IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

<u>WRIT PETITION NO.5256 OF 2013</u>

1. **Maulasaheb s/o. Maheboobsaheb Pathan**
   Age: Major. Occu. Agri.
   R/o. Shelhal Tq. Udgir Dist. Latur. ....**PETITIONER**

VERSUS

1. **The State of Maharashtra**
   Through Principal Secretary,
   Revenue and Forest Dept.
   Mantralaya Mumbai.

2. **District Collector,**
   Latur, Tq. & Dist. Latur.

3. **Deputy Collector (General),**
   Latur, Tq. Dist. Latur.

4. **Rohinibai w/o. Bhimrao Jabade**
   Age: Major, Occu. Household
   R/o. Shetkar Galli, Killa Road,
   Udgir, Tq. Udgir Dist. Latur.

5. **Digambar s/o. Yeshwantrao Biradar**
   Age: 70 years. Occu. Agril.
   R/o. Shivaji Society, Udgir
   Tq. Udgir Dist. Latur.

6. **Kishan s/o. Yeshwantrao Biradar**
   Age: 56 years, Occu: Agri.
   R/o. Shivaji Society Udgir,
   Tq.Udgir Dist. Latur.

7. **Govind Sakharam Jamkhande**
Age: 70 years, Occu: Agri.
R/o. Nayi Abadi, Udgir Tq. Udgir,
Dist. Latur. ....**RESPONDENTS**

WITH
WRIT PETITION NO.5342 OF 2013

1. **Maulasaheb s/o. Maheboobsaheb Pathan**
Age: Major. Occu. Agri.
R/o. Shelhal Tq. Udgir Dist. Latur. ....**PETITIONER**

VERSUS

1. **The State of Maharashtra**
Through Principal Secretary,
Revenue and Forest Dept.
Mantralaya Mumbai.

2. **Deputy Collector (General),**
Latur, Tq. Dist. Latur.

3. **Digambar s/o. Yeshwantrao Biradar**
Age: 70 years. Occu. Agril.
R/o. Shivaji Society, Udgir
Tq. Udgir Dist. Latur.

4. **Kishan s/o. Yeshwantrao Biradar**
Age: 56 years, Occu: Agri.
R/o. Shivaji Society, Udgir,
Tq. Udgir, Dist. Latur.

5. **Shri Marwale**
Age: Major. Occu: Service
(Deputy Collector, (General) Latur),

C/o. Collector Office, Latur,
Tq. & Dist. Latur. ....**RESPONDENTS**

Mr. N. K. Tungar, Advocate for the petitioner.

Mr. P. D. Patil, AGP for Respondent No.1 to 3-State.

Mr. V. D. Salunke, Advocate for Respondent No.6 and 7.

Mr. J. R. Patil i/by Mr. Manoj D. Shinde, Advocate for Respondent No.8.

CORAM	:	**KISHORE C. SANT, J.**
RESERVED ON	:	**20th FEBRUARY 2025.**
PRONOUNCED ON	:	**8th MAY 2025**

PC :-

1. Heard Mr. Tungar, the learned Advocate for the Petitioner, Mr. Patil, learned AGP for Respondent No.1 to 3, Mr. Salunke, learned Advocate for the Respondent Nos. 6 & 7, and Mr. Patil, the learned Advocate for Respondent No.8.

2. Both the writ petitions are in respect of same subject matter and between the same parties and, therefore, the matters are taken up for final disposal with the consent of the parties.

3. A challenge, in Writ Petition No.5256 of 2013, is to a judgment and order passed by the learned Deputy Collector (General) dated 20th February 2013 whereby the learned Deputy Collector rejected the application of the present petitioner. Transfer of land between Respondent Nos. 4 to 7 and the deceased, uncle of the petitioner namely, Gafursaheb Pathan came to be regularized. The suit property is at survey No.89 admeasuring 13H 22R.

