2025:BHC-AUG:2982

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5401 OF 2020

Kashinath Bhika Tupe and Another PETITIONERS

VERSUS

The State of Maharashtra and Others RESPONDENTS

....

Mr. Devdatt P. Palodkar, Advocate for the Petitioners
Mrs. V. N. Patil (Jadhav) AGP for Respondent - State
Mr. S. S. Panale, Advocate for Respondent No.5

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[CORAM : MANJUSHA DESHPANDE, J.]

DATE : 3rd FEBRUARY, 2025

ORDER :

1. Order dated 13th February, 2019 passed by the Minister of State, Revenue in Appeal No. 2019/Prakra 02/J-7 is challenged in the present Writ Petition.

2. It is the contention of the Petitioners that they had received notice dated 12th March, 2020 bearing outward No.Kon/Appeal/2019/Prakra/02/J-7 issued by Respondent No.4 directing the Petitioners to submit objections within 15 days to the proposed modification of the consolidation scheme. In the notice, 3 Hectare 44 R land possessed by the Petitioner was proposed to be reduced by modification.

3. When the Petitioners had been to the office of Respondent No.4, it came to their knowledge that, proceedings were initiated on the basis of order passed by Respondent No.2 – Minister for State Revenue dated 13th February, 2019. The Minister has allowed the Appeal filed by Respondent No.5 and set aside the order passed by Respondent No.4 dated 21st October, 2018 and directed Respondent No.3 to carry out the correction in consolidation scheme in old Survey No. 148. It is contention of the Petitioners that before passing the order impugned, no opportunity of hearing was granted to the Petitioners. In fact, the Petitioners though are affected, they have not been added as parties in the proceedings filed by Respondent No.5 before the Minister. Since they are affected parties, they ought to have been heard before passing any order by the Minister.

4. Mr. Palodkar, learned Advocate appearing for the Petitioners draws my attention to the order passed by the Deputy Director of Land Records, Aurangabad, whereby application of the Petitioners for correction in consolidation scheme was rejected by order dated 29th June, 2018. Hence, Respondent No.5 has challenged the said order before the Minister of State (Revenue). The Minister has straightway passed order thereby directing to cause measurement of land survey No. 148 and

make necessary amendments in the scheme. Being aggrieved by the said order, the Petitioners have approached this Court.

5. Learned Advocate for Respondent No.5 has filed reply affidavit. It is his contention that there is no error in the order passed by the Minister, since consolidation scheme was finalized after hearing the concerned parties. It is submitted that the Petitioners were present during the measurement, they have not objected to it. There is nothing wrong in the order passed by the Minister. It is his further contention that so far as objection to the delay is concerned, since Respondent No.5 has sought correction of arithmetical error there is no limitation for making correction in the arithmetical errors. Hence, the question of delay would not arise.

6. Learned AGP supports the impugned order. She submits that Panchanama was drawn on 26th September, 2018 and since the Petitioners have not objected to the Panchanama, therefore, based on the said Panchanama, measurement report was submitted by Respondent No.4 to Respondent No.2, with the observations that consolidation scheme has been implemented on the basis of statements recorded by the owners of Survey No. 148. Therefore, there is no error in the scheme. It is also contended that as per the order of the Minister, measurement

has been carried out on 19th December, 2019.

7. After hearing the learned Advocates for the respective parties and on going through the record, it is evident that, it is not in dispute that the present Petitioners are affected parties and they were neither made parties before the Minster nor were they heard before passing the impugned order by the Minister. Hence, it is clear that the order impugned is passed by the Minster without following principles of natural justice. Therefore, the order passed by the Minster cannot sustain and deserves to be quashed and set aside.

8. Therefore, the order dated 13th February, 2019 passed by the Minister of State, Revenue in Appeal No. 2019/Prakra 02/J-7 is quashed and set aside. Since the order is quashed on the ground of non adherence to the principles of natural justice, the matter is remanded back to the Minster by directing the appellant in the proceedings before the Minister i.e. Respondent No.5 herein to add all the necessary parties, including present Petitioners to the proceedings filed by him before the Minster. Since the order passed by the Minister is quashed and set aside, the consequent measurement and proceedings initiated pursuant to the said order are also quashed and set aside. After necessary parties are added to the proceedings, by present Respondent No.5, the

Minster shall hear all the parties and make endeavor to decide the proceedings afresh as expeditiously as possible, preferably within 6 months.

9. With the above directions, Writ Petition stands disposed of.

[MANJUSHA DESHPANDE]
JUDGE

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