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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.847 OF 2018

1. Bhujangrao Eknath Jagtap — PETITIONER
Age – 61 years, Occ – Agriculture

2. Sudam Ekanth Jagtap
Age – 58 years, Occ – Agriculture

3. Shamrao Eknath Jagtap
Age – 55 years, Occ – Agriculture

4. Anil Eknath Jagtap
Age – 52 years, Occ – Agriculture

5. Prayagabai Eknath Jagtap
Age – 79 yeas, Occ – Agriculture

All R/o Wangidari Taluka – Shrigonda,
District - Ahmednagar

VERSUS

1. The State of Maharashtra — RESPONDENTS
Through the Secretary for
Revenue Department
Mantralaya, Mumbai

2. The Divisional Commissioner
Nashik Division, Nashik

3. The Additional Collector,
Ahmednagar, District – Ahmednagar

4. The Sub Divisional Officer,
Shrigonda – Parner
District – Ahmednagar

5. The Tahsildar Shrigonda
Taluka – Shrigonda,
District – Ahmednagar

6. Vasant Bapurao Nagwade
Age – 65 years, Occ – Agriculture

Through his Power of attorney
Nitin Vasant Nagwade
Age – 42 years, Occ – Agriculture
R/o Dhokrai Mal, Wangdari
Taluka – Shrigonda, District - Ahmednagar

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Mr. V. D. Hon, Senior Advocate i/b Mr. A. V. Hon, Advocate for Petitioners

Mrs. M. L. Sangir, AGP for Respondent - State

Mr. Rahul R. Karpe, Advocate for Respondent No.6

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[CORAM : MANJUSHA DESHPANDE, J.]

RESERVED ON : 14th JANUARY, 2025

PRONOUNCED ON : 28th JANUARY, 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned Advocates for the parties.

2. Petitioners have challenged order dated 27th November, 2017 passed by State Minister for Revenue, Maharashtra State, in RTS No. 3317/620/PK 422/JK-06, whereby the Appeal filed by present Respondent No.6 is allowed and order dated 30th August, 2017 passed by Deputy Commissioner, Nashik is quashed and order dated 30th October, 2006 passed by Sub Divisional Officer, Karjat in Appeal No. 89A of 2006 is confirmed.

3. According to the learned Senior Advocate Shri Hon appearing for the Petitioners, order passed by the Minister is

contrary to the settled provisions of law. According to him, the Minister has committed an error of jurisdiction in entertaining the proceedings filed by Respondent No.6 despite there being huge delay of 28 years in raising challenge to the Mutation Entries, which were effected way back in the year 1977. The Mutation Entries effected in 1977 are tried to be challenged, for the first time, by initiating proceedings in the year 2006, without filing any application for condonation of delay. The Minister has entertained the proceedings filed by Respondent No.6, without considering the issue of delay and has passed the impugned order.

The Minister has not taken into consideration the reasoned orders passed by the Revenue Authorities, which have been passed after taking into consideration the record available with them. It is the case of the Petitioners that, when already, in the earlier round of litigation, the Divisional Commissioner had passed an order dated 5th March, 2012 in Appeal No. 49 of 2009, rejecting the same under section 257 of the MLR Code, without challenging the said order, subsequent proceedings have been initiated by Respondent No.6, therefore, on that count also, the order passed by the Minister is unsustainable.

4. In order to decide the correctness and validity of the order

passed by the Minister, it is necessary to appreciate the facts giving rise to the proceedings before the Minister.

5. According to the Petitioners, original Survey No. 181/2 was converted into Gut No. 413 situated at village Wangdari, Taluka – Shrigonda, District – Ahmednagar, having area of 1 Hectare 64 R. It was further changed after constitution of revenue village Dhokraimal and it was re-numbered as Gut No. 1, *ad measuring* 1 Hectare 64 R. It is claimed by the Petitioners that, Respondent No. 6 - Vasant Bapurao Nagwade had filed an application before the Revenue Authorities on 10th August, 1976, claiming that he is in possession of half of the suit land i.e. to the extent of 82 R, and it was claimed that rest of the half land was actually in possession of one Eknath Ramrao Jagtap, i.e. father of the present petitioners No.1 to 4 and the Petitioners have constructed their houses and cattle sheds and they are residing on the suit land. Vasant Bapurao Nagwade had filed application for correction in the Mutation Entries in revenue record to record name of Ekanth Ramrao Jagtap in Gut No.1 to the extent of 82 R. On the basis of application made by Respondent No. 6 - Vasant Bapurao Nagwade, on 18th January, 1977 Mutation Entry No. 340 was effected. Accordingly, name of Eknath Ramrao Jagtap was reflected in the revenue record, as owner of half of the portion of the suit land.

