

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13952 OF 2023

Anandrao Dinkar Pachundkar

...Petitioner

V/s.

1. Hon'ble Minister for Revenue &
Forest Department,
Maharashtra State,
Mantralaya, Mumbai.
2. Deputy Director of Land
Records, Pune Region, Pune.
3. District Superintendent of Land
Records, Pune.
4. Taluka Inspector of Land
Records, Pune.
5. Tahsildar, Taluka-Shirur, Pune.
6. Grampanchayat Ranjangaon,
through its Village Development
Officer, Ranjangaon Ganpati,
Taluka-Shirur, Pune.
7. Sarpanch, Grampanchayat
Ranjangaon Ganpati, Tal.
Shirur, Pune.

...Respondents

**WITH
WRIT PETITION NO. 200 OF 2024**

Anandrao Dinkar Pachundkar

...Petitioner

V/s.

1. Hon'ble Minister for Revenue
& Forest Department,
Maharashtra State,
Mantralaya, Mumbai.
2. Deputy Director of Land
Records, Pune Region, Pune.
3. District Superintendent of
Land Records, Pune.

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4. Taluka Inspector of Land Records, Pune.
5. Tahsildar, Taluka-Shirur, Pune.
6. Grampanchayat Ranjangaon, Taluka-Shirur, Pune.
7. Sarpanch, Grampanchayat Ranjangaon, Shirur, Pune.

...Respondents

Mr. G.S. Godbole, Senior Advocate i/b Mr. Dilip Bodake for the Petitioner in WP/13952/2023.

Mr. P.S. Dani, Senior Advocate i/b Mr. Dilip Bodake a/w Mr. S.T. Bhosale, for Petitioner in WP/200/2024.

Mr. Ashutosh Kumbhakoni, Senior Advocate a/w Ms. Savita Prabhune, AGP for Respondent Nos. 1 to 5-State in WP/13952/2023.

Ms. Savita Prabhune, AGP for Respondent Nos. 1 to 5-State in WP/200/2024.

Mr. Anil Y. Sakhare, Senior Advocate i/b Mr. Manish Kelkar for Respondent Nos. 6 & 7 in both the Petitions.

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 5 March 2025.

Judgment pronounced on: 19 March 2025.

JUDGMENT :-

A. The Challenge

1) These two Petitions are filed by the Petitioner challenging the orders dated 17 October 2023 passed by the

Hon'ble Minister (Revenue) dismissing the Revision Applications filed by him. Petitioner had initiated proceedings in the form of appeals before the District Superintendent of Land Records essentially seeking inclusion of the lands bearing Grampanchayat old Milkat No. 34A(new No.622/1) and 35(new No.622/2) in the city survey by conducting a fresh survey enquiry under the provisions of Section 20(2) Maharashtra Land Revenue Code, 1966 (**the Code**) and to record his name in the revenue records by carrying out necessary corrections in city survey records and the map. The said proceedings initiated by the Petitioner have ultimately been rejected by virtue of impugned orders dated 17 October 2023 passed by the Hon'ble Minister.

2) In respect of house property bearing Grampanchayat Old Milkat No.35 (revised No.622/2) the Petitioner has lost throughout the District Superintendent of Land Records (**DSL**R), Deputy Director of Land Records (**DDL**R) and Hon'ble Minister and the orders passed in those proceedings are subject matter of challenge in Writ Petition No.200 of 2024.

3) So far as land bearing Grampanchayat Old Milkat No.34A (revised No. 622/1) is concerned, the Petitioner initially succeeded before the DSLR, who passed order dated 31 July 2013 directing the Deputy Superintendent Land Records, Shirur to assign city survey number to the said land and to record name of holder accordingly. The Deputy Superintendent accordingly

passed order dated 27 September 2013 assigning city survey number to the said land admeasuring 4900 sq.mtrs. and mutating name of Petitioner therefor. Grampanchayat challenged order dated 27 September 2013 passed by the Deputy Superintendent before the DSLR, who rejected the appeal of the Grampanchayat by order dated 23 December 2019. The Grampanchayat filed second appeal before the DDLR and partly succeeded before him in setting aside order dated 23 December 2019 and the DDLR remanded the proceedings to DSLR for decision of the appeal on merits. Petitioner got aggrieved by order passed by the DDLR on 29 October 2021 and filed revision before the Hon'ble Minister. The Hon'ble Minister, while dismissing Petitioner's revision, has set aside the order of the DDLR dated 29 October 2021 as well as orders of DSLR dated 31 July 2013 and 23 December 2019. Hon'ble Minister has directed deletion of name of Petitioner from revenue records relating to the said land bearing Grampanchayat Old Milkat No.34A (revised No.622/1) and has further directed Tehsildar to remove Petitioner from said land under the provisions of Section 59 of the Code. Said order passed by the Minister on 17 October 2023 relating to Grampanchayat Old Milkat No.34A (revised No.622/1) is subject matter of challenge in Writ Petition No.13952 of 2023.

