangabad dismissed the Revision on 21st February, 2020 without passing reasoned order. Only observing that he is of the opinion that the order passed by the Collector does not deserve any interference.

8. Being aggrieved by the order dated 2nd February, 2018, passed by Respondent No. 3 - Collector Jalna in Application No. Gut No. 273 (S. No. 113)/Area Correction/P.K. - 5/2016, as well as the order dated 21st February, 2020 passed by Respondent No.2 - Additional Divisional Commissioner, Aurangabad in Revision No. 2018/ROR/REV/152, the Petitioners have approached this Court, challenging both the orders.

9. It is the contention of the Petitioners that, though the application raising objection to the jurisdiction of the Collector was filed by the Petitioners and it was heard and closed for orders, which is also reflected from the record, however, without making any observation in respect of the same, merely relying on the observations of the Civil Court in the suit filed by Respondent No.5, the Collector, Jalna has proceeded to pass the order, purportedly under section 106 of the Maharashtra Land Revenue Code. Hence, the said order is challenged by the Petitioners in this Writ Petition. It is further contended that though the said

order was assailed before the Additional Commissioner, Aurangabad, the Additional Commissioner, Aurangabad without assigning any reason, has rejected the Revision filed by the Petitioners. Therefore, even the order passed by the Additional Commissioner, Aurangabad has been challenged by the Petitioners, on the ground that no reasoned order is passed while rejecting the Revision.

10. Respondent No.5 has filed reply affidavit contending that old Survey No. 113 was having land *ad measuring* 9 Hectare 67 R, however, in consolidation scheme, the said Survey No. 113 was converted into Gut No. 273 and in seven twelve extract of the property land *ad measuring* only 6 Hectare and 16 R is shown. In fact agricultural land to the extent of 9 Hectare 67 R ought to have been recorded instead of 6 Hectare and 16 R. Hence, this is an apparent mistake committed while implementing the consolidation scheme, it was very much within the powers of the Collector to correct the said mistake in exercise of his powers under section 106 of the MLR Code. Therefore, the Collector has exercised his powers and passed an order to that effect. It is further submitted that in fact, the Petitioners have an alternate remedy of filing Revision before the State Government. Though the Petitioners have alternate remedy, the Petitioners have not availed the same and, therefore, on the ground of

availability of alternate remedy, under section 258 of the MLR Code, the Writ Petition may be dismissed. It is contended that Section 106 of the MLR Code confers powers on the District Collector at any time, during the term of settlement, after giving notice to the holders, to correct any error in the area or assessment of his holding due to mistake of survey or arithmetical miscalculation. Hence, the impugned judgment and order of the District Collector, Jalna, dated 2nd February, 2018 is legal and proper and in view of availability of alternate remedy as well as powers conferred on the Collector under section 106 of the MLR Code, it is prayed that the Writ Petition be dismissed.

11. The stand of Respondent No.5 is also supported by learned AGP appearing for Respondents No.1 to 4. Learned AGP relies on the affidavit filed by one Prakash Vasant Gamne, working as Deputy Superintendent of Land Records, Badnapur, District – Jalna. According to learned AGP, upon receipt of the application under section 106 of the MLR Code, Respondent No.3 – Collector issued notice to all the concerned parties and after giving opportunity of hearing to the concerned parties, allowed the application by order dated 2nd February, 2018 and directed to correct the arithmetical error in the area of Gut No. 273 original Survey No. 113. While considering the application filed by Respondent No.5, the Collector, Jalna has also considered

objection raised by the Petitioners. However, in view of the powers conferred upon the Collector under section 106 of the MLR Code, the Collector passed a reasoned order, which is legal and proper. Similarly, the learned AGP has also contended that the order passed by the Divisional Commissioner under section 257 of the MLR Code is also legal and proper and hence, the Writ Petition deserves to be dismissed.

12. After hearing the learned Advocates for the respective parties and after going through the documents annexed to the Writ Petition, it appears that the Petitioners have raised an objection to the powers of the Collector to entertain application for correction in the error committed during implementation of the consolidation scheme resulting into reduction in the area of land held by Respondent No.5 and also seeking measurement of the land, in order to carry out the correction. Since Respondent No.5 has claimed correction after implementation of the consolidation scheme, admittedly, the powers to make any correction in the area under section 31A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, lies with the Settlement Commissioner.