6. It is the case of the Petitioners that Eknath Ramrao Jagtap thereafter applied for recording name of his son, Anil Eknath Jagtap to the extent of 20 R land in the suit land. Accordingly, Mutation Entry No. 259 had been recorded on 3rd April, 1995 on the basis of application made by Eknath Ramrao Jagtap, invoking power under section 85 of the Maharashtra Land Revenue Code. Eknath Ramrao Jagtap expired on 25th May, 2001 and his legal heirs had applied for mutating their names in the suit land. Therefore, Mutation Entry No. 430 was effected in the suit land to the extent of 62 R. As on date, Mutation Entries No. 340, 259 and 430 exist in the revenue record in respect of the suit land. The said entries remained intact till 2006, and after a long gap and delay of 28 years, Respondent No.6 filed Appeal No. 89A of 2006 before the Sub Divisional Officer, Shrigonda – Karjat under section 257 of the MLR Code, raising challenge to the Mutation Entries No. 340, 259 and 430. The ground of challenge to the said Mutation Entries was that the Mutation Entries have been effected without following due procedure of law. Hence, it was prayed that the Mutation Entries be cancelled.

7. On notice being issued, present Petitioners caused their appearance and opposed the appeal filed by Respondent No.6 pointing out that, their names ostensibly appear in revenue

record since 1976-77, they are in possession of the land and therefore, the Sub Divisional Officer cannot entertain the Appeal to consider the grievance of Respondent No.6, after a long period of 28 years, that too without filing any application for condonation of delay. The Appeal filed by Respondent No.6 was allowed by the Sub Divisional Officer by order dated 31st October, 2006. The reason for cancellation of Mutation Entries, given by the Sub Divisional Officer was that the transfer on the basis of which Mutation Entry No. 340 had been recorded is not supported by any legal document or any evidence to the effect that there was passing of any consideration or any legal instrument in support of the transfer. Therefore, without there being any lawful consideration, Mutation Entry No. 340 was effected and hence, Mutation Entry No. 340 and subsequent Mutation Entries No. 259 and 430 were cancelled by the Sub Divisional Officer.

8. Being aggrieved by the order dated 31st October, 2006 passed by the Sub Divisional Officer, the Petitioners had filed Second Appeal before Additional Collector, Ahmednagar. The Additional Collector, Ahmednagar, after taking into consideration the rival contentions of the parties, had remanded the matter back to the Tahsildar, Shrigonda for fresh consideration. It was directed that the Tahsildar should take a decision afresh after

conducting local inquiry. The order of remand was passed on the ground that after a yawning gap of 28 years, the proceedings were initiated by Respondent No.6, which according to Additional Collector was suspicious.

9. The order of Additional Collector, thereby remanding the matter back, was challenged by Respondent No.6 in RTS Revision No. 49 of 2009 before the Additional Commissioner, Nashik, who has rejected the Revision and confirmed the order of remand of matter dated 15th January, 2009 passed by the Additional Collector.

10. Pursuant to the order of remand passed by the Additional Collector, Tahsildar Shrigonda had conducted an inquiry into the matter and confirmed Mutation Entries No. 340, 259 and 430, by order dated 27th August, 2014, In his order, the Tahsildar has observed that first Mutation Entry under challenge is Mutation Entry No. 340 and rest of the two Mutation Entries are the subsequent entries. Record does not disclose that Vasant Bapurao Nagwade has ever filed any complaint against the first Mutation Entry, claiming that the said entry is illegal. He has also not produced any document in order to claim that the said Mutation Entry is illegal. Since the challenge to the Mutation Entry has been made after 28 years, it should have been

accompanied by an application for condonation of delay, giving appropriate and satisfactory reasons for condonation of delay. Even in his application, Vasant Nagwade does not seem to have given any satisfactory reason for condonation of delay. As against that, record discloses that Respondent No.6 had filed revenue record from the year 1976-77, which discloses that the Petitioners are in possession of the land in question since 1976-77 to 2013-14. It is also reflected in the seven twelve extract. Therefore, the Tahsildar had come to the conclusion that since the Petitioners are in possession since 1976-77, which is reflected in the revenue record, Mutation Entries No. 430, 259 and 340 are required to be confirmed and accordingly he has passed an order confirming the Mutation Entry. The said order was further subject matter of challenge before the Sub Divisional Officer in RTS Appeal No. 105 of 2014, which was decided on 2nd January, 2016 rejecting the Appeal and confirming the order dated 27th August 2014 passed by the Tahsildar.