4) Since both the Petitions are filed by the same Petitioner for same purpose, the same are heard together and are being decided by this common judgment.

B. Factual Matrix

5) A very brief factual background for better understanding of issue at hand would be necessary. It is Petitioner's case that his great great grandfather– Sakharam Malhari Pachundkar died leaving behind two sons-Ganpati and Baban. Petitioner is from the branch of Ganpati, who had son by name Dinkar and Petitioner is the son of Dinkar. According to the Petitioner, a partition was effected between Ganpati and Baban on 2 November 1946, under which the land bearing Survey No.1/1 came to be allotted to the share of Ganpati and partition was effected in the revenue records through Mutation Entry No.1866. On 26 December 1969, Phalani Bara scheme Form No.12 was implemented in village-Ranjangaon Ganpati, in which land bearing Old Survey No.1/1 admeasuring 9 acres 34 guntha plus 4 guntha (total 9 acre 38 guntha) was recorded in the name of Dinkar Ganpati Pachundkar vide Mutation Entry No.4338.

6) According to Petitioner in the Register of Properties liable for tax assessment maintained by Ranjangaon Grampanchayat in Form No.7 of Bombay Village Panchayat Act of 1933, Petitioner's name came to be recorded in respect of Grampanchayat Property No.34A admeasuring constructed area of 38' x 20' and open land admeasuring 180' x 234'. In respect of Grampanchayat property No.35, Petitioner's name was recorded as owner in respect of open land admeasuring 170' x 140'.

7) In the year 1978, consolidation scheme came to be implemented for village-Ranjangaon Ganpati. City Survey was introduced in Village-Ranjangaon Ganpati during 1977-78 and it is the case of the Petitioner that the open land (*bakhal*) alongwith constructions thereon, which earlier bore Grampanchayat Property Nos.34A and 35, were not assigned any City Survey number and the same therefore remained unsurveyed land. On 27 August 2012, Petitioner filed two appeals bearing CTS Appeal No.2473 of 2012 *qua* Grampanchayat House No.34A and CTS Appeal No.2918 of 2013 *qua* Grampanchayat House No.35 before the DSLR, Pune. CTS Appeal No.2918 of 2013 *qua* Grampanchayat House No.35 came to be rejected by the DSLR by order dated 30 October 2018. Petitioner preferred Second Appeal before the DDLR, which came to be rejected by order dated 30 October 2021. Revision preferred by the Petitioner has been rejected by the Hon'ble Minister by order dated 17 October 2023. These orders are subject matter of challenge in Writ Petition No.200 of 2024.

8) So far as CTS Appeal No. 2473 of 2012 is concerned, it appears the report dated 11 February 2013 was submitted by Maintenance Surveyor, Shikrapur to the Deputy Superintendent of Land Records, Shirur stating therein that land bearing Grampanchayat House No.34A (revised No. 622/1) remained to be surveyed and was required to be assigned city survey number. The DSLR accordingly partly allowed CTS Appeal No.2473 of

2012 by order dated 31 July 2013 directing the Deputy Superintendent to conduct enquiry to assign city survey number to land bearing Grampanchayat No.34A (new No. 622) by following due process. Towards implementation of order passed by the DSLR, the Deputy Superintendent passed order dated 27 September 2013 assigning city survey number to the said land and entered Petitioner's name to the revenue records.

9) Grampanchayat of Ranjangaon Ganpati got aggrieved by the said order dated 27 September 2013 passed by the Deputy Superintendent and filed appeal before the DSLR, which came to be rejected by order dated 23 December 2019 holding that direction for conduction of enquiry for assignment of city survey number was given by DSLR himself by order dated 31 July 2013 and it was beyond his jurisdiction to sit in appeal over his own order. Grampanchayat, Ranjangaon Ganpati preferred Second Appeal No.5122 of 2020 before the DDLR, Pune, who allowed the said appeal observing that DSLR ought to have decided the appeal on merits. Accordingly, the appeal was remanded to DSLR for being decided on merits. Petitioner got aggrieved by the remand order dated 29 October 2021 and filed Revision Application No.2543 of 2021 before the Hon'ble Minister (Revenue). The Hon'ble Minister has not only dismissed the revision filed by the Petitioner, but has also granted relief in favour of the Grampanchayat by setting aside remand order of DDLR dated 29 October 2021 and by setting aside orders passed by the DSLR dated 31 July 2013 and 23 December 2019,