13. Though objection application regarding jurisdiction was filed by the Petitioners on 14th November, 2017, and the matter

was closed for orders after hearing the parties, however, no orders were passed on the said application and directly the impugned order dated 2nd February, 2018 was passed by the Collector, Jalna on merits of the matter thereby allowing the application filed by Respondent No.5, purportedly under section 106 of the MLR Code. Section 106 of the MLR Code reads thus,

> ***106. Power of Collector to correct errors.***
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> - *The Collector may, at any time during the term of settlement after giving notice to the holder, correct any error in the area or assessment of his holding due to mistake of survey or arithmetical miscalculation:Provided that, no arrears of land revenue shall become payable by reason of such correction; but excess payment as land revenue made, if any, shall be adjusted against the payment of land revenue which may become due.*

14. The word “Settlement” has been defined in section 90 (e) of the MLR Code, which reads thus -

> *(e) "settlement" means the result of the operations conducted in a zone to determine the land revenue assessment therein;*

15. On bare perusal of section 106 of the MLR Code, it is clear that it confers powers on the Collector to correct the clerical mistake or error in the area of assessment of holding due to mistake of survey or arithmetical calculation refers to the assessment for land revenue and nothing else. Section 94 of the MLR Code clearly provides for assessment of land Revenue. Therefore, considering the relief sought in the application, it is

definitely not seeking relief of correction in the mistake or error occurred while assessing the land Revenue. Therefore, the order of Collector, claiming to be passed under section 106 of the MLR Code is not tenable. The Collector has corrected an error by passing an order directing correction of area of holding. The relief sought by the applicant can only be granted under section 31A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act.

16. Merely relying on the observations of the Civil Court while dismissing the suit filed by Respondent No.5, the Collector, Jalna has entertained application of Respondent No.5 and has passed the order directing to correct the entries after carrying out measurement. Though the objection filed by the Petitioners was entertained and heard by the Collector, Jalna, there is no finding recorded by the Collector, Jalna regarding objection raised by the Petitioners to the maintainability of the application filed by Respondent No.5. Similarly, the order passed by the Additional Commissioner, Aurangabad is not a reasoned order and hence the order passed by the Additional Commissioner, Aurangabad also cannot be sustained.

17. Learned Advocate for Respondent No.5 has placed reliance on the judgment in the case of *“Gurudassing Nawoosing*

Panjwani V/s State of Maharashtra and Others" 2015 AIR SCW 6277, in support of his contention that the Petitioners have alternate remedy of second Revision before the State Government, and hence, according to him the Petitioners ought to have filed Revision before the State Government challenging the order passed by the Additional Commissioner, Aurangabad and not the Writ Petition. Though Respondent No.5 has objected tenability of the present Writ Petition, however the fact remains that the Collector has passed order in exercise of powers, which are not conferred upon him and, therefore, the order passed by the Collector is nullity and since the said order is nullity, the same need not be challenged in Revision before the State Government. Similarly, the challenge is to the maintanability of application under Maharashtra Land Revenue Code, when remedy lies under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. Therefore, the objection regarding availablity of alternate remedy under the MLR Code would not be tenable. Hence, the objection raised by Respondent No.5 to the maintainability of this Writ Petition is not sustainable. Hence, in view of the fact that the order passed by the Collector, Jalna was without any jurisdiction, the same deserves to be quashed and set aside resultantly, the order passed by the Additional Commissioner, Aurangabad also deserves to be quashed and set aside.

18. In the result, the Writ Petition is allowed. Order dated 2nd February, 2018 passed by Respondent No.3 - Collector, Jalna in Application No. Gut No. 273 (S. No. 113)/Area Correction/P.K. - 5/2016 is quashed and set aside. Resultantly, the order dated 21st February, 2020 passed by Respondent No.2 - Additional Divisional Commissioner, Aurangabad in Revision No. 2018/ROR/REV/152 refusing to interfere in the order passed by the Collector, Aurangabad is also quashed and set aside. Rule is made absolute in above terms.

19. It is however, made clear that Respondent No.5 is at liberty to approach appropriate forum or authority seeking the relief claimed by her.

20. In view of disposal of the Writ Petition, pending Civil Application is also disposed of.

[MANJUSHA DESHPANDE]
JUDGE

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