11. The order dated 2nd January, 2016 passed by the Sub Divisional Officer in RTS Appeal No. 105 of 2014 was challenged by Respondent No.6 in Second RTS Appeal No. 188 of 2016, which also met with the same fate and the Mutation Entries No. 340, 259 and 430 were confirmed. The order passed by the Tahsildar confirming Mutation Entries No. 430, 249 and 430 was

further confirmed by the Divisional Commissioner Nashik in RTS Revision No.65 of 2017, by order dated 30th August, 2017.

12. Both the authorities have refused to interfere with the order passed by the Tahsildar, Shrigonda on 27th August, 2014 on the ground that the delay occurred in initiating the proceedings against the revenue entries is not satisfactorily explained.

13. Being aggrieved by the orders passed by the all the Revenue Authorities after the remand of the Matter to Tahsildar, Respondent No. 6 preferred RTS Revision No.3317/620/PK 422/ J 6 before State Minister (Revenue). The Minister, after hearing the parties and taking into consideration the law applicable in respect of the Mutation Entries, has allowed the Appeal filed by Respondent No.6 by order dated 27th November, 2017 and confirmed the order dated 30th October, 2006 passed by the Sub Divisional officer, Shrigonda in Appeal No. 89A of 2006. Resultantly, Mutation Entry No. 340 and subsequent Mutation Entries No. 259 and 430 taken in respect of the suit property at Dhokarimal in Gut No.1 were cancelled.

14. Being aggrieved by the order passed by the Minister, present Writ Petition has been filed by the Petitioners, on the ground that the Minister has unsettled the settled position of the revenue entries, which were taken in the year 1977, after a long

gap of 28 years, without taking into consideration that there is no application for condonation of delay and the revenue entries reflect names of Petitioners since 1977 onwards. Therefore, the settled position of their possession as well as the Revenue Entries standing in their names ought not to have been unsettled by the Minister, without recording any satisfactory reasons.

15. According to learned Senior Advocate Shri Hon appearing for the Petitioners, the Petitioners and Respondent No.6 are related to each other and Respondent No.6 himself had given an application on 10th August, 1976 to the Revenue Authorities claiming that he is in possession of half of the suit land and Eknath Ramrao Jagtap – father of present Petitioners No.1 to 4, is in possession of rest of the half land. Therefore, considering the possession as well as the exchange that had taken place *inter se*, between them, name of Eknath Ramrao Jagtap should be entered in the revenue record, by correction of Mutation Entries. It is on the application filed by Respondent No.6, the revenue record was corrected and name of Eknath Ramrao Jagtap was mutated in respect of the suit land. Even after the Mutation Entry No. 340, which is recorded on 18th January, 1977, the subsequent Mutation Entries have been recorded, which have attained finality. There is no challenge to these Mutation Entries all along, for a long period. Therefore, after a gap of 28 years, Respondent No. 6

cannot be allowed to unsettle the settled position.

After the matter was remanded by the Sub Divisional Officer, an appropriate inquiry was conducted by the Tahsildar and opportunity was afforded to the respective parties and after taking into consideration the case of the respective parties and the revenue record, the Tahsildar, Shrigonda has passed the order thereby confirming Mutation Entries No. 340, 259 and 430 and the said order of the Tahsildar, Shrigonda has been maintained by all the Revenue Authorities, refusing to entertain the challenge to the order passed by the Tahsildar.

16. While assailing the order passed by the Minister, learned Senior Advocate submits that, the Minister has overstepped his jurisdiction in observing that Revenue Entries could not have been changed on the basis of simple application allegedly given by Respondent No.6.

17. According to learned Senior Advocate for the Petitioners, it is a matter of civil dispute, but these are the proceedings pertaining to the Mutation Entries, therefore, impugned order passed by the Minister needs to be interfered with and deserves to be quashed and set aside.

18. Per contra, learned Advocate Shri. R. R. Karpe appearing for

Respondent No.6 submits that, though the Petitioners are claiming that Mutation Entry No. 340 was taken on 18th January, 1977, on the basis of application given by Respondent No.6, however, the claim of the Petitioners is falsified from the fact that when he had made an application requesting for issuance of relevant copies of the so called application made by him requesting to effect Mutation Entry dated 10th August, 1976, in response to it, he has received communication dated 16th March, 2016, informing that upon going through the relevant record in respect of Gut No. 413, it is found that application, statement, order in respect of Gut No. 413 preceding Mutation Entry effected on 18th January, 1977, could not be traced.

19. Hence, according to him, there is no basis for effecting Mutation Entry dated 18th January, 1977, as claimed by the Petitioners. When an entry has been effected without there being any document or application or inquiry, the very basis of the said entry rests on a false case by Petitioners. Therefore, even the subsequent entries are of no consequence.

