

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.16249 OF 2024

Salim Noormohammad Saudagar

...Petitioner

V/s.

Bapu Ganu Pawar
(since deceased through legal heirs)

1A. Krushnat Bapu Pawar and Ors.

...Respondents

Mr. Nilesh Wable *i/b. Mr. Umesh Mankapure for the Petitioner.*

Mr. Kuldeep U. Nikam *for Respondent Nos.1A & 1B.*

Ms. Snehal S. Jadhav, *AGP for Respondent-State.*

CORAM: SANDEEP V. MARNE, J.

Dated: 16 April 2025.

P.C.:

1) Petition challenges order dated 4 March 2020 passed by the Additional Collector, Sangli, rejecting appeal preferred by the Petitioner and confirming the order dated 11 September 2017 passed by the Sub Divisional Officer, Miraj (SDO). The SDO, in turn, had rejected the appeal preferred by the Petitioner and had confirmed the order dated 27 May 2014 passed by the Tehsildar.

2) It appears that Respondent No.1 had filed application dated 11 August 2010 before the Tehsildar raising following contentions and prayers:

सर्व्हे नं ९२२/२अ म्हणजे सध्याचा सर्व्हे नं.९५२ /४ मधील उत्तरेकडील २ एकर म्हणजे ०८१ आर जमीन सन १९७१ पासून सन १९९० साला पर्यंत मालकी हक्काने बापू गणू पवार हे कशीत होते. त्यात त्यांनी घरही बांधलेले आहे. बापू गणू पवार मयत झालेनंतर सदर जमीन मालकी हक्काने त्यांचे वारस अर्जदार नं.१ व २ हेच कशीत असतात. त्यांचे वहिवाटीस कोणीही हरकत केलेली नाही. तडजोडीचा हुक्मनामा असलेमुळे याकामी अपिलाचा प्रश्न उद्भवत नाही. एम. आर.टी. कोल्हापूर यांचे दि.०४/०२/१९७१ चे तडजोड आदेशाप्रमाणे जमिनीचा कब्जा बापू गणू पवार यांना मिळाला आहे. मात्र त्या आदेशाप्रमाणे महसूल दफ्तरी म्हणजे ७/१२ चे पत्रकी नोंदी करणेच्या राहून गेल्या आहेत. त्या करणेत येऊन अर्जदार यांची नावे पोकळ असलेल्या जाबदार नं. १ ते ७ यांची नावे कमी करून दाखल करणेबाबत तलाठी मिरज यांना आदेश होणेस विनंती आहे.

जमिनीचा कब्जा जाबदार नं १ यांनी आपल्या हयातीत दिला आहे. मात्र त्याचा अंमल गावदफ्तरी न झालेमुळे त्यांनी इतर जमिनीचे बाबतीत जाबदार नं २ ते ७ यांची नावे दाखल करणेसाठी दिले अर्जाच्या आधारे सर्व्हे नं.९५२/४ यांस त्यांची नावे बेकायदेशीररीत्या दाखल करणेत आली आहेत. ती कमी करणेत यावीत.

3) Thus, the prayer of the first Respondent before the Tehsildar was for correction of entries in the revenue records. Tehsildar however, exceeded the jurisdiction and granted something in favour of the first Respondent, which was never prayed for. The Tehsildar directed, by his order dated 27 May 2014, as under:-

आदेश

मिरज येथील सध्याचा सर्व्हे नं . ९५२ /४ या जमिनीतील उत्तरेकडील ०. ८० आर जमिनीचा कब्जा कै. श्रीमती चांदबी नूरमहंमद सौदागर यांचे सध्याचे ७/१२ मधील वारसाकडून काढून घेऊन तो कै. बापू गणू पवार यांचे सध्याचे वारसा श्री. कृष्णात बापू पवार व श्रीमती इंदुबाई बापू पवार यांना देणेत यावा.

4) Thus, though the prayer before Tehsildar was limited to correction of revenue entries, he directed recovery of possession

of the land from the Petitioner and to hand over the same to the first Respondent. The Tehsildar has thus clearly committed jurisdictional error while passing order dated 27 May 2014. The SDO and Additional Collector have failed to correct the said blatant error committed by Tehsildar while dismissing Appeals preferred by the Petitioner.

5) In my view, Tehsildar ought to have restricted the remit of enquiry to the prayer made in the Application dated 11 August 2010. He could not have dealt with the issue of possession of the land. In fact the application filed before the Tehsildar contained a specific averment that the Respondent No. 1 had secured possession of the land and desired only mutation of his name to the revenue records by deletion of name of Petitioner. The Tehsildar however exceeded the scope of inquiry before him and directed removal of possession of land from Petitioner and handing over the same to the first Respondent. Therefore, orders passed by the Tehsildar, SDO and Additional Collector deserve to be set aside by remanding the proceedings before the Tehsildar for being decided afresh in the light of prayer made in Application dated 11 August 2010.

6) Though Mr. Nikam, the learned counsel appearing for first Respondents, has raised the issue of delay of four long years in filing the Petition, in my view since there is a gross jurisdictional error on the part of the Tehsildar in passing order dated 27 May 2014, mere delay in filing the Petition cannot be a

reason for shutting the doors of the Court on the Petitioner. This Court is exercising jurisdiction under Article 227 of the Constitution of India. Once it is noticed that there is serious jurisdictional error on the part of the Tehsildar in directing recovery of possession in proceedings filed for correction of names in revenue records, this Court would not hesitate to entertain the present Petition by ignoring the objection of delay.

7) Petition succeeds partly. Order dated 4 March 2020 passed by the Additional Collector, order dated 11 September 2017 passed by the SDO and order dated 27 May 2014 passed by the Tehsildar are accordingly set aside. The proceedings are remanded before Tehsildar for being decided afresh in accordance with the prayers made in Application dated 11 August 2010.

8) All rights and contentions of the parties on merits are expressly kept open. Tehsildar shall proceed to decide the remanded proceedings in an expeditious manner.

9) With the above directions, Petition is partly allowed and disposed of.

[SANDEEP V. MARNE, J.]