4. In the Writ Petition No.5342/2013 challenge is to an order passed by the learned Deputy Collector (General), Latur dated 3rd April 2013. By way of impugned order, the learned Collector regularized the sale-deed executed by the deceased, uncle of the petitioner namely, Gafursheb Pathan in favour of one Yashvantrao Madhavrao Biradar dated 4th September 1971. The petitioner claims to have right in the suit property Gut No. 89 admeasuring 1H 36 R.

5. The facts, in short, giving rise to the present petitioner are that, one Mastan Ismailsaheb r/o. Shelhal from village Majkuri was allotted a land survey No.89 admeasuring 13H 20 Guntha. The land was allotted

to him as service Inam land as Khidmat Gaon Majkuri. He had two sons namely, Mahboobsaheb, father of the petitioner and and Gafursheb Pathan. Gafursheb Pathan died issuless. Wife of Gafursheb performed second marriage after his death. After death of Gafursheb, the name of Mahboobsaheb came to be recorded in the revenue record on 31st March 1959.

6. In 1972, Gafursheb Pathan approached Respondent Nos. 4 to 8 and obtained loan by mortgaging the suit land. It is the case of the petitioner that, the land was to be re-transferred after five years. It is further case that, after five years, the respondent avoided to restore physical possession of the land and enjoined the possession.

7. It is further case that Mahboobsaheb had deposited occupancy price in view of order passed by the learned Tahsildar. He requested to record his name in the revenue record and it came to be recorded by mutation entry No.118 on 10th September 1974, in the ownership column. The said order was challenged by the Respondent Nos. 3 and 4 showing that the Gafursheb Pathan had executed sale-deed on 4th

September 1971 in favour of father of the present Respondent Nos. 6 and 7 and challenged the entry in the name of Mahboobsaheb. He approached the authorities with the case that the land being Vatan Land, in view of Bombay Village Vatan Abolition Act, no transaction could have been there by Gafursheb Pathan. The transaction was without permission. The said application was dealt with by the Tahsildar. The Tahsildar allowed the application by order dated 16th March 2002 and ordered to put Memboobsaheb in possession to the extent of land admeasuring 1H 21R from Gut No.305 and land admeasuring 2H 42R from Gut No.304. So far as land admeasuring 1H 6R from Gut No.302 and land 81R from Gut No.303 i.e. from Survey No.89 came to be rejected for want of *locus standi*.

8. Against the order of Tahsildar, to the extent of land from Gut No.302 and 303, Mehboobsaheb approached the Maharashtra Revenue Tribunal. The Respondent Nos. 8 i.e. purchaser also preferred an appeal before the Maharashtra Revenue Tribunal challenging the order to the extent of Gut No.304 and 305. It is the case of the petitioner that the

petitioner was not made a party to the revision before the Maharashtra Revenue Tribunal filed by the respondent.

9. The learned Member, Maharashtra Revenue Tribunal on 1st October 2010 decided both the appeals. The appeal of the respondent came to be allowed. The appeal of the petitioner came to be dismissed. It is observed that, there is *ex-post facto* sanction granted to transaction entered into between Gafursaheb Pathan and Respondent No.5 by the Tahsildar. Against the said order, writ petition No.11733/2010 was filed by the petitioner. The petition was partly allowed by order dated 24th January 2012. The parties were directed to obtain *ex-post facto* sanction from the Tahsildar. After the hearing started, the petitioner again approached the learned Divisional Commissioner. The learned Divisional Commissioner directed the Tahsildar to decide the application of the petitioner and respondents by considering the order passed by this Court. Thus, the matter was about *ex-post facto* sanction to the transaction. The Tahsildar by impugned order granted *ex-post facto* sanction. The said order was challenged before the learned District

Collector in which now, the Deputy Collector has passed the order and, thus, the petitioner is before this Court in Writ Petition No.5256/2013.

