



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

914 WRIT PETITION NO. 830 OF 2016

Shambhu Kashinath Pangate

....Petitioner

VERSUS

The State Of Maharashtra And Others

.....Respondents

.....

Mr. Avinash Londhe h/f Mr. R.P. Adgaonkar, Advocate for the
Petitioner

Mrs. A.S. Mantri, AGP for State

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CORAM : MANJUSHA DESHPANDE, J.

DATE : 30th JANUARY, 2025

ORDER :

1. Petitioners are challenging the order passed by Deputy Director of Land Records, Aurangabad, in File No. CON/S.R. 4099/2004 dated 30.07.2012.

2. Petitioner submits that he is owner and possessor of land Survey No. 44/9 and 44/3 of village Sora, Tq. Ahmedpur, Dist. Latur, being his ancestral property. It is submitted that in the year 1992 consolidation scheme was implemented by respondents and survey numbers were converted into gat numbers. The land of the petitioner was converted into Gat No. 88, however, name of one Rajaram Pangate was wrongly recorded in the records and accordingly 7/12 extracts were prepared. Petitioner got knowledge about the said error in the month of December-2003. Therefore, petitioner filed application

Bhagyawant Punde

before Deputy Director of Land Records, Aurangabad on 12.12.2003, seeking correction in the entry which was taken during the consolidation scheme. In the application it was prayed that since name of Rajaram Pangate has been wrongly recorded, it should be corrected and his name should be recorded. In view of the application, inquiry was conducted by Deputy Superintendent of Land Records, Ahmedpur, Dist. Latur and report was submitted on 25.08.2004. In the said report it is stated that after the enquiry it transpired that petitioner is in possession of said land since his forefather. While making entry of Gut No. 88, a clerical error has occurred, therefore, it needs to be corrected as per Section 31(A) of Bombay Fragmentation and Consolidation of Holdings Act, 1947. Said report was forwarded to the Superintendent of Land Record, Latur.

3. It is the contention of petitioner that though this report was forwarded on 25.08.2004, the matter remained pending before Deputy Director of Land Records, Aurangabad and by way of communication dated 30th July, 2012, it was communicated to the respondent No. 3 that application of petitioner has been rejected. Said communication is obtained by petitioner under Right to Information Act. Referring to Circular dated 17.03.2004, which has been issued pursuant to the order

passed by this Court in the case of Gunda Tuka vs. Pandharinath Shinde and Krushna Bhatu Sindgoda vs. Settlement Commissioner, Pune., the application of the petitioner has been rejected. Said circular was issued giving directions to the authorities not to entertain applications received after 30 days of publication of draft consolidation scheme.

4. It is the contention of petitioner that he had filed application on 12.12.2003 and circular has been issued on 17.03.2004. Therefore, said circular cannot be made applicable to his case and order which is passed based on said circular is not tenable. He also submits that in fact there is decision of this Court in Writ Petition No. 8737/2021, wherein this Court has taken a view that Section 31A of the Act needs to be exercised to correct the clerical errors as there is no variation in the scheme but mere recording of correct ownership of the respective owners, in the existing gat numbers. Therefore, application made under Section 31A cannot be rejected on the ground of delay.

5. The judgment passed by this Court in Writ Petition No. 8737/2021, has been passed after taking into consideration, all earlier judgments holding the field. The judgment passed has taken into consideration the provisions of the Act, its implication

and scope. The relevant para no. 39 is reproduced herein which reads thus:

"39. In the instance case, the changes are made, on account of clerical mistakes in noting the area, as such there is no corresponding change in the consolidation scheme and there is no change in the gat numbers. It is only the areas mentioned qua respective owners i.e. found to be defecting and sought to be rectified. Section 32 of the Act would come into play when at the time of making correction, the guts are to be re-organized and there is variation in the scheme. In the instance case, the authority has rightly come to the conclusion that powers under Section 31A of the Act needs to be exercised to correct the clerical errors as there is no variation in the scheme but mere recording of correct ownership of the respective owners, in the existing gat numbers."

6. In the reply filed by State, Deputy Superintendent of Land Records has admitted that petitioner is the owner and possessor of land as per available record. The wrong entry of Rajaram Pangate during the consolidation scheme has also been admitted. None of the factual aspects which have been stated by petitioner are disputed by the concerned authority.

7. The respondent No. 2 has disposed the application on observing that during consolidation proceeding the parties with mutual consent have exchanged the lands. Therefore, if at this stage the correction is made, that will affect other gut numbers and result in variation of scheme. The reason in the impugned

communication is contrary to the prayer made in the application, the petitioner only seeks correction in name and no variation in area or holding. Reliance is also placed on the circular dated 17.03.2004. So far as said circular is concerned, preface of the circular refers to the decision of this Court, which was the basis for issuance of circular. In the circular itself it is stated that if objections are not recorded within 30 days of coming into course of draft consolidation scheme, then in such case, the subsequent objections cannot be entertained. It also refers to the corrections to be made under Section 32(1), which are necessary corrections.

8. So far as the present case is concerned, it is categorically stated by the Deputy Superintendent of Land Records in his report that correction needs to be carried out as per provisions of Section 31(A), for correction of clerical error. Therefore, the circular is not applicable to the present case. Hence, during the pendency of petition the view taken by this Court in Writ Petition No. 8737/2021 in respect of entertaining application for correction under Section 31(A) would be squarely applicable to the present case. In the present case also the proposed correction is not going to affect the consolidation scheme, and result in changing gut number etc only correct

name is required to be entered in Gut No. 88. As per the averment of the petitioner, the petitioner got knowledge of the error in December-2003, and immediately he has filed application on 12.12.2003. Hence, in view of legal position, order dated 30.07.2012 passed by Deputy Director of Land Records, Aurangabad cannot be sustained and deserves to be quashed and set aside. Hence, the following order:

ORDER

- (I) Writ Petition is allowed.
- (II) Order passed by Deputy Director of Land Records, Aurangabad, in File No. CON/S.R. 4099/2004 dated 30.07.2012 is hereby quashed and set aside.
- (III) The competent Authority to pass necessary orders on the basis of enquiry report submitted by Deputy Superintendent of Land Records, Ahmedpur, Dist. Latur, dated 25.08.2004.
- (IV) Writ petition stands disposed of.

(MANJUSHA DESHPANDE, J.)