20. The learned Advocate for Respondent No. 6 submits that, the father of Petitioners No. 1 to 4 namely Eknath was holding charge of Sarpanch of the village during the relevant period. Therefore, misrepresentation at his behest cannot be ruled out.

Learned Advocate for Respondent No.6 relies on a certificate issued by Gram Panchayat Wangdari certifying that Eknath Ramrao Jagtap was holding the post of Sarpanch during the period form 13th July, 1972 to 25th May, 1978.

21. It is the further contention of learned Advocate for Respondent No. 6 that, no limitation is prescribed for entertaining proceedings under section 247 of the Maharashtra Land Revenue Code. Since there is no limitation prescribed, delay of 28 years, as claimed by the Petitioners cannot be a ground of challenge. According to him, when he got knowledge about the Mutation Entries, Respondent No. 6 has filed Appeal before the Sub Divisional Officer in 2006. In the Appeal memo he has categorically stated that last Mutation Entry no. 430 has been recorded in 2006, and he has filed the Appeal in the year 2006, therefore, there is no substance in the contention that there is a delay of 28 years in filing the Appeal. It is further submitted by Shri Karpe that the delay should not be a consideration in the present case since the impugned Mutation Entries are obtained by fraud and fraud vitiates everything. The learned Advocate for Respondent No.6 submits that even otherwise, after the order is passed by the Minister (Revenue), upholding the order passed by the sub Divisional Officer, Karjat in Revision Appeal No. 89A of 2006, dated 30th October, 2006, revenue Entries have been

taken, thereby deleting names of the Petitioners and entering name of Respondent No. 6 – Vasant Bapurao Nagwade. Hence, the order impugned has been executed. He has supported the impugned order passed by the Minister, contending that there is no reference about the exchange deed between the respective parties in the Mutation Entry No. 340. The alienation claimed by the Petitioners, terming it as a family arrangement, is not legal and valid. There is no mandatory compliance of section 17 of the Stamp Act in respect of registration of the document. Therefore, the order passed by the Minister is just, proper and legal and does not deserve any interference.

22. After hearing the parties, learned Senior Advocate Mr. Hon for the Petitioners, learned Advocate Mr. Karpe for Respondent No.6 and Mrs. Sangit, learned AGP for Respondents No.1 to 5 and Upon going through the order passed by the Minister, it appears that the Minister has passed the order on merits of the matter, after recording submission of the parties. While recording the conclusion, though the Minister has observed that there is delay of 28 years in seeking change in the Mutation Entry No. 340, no reasons are recorded on that issue by the Minister. The Minister has merely decided the Revision on the basis of facts as well as law. The Minister ought to have decided the issue of delay at the outset and thereafter proceed to decide the matter on merits.

Right from the Tahsildar, who has passed the order after making local inquiry on 27th August, 2014 and observed that there is delay which is not satisfactorily explained, the Sub Divisional Officer as well as Additional Commissioner have refused to interfere with the order, on the ground that delay of 28 years has not been explained. Both the Appellate Authorities have refused to interfere with the order of the Tahsildar on the ground that there is unexplained delay of 28 years. In spite of the consistent findings recorded by the Revenue Authorities regarding delay, thereby refusing the entertain the application for change in Mutation Entries, though the Minster has observed about delay in the impugned order, however the Minister has failed to record any reason for entertaining Revision in spite of delay. Though it is an undisputed position of law that when there is delay, findings regarding delay are required to be recorded and only in case of condonation of delay, the court or the authority can proceed to pass an order on merits of the matter. Hence, in view of the fact that the reason for not entertaining the Appeal and Revision filed by Respondent No.6 by all the Revenue Authorities, is delay, the Minister has failed to record any reason on that count. Hence, in view of the same, the order passed by the Minister becomes unsustainable and is, therefore, requires to be quashed and set aside.

23. In the result, the Writ Petition is partly allowed. Impugned order dated 27th November, 2017 passed by State Minister for Revenue, Maharashtra State, in RTS No. 3317/620/PK 422/JK-06 is quashed and set aside. The matter is remanded back to the Minister for fresh decision, after taking into consideration the issue of delay caused in preferring application challenging Mutation Entries. Minister shall record the findings on delay and thereafter pass order on merits of the matter as early as possible, preferably within a period of 3 months from the date receipt of writ of this order. Rule is made absolute in aforesaid terms.

24. At this stage, learned Advocate appearing for Respondent No.6 makes a request to grant *status quo* as on the date till the decision in Revision. Since the proceedings before the Minister are directed to be disposed of within three months, parties shall maintain *status quo* as on the date for a period of three months.

[MANJUSHA DESHPANDE]
JUDGE