

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

WRIT PETITION NO.4179 OF 2022

Tukaram s/o Bhivraj Jawale
Age 63 years, Occ. Agriculture
R/o. Sonewadi, Tq. Kopargaon
District Ahmednagar
Through its general power of attorney
Suresh s/o Tukaram Jawale
Age 41 years, Occ. Agriculture
R/o. Sonewadi, Tq. Kopargaon
District Ahmednagar

... Petitioner

Versus

1. The State of Maharashtra
Through the Secretary for Revenue
and Forest Department Mantralaya,
Mumbai
2. The Additional Commissioner
Nashik Division, Nashik
3. The Additional Collector,
Ahmednagar, Dist. Ahmednagar
4. The Sub Divisional Officer,
Shirdi, Tq. Rahata, Dist. Ahmednagar
5. The Tahsildar,
Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar
6. Smt. Surekha Shivdas Jawale
Age 48 years, Occ. Household
7. Baji s/o Shivdas Jawale
Age 28 years, Occ. Agriculture
Both R/o. Sonewadi, Tq. Kopargaon
District Ahmednagar

...Respondents

.....

Shri. V. D. Hon, Senior Counsel a/w. Shri. S. S. Kote, Advocate
i/by. Shri. A. V. Hon, Advocate for the Petitioner
Ms. M. L. Sangit, AGP for the Respondent Nos.1 to 5 – State.
Shri. R. R. Karpe, Advocate for the Respondent Nos.6 and 7

.....

CORAM : NEERAJ P DHOTE, J.
RESERVED ON : NOVEMBER 10, 2025
PRONOUNCED ON : NOVEMBER 27, 2025

ORDER :-

. Impugned in this Writ Petition under Article 227 of the Constitution of India is the Order dated 11.02.2022 passed by the Respondent No.1 (Hon'ble Minister) in RTS-3321/1742/PraKra.160/J-6, setting aside the order dated 22.04.2021 passed by the Additional Commissioner, Nashik Division in RTS/Revision/498/2019.

2. Heard the learned Senior Advocate for the Petitioner, the learned AGP for the Respondent Nos.1 to 5 and the learned Advocate for the contesting Respondent Nos.6 and 7. Perused the papers on file.

3. The facts, in brief, borne from the Writ Petition are as follows:

3.1. The Petitioner and the Respondent Nos.6 and 7 are from the joint Hindu family. On 19.09.1966 the registered Partition Deed was executed between the family members and the family properties were partitioned by metes and bounds. In the said Partition Deed, the property bearing Survey No.59 was shown having area of 8 Acres and 29 Gunthas. The property bearing Survey No.59/1 was partitioned and 1 Acre 20 R was allotted to the share of Vitthal Kashinath Jawale. The Father of the Petitioner by name Bhivraj Vitthal Jawale was given the area of 7 acres

and 9 R from Survey No.59/2. In view of the said partition in Gat No.59, the mutation entry was effected bearing ME No.4753 and Survey number was divided into 59/1 showing the name of Vitthal Kashinath Jawale and Survey No.59/2 showing the name of Bhivraj Vitthal Jawale. The said mutation entry was recorded on 27.11.1967. The Petitioner came to know that the record was manipulated and there was overwriting in the mutation entry in respect of extent of land. The area in Survey No.59/2 was overwritten as 6 Acres 20 R and area in Survey No.59/1 was overwritten as 2 Acres.

3.2. Noting the above referred overwriting, the Petitioner preferred an Application bearing Application No.213 of 2016 before the Respondent No.5 – Tahsildar under Section 155 of the Maharashtra Land Revenue Code (for short, ‘Code’) for correction in the revenue record as per the Partition Deed. The Respondent No.5 – Tahsildar after hearing the parties concluded by order dated 07.08.2017 that, there was overwriting in the revenue extract, however he had no powers to correct the same and directed the Petitioner to prefer the Appeal before the Respondent No.4 – Sub-Divisional Officer (in short, ‘S.D.O.’). Accordingly, the Petitioner preferred the R.T.S. Appeal No.146/2017 before the Respondent No.4 – SDO with an Application for condonation of delay. The parties were put to notice. The Respondent No.4 – SDO, after hearing the parties and going through the record, noticed overwriting in

