



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7273 OF 2023

Dashhar s/o Sadashiv Kale,
Age : 90 years, Occu. : Agri.,
R/o. Jawla (Dumala), Tq. & Dist.
Osmanabad

.. Petitioner
(Resp. in Appeal before
Mantralaya, Mumbai)

Versus

1. Sheshnarayan s/o Nagnath Kale,
Age : 65 years, Occu. : Agri.,
R/o. Jawla (Dumala), Tq. & Dist.
Osmanabad

(Appellant in Appeal
before Mantralaya)

2. The State of Maharashtra,
Through the Secretary of
Revenue Department
Maharashtra State, Mantralaya,
Mumbai – 32.

3. The Deputy Director Land Records,
Aurangabad Division, Aurangabad.

4. The Superintendent of Land Records,
Osmanabad, Dist. Osmanabad.

.. Respondents

Mr. Nileshsingh J. Patil, Advocate for the Petitioner.

Mr. D. M. Bhalke & Mr. H. H. Padalkar, Advocate for Respondent No. 1.

Smt. D. S. Jape, AGP for Respondent Nos. 2 to 4.

WITH
CIVIL APPLICATION NO. 12949 OF 2024
IN
WRIT PETITION NO. 7273 OF 2023

Dashhar s/o Sadashiv Kale,
Age : 91 years, Occu. : Nil.,

R/o. Jawla (Dumala), Tq. & Dist.
Osmanabad

.. Applicant

Versus

1. The State Minister (Revenue)
Maharashtra State, Mantralaya,
Mumbai – 32.
2. The Deputy Director of Land Records,
Aurangabad Division, Aurangabad.
3. The Superintendent of Land Records,
Osmanabad, Dist. Osmanabad.
4. Sheshnarayan s/o Nagnath Kale,
Age : 65 years, Occu. : Agri.,
R/o. Jawla (Dumala), Tq. & Dist.
Osmanabad

.. Respondents

Mr. Nileshsingh J. Patil, Advocate for the Applicant.

Smt. D. S. Jape, AGP for Respondent Nos. 1 to 3.

Mr. D. M. Bhalke & Mr. H. H. Padalkar, Advocate for Respondent No. 4.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 03rd December, 2024.

Date on which order pronounced : 22nd January, 2025.

ORDER :-

. The petitioner being aggrieved by the judgment and order dated 05.03.2019 passed by the learned Minister (Revenue) in Appeal No. 2018/PK-63/J-7(A) has approached this Court. The learned Minister by way of impugned judgment and order has allowed the appeal of respondent No. 1 thereby directing to correct the consolidation scheme

in respect of land Survey No. 6 Hissa No. 3 admeasuring 01 Hectare 52 R and taken the entries in the name of petitioner therein.

2. The facts in short giving rise to the present petition are that the respondent No. 1 filed an appeal before the learned Deputy Director Land Records, Aurangabad (for short "D.D.L.R.") bearing Consolidation Appeal No. S. R. 1182/2017. It is the case that the land of respondent No. 1 is received as ancestral property. The land is in possession of respondent No. 1, however, the name of respondent No. 1 was taken in the land while implementing the consolidation scheme. The mutation No. 82 was challenged on 15.12.1979. No such enquiry was however held. The petitioner thus prayed for cancelling the mutation in the name of the respondent No. 1.

3. Before the learned D.D.L.R. it is the case of the present petitioner that, the father of respondent No. 1 had filed an appeal bearing No. S.R. 2778. In the said appeal enquiry was held. Statements were recorded. Panchanama was also drawn. The said proceedings are still pending. By suppressing this fact the appeal is filed. It is also stated before the authority that, already a Civil Suit No. 15/1968 was filed. In the said suit the respondent No. 1 and his uncle succeeded. Against that, the appeal was filed. The appeal came to be decided in favour of the petitioner and the second appeal filed there

against came to be rejected. While implementing the scheme from 1974 till 1980 some mistake had taken place while recording the names. The petitioner thereafter filed appeal before the consolidation authorities along with the copy of the judgment of the Civil Court. Thus, it is on the basis of that judgment mutation is taken. It is thus prayed that the appeal is without any merit.

4. The learned D.D.L.R. considered these aspects and dismissed the appeal. Against the said judgment, the respondent No. 1 approached the State Government. The learned Minister allowed the appeal recording a finding that no documents of ownership are on record in Civil Suit No. 15/1968. The present suit land is not included. No enquiry was held while taking mutation entry No. 82. It is further held that, circular dated 17.03.2004 is not applicable as the mistake has occurred while implementing the consolidation scheme and directed to correct the entries.