10. So far as the facts of Writ Petition No.5342 of 2013 are concerned, it is the case that on 4th September 1971, deceased Gafursheb Pathan executed sale-deed in favour of father of Respondent Nos.3 and 4. However, he was not owner of the said property as per the allegations of the petitioner. It is the petitioner's case that on 10th September 1974, the mutation entry was taken bearing No.118 in the name of Mehboobsaheb. Since the entry was taken in the name of Mehboobsaheb, the petitioner is entitled to get possession. The transactions in respect of the land were without permission and sanction. Mehboobsaheb approached the learned Tahsildar by order dated 16th March 2002. The learned Tahsildar partly allowed the application directing that the possession of land Gut Nos.304 and 305 be restored to the possession of Mehboobsaheb. Against the said order, the matter went to learned Maharashtra Revenue Tribunal in Appeal bearing No.49/A/2002/L filed by the Mehboobsaheb and Appeal of one Govind

Jamkhande (R7) bearing Appeal No.28/A/2002/L. It is in this proceeding, the judgments in both the appeals were challenged in Writ Petition No.11733 of 2010 in this Court. The petition was partly allowed. The parties were directed to move the learned District Collector for grant of *ex-post facto* sanction. The learned Tahsildar rejected the application of Mehboobsaheb to regularize alleged sale-deeds. Again writ petition was filed. It is alleged that thereafter, the learned Tahsildar passed back dated order date 3rd April 2013. No effect could have been given to the order dated 3rd April 2013, in view of circular No.2010/Mashaka-2/land-2/PK-15 dated 27th August 2010 and regularized the sale-deed executed by Gafursaheb Pathan in favour of father of Respondent Nos. 3 and 4 and thus, the petitioner is before this Court.

11. So far as Writ Petition No.5342 of 2013 is concerned, Mr. Tungar, the learned Advocate for the petitioner vehemently submits that the mutation entry was rightly taken in the name of petitioner. Gafursaheb Pathan sold the property without obtaining prior permission from the

authority. The sale-deed dated 4th September 1979 executed in favour of Yashwant Birasdar i.e. father of Respondent Nos. 6 and 7 to the extent of 1H 63R was illegal. Initially, the survey No.89 was one land which was converted into four gut numbers. Since the sale-deeds were illegal and Mehboobsaheb was entitled to receive the property, the petitioner rightly applied to the Collector for restoration of the land. The Tahsildar rightly passed an order directing to give back possession to Mehboobsaheb from Respondents. The learned Member, Maharashtra Revenue Tribunal however, committed illegality by setting aside the order passed by the Tahsildar in the revision preferred by the Respondents regularizing the sale-deed and dismissed the appeal of the petitioner. He thus prays for allowing the writ petition.

12. So far as Writ Petition No.5256 of 2013 is concerned, Mr. Tungar submits that, the learned Member, Maharashtra Revenue Tribunal has committed mistake while deciding the appeal. Mehboobsaheb was the only legal heir of father of Mastan Ismailsaheb. No *ex-post facto* sanction could have been granted. He thus prays for allowing the writ petitions.

13. Mr. Salunke, the learned Advocate for the Respondent Nos. 6 & 7, opposes the writ petitions. He submits that looking to the prayer clauses, it is seen that there is no challenge to the order passed by the learned Maharashtra Revenue Tribunal. The earlier order of MRT merged into order passed by the High Court in Writ Petition No.11733 of 2010. So far as regularization is concerned, he relied on the judgment in the case of ***Vithal Kondhalkar Vs. State of Maharashtra and Ors***.[1]. *Ex-post facto* sanction can be granted by regularizing the same. He submits that in view of section 9 of Bombay Inferior Village Watans Abolition Act, 1958, order passed by the Tahsildar regularizing the sale-deed dated 29th July 1974 in favour of respondent No.8 is correct. In view of notification by empowering the Tahsildar to exercise the power of the Collector under the said Act, by exercising the power confirmed by clause IV of Section 2 of the Bombay Inferior Village Watans Abolition Act. From notification, it is seen that the Tahsildar was given authority to perform the functions and exercise the power of the Collector under Section 6 and 9 of the said Act. He thus submits that sanction granted by the Tahsildar was well

1 1981 Bom. C.R. 32

within the power. No fault can be found in the order. In support of his submissions, he relied upon the judgments passed by this Court in Writ Petition No.10979 of 2021 in the case of ***Sunita Vasant Kamble Vs. The State of Maharashtra and Ors.*** decided on 1st July 2024, and Writ Petition No. 3220 of 1990 in the case of ***Kacharu s/o. Bhagaji Gaikwad and Ors. Vs. smt. Sheela w/o. Ramesh Mittal and Ors***. decided on 30th April 2008.