the revenue record contrary to the shares shown in the Partition Deed and directed that Mutation Entry No.4753 be corrected accordingly by order dated 21.07.2018. Being aggrieved by the said decision, the Respondent Nos.6 and 7 preferred Second R.T.S. Appeal No.586/2018 before the Respondent No.3 – Additional Collector challenging the order of the Respondent No.4 – S.D.O. The Respondent No.3 – Additional Collector by order dated 29.05.2019 allowed the Appeal and set aside the order passed by the Respondent No.4 – S.D.O. The Petitioner challenged the order passed by the Respondent No.3 – Additional Collector by preferring R.T.S./Revision/498/2019 before the Respondent No.2 – Additional Commissioner, Nashik. The Respondent No.2 – Additional Commissioner after hearing both the sides allowed the Revision Application by order dated 22.04.2021 and set aside the order of the Respondent No.3 – Additional Collector and resultantly, restoring the order passed by the Respondent No.4 - S.D.O. Thereafter Respondent Nos.6 and 7 challenged the order passed by the Respondent No.2 – Additional Commissioner by preferring RTS-3321/1742/Pra.Kra.160/J-6 before the Respondent No.1. The Respondent No.1 by order dated 11.02.2022 allowed the Revision and set aside the order passed by the Respondent No.2 - Additional Commissioner and confirmed the order passed by the Respondent No.3 – Additional Collector. Being aggrieved by the decision of the Respondent No.1, present Writ Petition is preferred.

4. It is submitted by the learned Senior Advocate for the Petitioner that, the impugned order passed by the Hon'ble Minister i.e. Respondent No.1 was unreasonable. The original mutation entry was in consonance with the registered Partnership Deed which was scored and the area of land was changed. The prescribed procedure for effecting the change was not followed. The Respondent No.4 – S.D.O and the Respondent No.2 – Additional Commissioner rightly passed the orders restoring the original mutation entry. The impugned order was passed by the Respondent No.1 - Hon'ble Minister without going through the record. By making corrections in the mutation entry, the extent of land allotted to the Petitioner in the Partition Deed was reduced and the area allotted to the Respondent Nos.6 and 7 was increased. The Civil Suit preferred by the Respondent Nos.6 and 7 show the extent of the land of the Petitioner as per the Partition Deed. He submitted that, the impugned order be set aside and the Writ Petition be allowed.

5. It is submitted by the learned Advocate for the Respondent Nos.6 and 7 that, there is no dispute in respect of relations between the parties. The basic Mutation Entry was bearing No.4713 which was rectified by Mutation Entry No.4753. In 1995 there was civil litigation between the parties wherein they accepted the extent of lands. After 50 years, the Petitioner filed the Application before the Respondent No.5 –

Tahsildar. The correction is made by consent of all the parties. The description shown in the civil litigation was as per the corrected area. Reply Affidavit was filed by the Respondent Nos.6 and 7. The Respondent No.1 has passed the impugned order after considering all the aspects and had given reasons for the decision. The Writ Petition was not *bona fide* and the same be dismissed.

6. There is no dispute in respect of relations between the contesting parties. There is also no dispute that, the Partition Deed was registered on 19.09.1966. The Respondent No.5 – Tahsildar turned down the Application of the Petitioner by observing that, the remedy was the Appeal before the Respondent No.4 – S.D.O. The Respondent No.4 – S.D.O. allowed the Appeal of the Petitioner and directed correction in the mutation entry. The Respondent No.3 – Additional Collector turned down the decision of the Respondent No.4 – S.D.O. The Respondent No.2 – Additional Commissioner turned down the decision of the Respondent No.3 – Additional Collector and eventually the Hon'ble Minister turned down the decision of the Respondent No.2 – Additional Commissioner and upheld the decision of the Respondent No.3 – Additional Collector.