Mutation Entry No.357 recording name of the Petitioner to land bearing Grampanchayat House No.34A is also set aside and name of the State Government is directed to be mutated to the revenue records. The Hon'ble Minister has further directed eviction of the Petitioner from the said land under the provisions of Section 59 of the Code. Petitioner has filed Writ Petition No.13952 of 2023 challenging the Minister's order dated 17 October 2023.

C. Submissions

10) The learned counsel appearing for the rival parties have canvassed extensive submissions, gist of which is captured in the paragraphs to follow.

C.1. Submission on behalf of Petitioner in Writ Petition No.13952 of 2023

11) Mr. Godbole, the learned senior advocate would appear on behalf of the Petitioner in Writ Petition No.13952 of 2023. He would submit that Hon'ble Minister has grossly erred in granting relief in favour of Respondent-Grampanchayat in revision filed by the Petitioner. That the DDLR had merely remanded the appeal for fresh decision by DSLR and such remand order was under challenge in the revision. If the Hon'ble Minister was not with the Petitioner, he ought to have at the highest, dismissed the revision, which would have resulted in

DSLRL deciding the appeal on merits. That the DDLR had not decided the appeal preferred by Respondent -Grampanchayat on merits. He had merely made a remand order directing DSLR to decide Grampanchayat's appeal on merits. Therefore, if the Hon'ble Minister was not inclined to grant any relief in favour of the Petitioner in the revision, he ought to have simply dismissed the same. There was no warrant for the Hon'ble Minister to proceed ahead and set aside the orders passed by the DDLR and DSLR. That while deciding the correctness of order of remand passed by the DDLR, the Hon'ble Minister has offered to the Respondent-Grampanchayat on a platter, the entire land by setting at naught the order dated 31 July 2013 passed by the DSLR.

12) Mr. Godbole would submit that DSLR's order dated 31 July 2013 was not subject matter of challenge before any of the authorities. What was challenged was merely consequential order passed by the Deputy Superintendent dated 27 September 2013. That therefore there was no challenge to the decision of DSLR of assignment of city survey number to land bearing Grampanchayat Milkat No.34A. Without order dated 31 July 2013 being challenged by any of the parties, learned Minister has erroneously set it aside. That the Hon'ble Minister had gone a step ahead and directed deletion of name of Petitioner from revenue records as well as his eviction from the land in question in absence of any such prayer being made by Respondent - Grampanchayat.

13) Mr. Godbole would further submit that under the provisions of Section 20(2) of the Code, the Survey Officer is entitled to determine claim of a party *qua* a land which has escaped survey. That the present case involves escape of land of the Petitioner from said survey and all that is ensured by the DSLR vide order dated 31 July 2013 is to assign city survey number to the said land. He would rely upon the report of the Maintenance Surveyor, Shikrapur in support of his contention that the city survey number was erroneously not assigned to the land which remained as *Bakhal* though included in the limits of the village which subjected to city survey. He would also rely upon panchanama drawn during the course of conduct of enquiry. He would accordingly pray for setting aside the order passed by the Hon'ble Minister.

C.2 Submissions on behalf of Petitioner in Writ Petition No. 200 of 2024

14) Mr. Dani, the learned senior advocate would appear on behalf of the Petitioner in Writ Petition No.200 of 2024. He would submit that the DSLR has erroneously refused to entertain the appeal preferred by the Petitioner by erroneously holding that appeal *qua* Grampanchayat Property No.34A was already allowed on 31 July 2013. That the DSLR failed to appreciate the fact that Grampanchayat property Nos.34A and 35 are independent properties, which are assigned new house property

Nos.622/1 and 622/2 respectively. That the DSLR has erroneously assumed as if both the properties are same. He would invite my attention to the relevant map for the purpose of demonstrating that the two properties are independent. He would submit that since Appeal *qua* House Property No.34A was partly allowed by the DSLR even the appeal *qua* House Property No.35 ought to have been allowed by the DSLR. That the DDLR and Hon'ble Minister have failed to appreciate this position and have erroneously confirmed the order of the DSLR. He would submit that Petitioner was not granted opportunity of hearing by DDLR. That the Hon'ble Minister had directed conduct of enquiry by conducting site inspection and would rely upon map of the said site inspection showing existence of house property No.35(new No.622/2). He would also rely upon revenue entries relating to land bearing survey No.1/1 to demonstrate that the forefathers of Petitioner always had a right in respect of the land which later formed part of the House No.35(New No.622/2). He would accordingly pray for setting aside the orders passed by the DSLR, DDLR and Hon'ble Minister and for assignment of survey number to land bearing Grampanchayat House No. 35.