14. It is seen from the judgment of learned Sub-Divisional Officer that he has considered the transactions of the mutation entry and also the sale-deed dated 29th July 1974 in favour of Smt. Rohinibai Bhimrao Jabade (R4). It is held that Mehboobsaheb Pathan had never mortgaged the land. The land, thereafter, was purchased by Govind Sakharam Jamkhande (R8) from Smt. Rohinibai B. Jabade (R4).

15. On disposal of Writ Petition No.11733 of 2010 by this Court, the matter went to the District Collector, Latur for considering regularization of the sale-deed between Mehboobsaheb and Smt. Rohinibai B. Jabade. It is considered that the land Gut No.302 admeasuring 1H 2R and Gut

No.303 admeasuring 81R were regularized by the learned Tahsildar. The said was set aside by the learned Maharashtra Revenue Tribunal. However, there is no finding given by this Court in the writ petition and thus, the judgment in favour of Respondent Nos.6 and 7 dated 16th March 2002 is in existence. The sale-deeds between Mehboobsaheb and Respondent Nos. 4 and 8 were registered. The possession is also with Respondent No.8. The land Gut No.302 and 303 were also sold by registered sale-deed by Gafursaheb. The sale-deed between Mehboobsaheb Pathan and Respondent No.4 was also with prior sanction of the Tahsildar. It is, thus, the petitioner's applications dated 1st October 2010 and 11th May 2012 came to be rejected. All the transactions were held to be legal and valid.

16. In the case of ***Sunita Vasant Kamble Vs. The State of Maharashtra and Ors.*** (supra), in that case, there was no dispute about the execution of registered sale-deed by deceased, husband of the petitioner. Only contention was that the petitioner was not heard in that case. He also relied upon the judgment of this Court in the case of ***Kacharu s/o***

Bhagaji Gaikwad and Ors. Vs. Smt. Sheela w/o. Ramesh Mittal and Ors. (supra), this judgment was also in respect of grant of *ex-post facto* sanction. The transaction was regularized by the impugned order. This Court, on considering the facts, dismissed the writ petition.

17. This Court finds that the respondent has rightly relied upon these judgments. While considering petitions, the conduct of the petitioner needs to be seen. Since after filing of the petition in 2013, the petitioner has changed three Advocates. When this petition was taken up on 18th November 2024, the learned Advocate expressed that petitioner wants to be present at the time of hearing and time was sought. This Court specifically recorded that the petitioner has change three Advocates. He is playing tactics for delaying the matter and adjourned the matter on 16th December 2024 subject to costs of Rs.2,000/-. Office note shows that inspite of this, no costs is deposited. Looking to the earlier orders, it is seen that, from time to time, requests were made by the Advocate for the petitioner for adjournments. On three occasions, none appeared for the petitioner. The petition was dismissed on 16th December 2015 for

none removal of objection. The said dismissal order was quashed and set aside subject to costs of Rs.1,000/- in both the petitions. This conduct shows that the petitioner was not interested in dealing with the issue. When this Court adjourned the matter subject to costs, even that cost is not paid. This Court finds that it would be proper to dismiss these writ petitions with costs of Rs.25,000/- each, in view of the conduct.

18. Having heard the submissions at the bar and the material placed before this Court, this Court does not find any illegality in the order impugned in Writ Petition No.5256 of 2013. This Court also does not find any illegality or perversity in the impugned order in Writ Petition No.5342 of 2013. For the reasons recorded in the writ petitions and as there is no substance in the writ petitions, both the writ petitions stand dismissed, subject to payment of costs of Rs.25,000/- in each petition, to be paid to the private respondents equally.

19. With this, both writ petitions stand disposed off.

[KISHORE C. SANT, J.]