7. The initial Mutation Entry is M.E. 4713 showing the survey numbers and the extent of land against the same. From the aforesaid

orders, one thing is clear that, there is overwriting / correction in the Mutation Entry No.4753. The contents of the said M.E. No.4753 speak that, the Application dated 27.11.1967, was filed by Kacheshwar Vitthal Jawale, Bhivrao Vitthal Jawale and Vitthal Kashinath Jawale v-ik-d-Mathubai Kashinath Jawale that, from last five to six years there was partition between them and made available the registered Partition Deed dated 19.09.1966 and on that basis the correction was made. The Respondent No.3 – Additional Collector in his order observed that, the Mutation Entry No.4713 was cancelled in view of the Prevention of Fragmentation and Consolidation of Holdings Act and the Mutation Entry No.4753 was again effected on the Application by the above referred three persons namely Vitthal, Kacheshwar and Bhivrao. It is further observed in the order by giving reference to the subsequent corrected partition dated 19.09.1966 that, there was no connection between the partition effected on 19.09.1966 and Mutation Entry No.4753 and held that, it would be appropriate to treat Mutation Entry No.4753 as final. He further observed that, from 1968 the *inter se* partition was reflected in the mutation entry and from that period the lands were in possession and cultivation. He further observed that, if there was any dispute in respect of the partition, the parties can resort to the civil suit and it will not be justified to uphold the order of Respondent No.4 – S.D.O. cancelling the mutation entry.

8. By the impugned order passed by the Respondent No.1 – Hon’ble Minister, the said order passed by the Respondent No.3 – Additional Collector is upheld. In the Affidavit of the Respondent Nos.6 and 7, it is mentioned in paragraph nos.11, 12 and 13 as follows :

“11. I say and submit that, the further proceeding filed by the present deponent before the respondent No.1 Hon'ble Minister has been allowed. Upon perusal of the copy of impugned order would also indicate the minute details and application of mind. The reference of Regular Civil Suit No.315/1985 qua the very same agricultural lands have been made wherein the compromise have been recorded between the parties on 11.03.1998. In addition to this another Regular Civil Suit No.46/1998 instituted by the present deponent being plaintiff have also been compromised on the very same i.e. on 11.03.1998 between the same parties and for same portion. Hereto annexed and marked as "Exhibit-R-3" collectively are the copies of compromise decree dated 11.03.1998.

12. I say and submit that, in the light of this and particularly in view of the fact that, already, the compromise have been entered into before the Court of law that to in legal proceeding which was in the form of Regular Civil Suit No.315/1985 and there is no further challenge to the said compromise recorded therein at the instance of any of the party including the present petitioner. In this view of the matter and in the light of finality to this compromise qua allocation of share the present petitioner at the instance of present petitioner is wholly unsustainable and untenable.

13. I say and submit that, it would be important to note that, the long standing mutation would always prevail, particularly when the same is recorded based upon the compromise deed in civil litigation between the parties. The emphasis of the present petitioner upon partition deed dated 19.09.1966 thereby recording mutation entry No.4713 is wholly unjustified for the reason that, the same has already been cancelled by virtue of statutory order which has further resulted into recording of consensus qua share on 27.11.1967 which culminated into the present mutation entry No.4753.”

8.1. In paragraph no.5 of the Sur Rejoinder filed by the Respondent Nos.6 and 7, it is stated that, '*the Mutation Entry No.4753 there was joint Application by the respective parties including Vitthal, Kacheshwar and Bhivrao. The Petitioners were from the branch of Bhivrao, whereas Respondent Nos.6 and 7 were from the branch of Kacheshwar. The father of the Petitioner namely Bhivrao was the Applicant to the said Application seeking partition and in the teeth of this, the Petitioners were not permitted to conveniently raised contention that they were not the party to the said Application.*' The Affidavit and Sur Rejoinder by the Respondent Nos.6 and 7 speak of the civil litigation between both the sides.

9. May be that the manner of correction is not proper. The overwriting should not have been done. However, on going through all the above referred orders passed by the Respondent – Authorities, no fault can be found in the impugned order dated 11.02.2022 passed by the Hon'ble Minister setting aside the order dated 22.04.2021 passed by the Respondent No.2 – Additional Commissioner and upholding the order dated 29.05.2019 passed by the Respondent No.3 – Additional Collector. Proper reasons are assigned by the Respondent No.3 – Additional Collector in his order. The other orders passed by

Respondent No.4 – SDO and by the Respondent No.2 – Additional Commissioner, are centered around the correction / overwriting, whereas the Respondent No.3 – Additional Collector considered the reason of cancellation. It is a speaking order. Thus, the impugned order upholding the said order of the Respondent No.3 – Additional Collector calls for no interference. Hence, the following order.

ORDER

- (i) Writ Petition stands dismissed.

(NEERAJ P. DHOTE, J.)

GGP-