5. Mr. Patil, learned advocate for the petitioner submits that, the learned Minister had clearly committed a mistake while allowing the proceedings. The learned D.D.L.R. had rightly recorded a finding and confirmed earlier orders. When the scheme is implemented long back, there was no question to call for any change. Before taking entry

No. 82, enquiry was held and entry was taken on 02.02.1979 and the same was sanctioned on 15.12.1979. This entry was taken after holding the enquiry and giving decision. He further submits that, the mutation entry No. 82 is not challenged by the respondent No. 1. In absence of challenge, there was no question of directing to correct the consolidation scheme when there is no any mistake committed while implementing the scheme. The learned advocate has produced on record copy of the judgment in Civil Appeal No. 132/1971 that was filed against the Civil Suit No. 15/1968.

6. During the course of hearing learned advocate for the petitioner relied upon the following judgments :

- (i) Gunda Tuka Shinde since by his heir Bajirao Tukaram Shinde Vs. Pandharinath Ramrao Shinde and another reported in 1991 (1) Mh.L.J. 669.
- (ii) Dattu Appa Patil since deceased by Lrs. Ananda Dattu Patil and others Vs. State of Maharashtra and others reported in 2007 (1) Mh.L.J. 393.
- (iii) Santoshkumar Shivgonda Patil and others Vs. Balasaheb Tukaram Shevale and others reported in 2010 (2) Mh.L.J. 150.
- (iv) Gulabrao Bhaurao Kakade since deceased by L.Rs. and others Vs. Nivrutti Krishna Bhilare and others reported in 2001 (4) Mh.L.J. 31.

(v) Madan Narayan Pawar died thorough his L.Rs. And others Vs. The Minister, Revenue and Forest Department and others in Writ Petition No. 1591/2019 by this Court.

7. Mr. Bhalke, learned advocate for respondent No. 1 argued that, the learned Minister has rightly passed an order. He has considered that, no material was produced in the enquiry to establish right of the petitioner. The suit property was not mentioned in Civil Suit No. 15/1968 and this fact is rightly considered. The learned advocate for respondent No. 1 relied upon the judgment passed by this Court in the case of Tulsiram Shivram Dhondkar and others Vs. The State of Maharashtra through its Secretary and others in Writ Petition No. 8737/2021.

8. The learned A.G.P for respondent Nos. 2 to 4 submits that, when entry No. 82 was taken there was no record available. She supports the order passed by the learned Minister and prays for dismissal of the petition.

9. In the case of Gunda Tuka Shinde (*supra*), the Division Bench of this Court held, that amendment of the scheme by the Settlement Commissioner at the instance of person who was party to earlier scheme and who had given consent is without jurisdiction.

10. In the case of **Dattu Appa Patil** (*supra*), the Division Bench of this Court held that, variation made after 27 years without finding any error or irregularity in the scheme, in such case, exercise of power by the consolidation officer after 27 years is unjustified.

11. In the case of **Santoshkumar Shivgonda Patil and others** (*supra*), the Hon'ble Apex Court held that, when statute does not prescribe any time limit for exercise of revisional power, it should be exercised within reasonable time i.e. within three years.

12. In the case of **Gulabrao Bhaurao Kakade** (*supra*), the Division Bench of this Court again considered the scope of jurisdiction of Settlement Commissioner under Section 32. It is held that, the Settlement Commissioner ordinarily shall not exercise such power after three years of finalisation of scheme under Section 22. The proceedings started by the Settlement Commissioner was quashed in view of the above submission.

13. In the case of **Madan Narayan Pawar** (*supra*), this Court by considering the judgments in the cases of **Gunda Tuka Shinde, Dattu Appa Patil, Santoshkumar Shivgonda Patil and Gulabrao Bhaurao Kakade** (*supra*) held that, the exercise of the jurisdiction by the learned Minister was not correct and the judgment of the learned Minister was

quashed and set aside.

14. So far as the judgment in the case of **Tulsiram Shivram Dhondkar** (*supra*), this Court held that, it is not absolute rule that no proceeding can be entertained after three years when the facts justified the interference.

15. This Court is not much impressed by the submissions. In the present matter, no such thing is pointed justifying exercise of jurisdiction after period of three years. The entries became final in the year 1979. Thereafter no application was filed for correction. There was dispute between the parties and therefore, a suit was filed in the year 1968. The said suit was thereafter carried in appeal. Even the learned District Judge in appeal has passed the judgment in favour of the present petitioner. Once the Civil Court has decided the lis finally between the parties thereafter there is no dispute remains about the ownership, possession etc. For this reason also this Court holds that, the exercise was not properly done by the learned Minister. The learned D.D.L.R. had rightly decided the appeal. No case was made out to quash and set aside the said judgment and order at the hands of the learned Minister.

16. For all these reasons this Court is inclined to allow the writ petition. The petition therefore succeeds. The writ petition is allowed in terms of prayer clause (C).

17. In view of disposal of the writ petition, civil application does not survive and the same is also disposed of.

(KISHORE C. SANT, J.)

PS.B.