C. 3 Submissions on behalf of State Government

15) Mr. Kumbhakoni, the learned senior advocate appearing for the Respondent-State would strongly oppose the Writ Petition No.13952 of 2023. He would submit that the concerned land is the property of the State Government under provisions of

Section 20 of the Code and the Petitioner is clearly attempting to grab the government property under the garb of conduct of assignment of city survey number. That Petitioner has no semblance of right in respect of the land in question. He would submit that the DSLR did not have jurisdiction to pass order dated 31 July 2013 as only the Collector can conduct an enquiry under Section 20(2) of the Code in relation to land vesting in the Government. That the whole claim of the Petitioner about the land not being assigned city survey number is entirely fallacious. He would submit that Petitioner's daughter-in-law was a Sarpanch at the relevant time and has accordingly misused her position as Sarpanch for the purpose of interpolating the name of Petitioner in Grampanchayat records. He would submit that entries in the relevant page of Grampanchayat Register pertaining to the year 1960-61 were erased by pouring water thereon and the name of the Petitioner was entered *qua* House Property No.34A and 35. That similar entries relating to the Petitioner were also forged and interpolated in respect of subsequent Register relating to year 2009 to 2012 in respect of House Property Nos.622/1 and 622/2. That the case involves systematic fraud by the Petitioner with connivance with the then Sarpanch, who happened to be his daughter-in-law. That except the interpolated entries of 1960-61, there is absolutely nothing on record to indicate possession of concerned land by the Petitioner. Mr. Kumbhakoni would submit that order of Hon'ble Minister ensures that the land ultimately vests with the State Government. He would submit that order passed by the DSLR on

31 July 2013 was without jurisdiction and the same has rightly been set aside by the Hon'ble Minister. He would pray for dismissal of Writ Petition No.13952 of 2023.

C. 4. Submissions on behalf of Grampanchayat

16) Mr. Sakhare, the learned senior advocate would appear for Respondent-Grampanchayat Ranjanagaon Ganpati in both the Petitions. He would place on record original Grampanchayat Register pertaining to the year 1960-61 for demonstrating deliberate act of erasing the entries therein by pouring of water and selectively adding the name of Petitioner in respect of Grampanchayat House Nos.34A and 35. He would also place on record the Grampanchayat Register pertaining to the year 2009-2010 to 2012-13 to demonstrate that a new page showing entries of Petitioner's name in respect of House Nos.622, 622/1 and 622/2 is pasted on the original page by adding new entries by way of interpolation. Mr. Sakhare would further submit that in the year 1960-61, Petitioner's grandfather as well as father were alive whereas Petitioner's age was only 12 years and it is otherwise inconceivable that name of 12 year old child would be entered in the Grampanchayat record instead of entering the name of grandfather and father. Mr. Sakhare would further submit that order passed by the DSLR is without jurisdiction as only Collector can conduct enquiry under Section 20(2) of the Code. Lastly, Mr. Sakhare would submit that the Petitioner can file suit to claim title in respect of the land in question and all

that is done by the orders passed by Hon'ble Minister is to ensure that his name is deleted from revenue records. Mr. Sakhare accordingly pray for dismissal of both the Petitions.

D. Reasons and analysis

17) As observed above though the proceedings relating to two adjoining pieces of land bearing Grampanchayat Milkat Nos.34A and 35 were contemporaneously initiated by the Petitioner before the DSLR, the proceedings relating to House No.35 have been throughout dismissed at the levels of DSLR, DDLR and the Hon'ble Minister, whereas the proceedings relating to House No.34A were initially decided in favour of Petitioner by DSLR leading to consequential order passed by the Dy. Superintendent assigning city survey number and entering Petitioner's name in respect of that city survey number. Petitioner has however ultimately lost before Hon'ble Minister in respect of House Property No.34A as well.

18) Since the Petitioner had initially succeeded before the DSLR in respect of House No.34A, it would be appropriate to first deal with Writ Petition No.13952 of 2023, which also was argued as a lead Petition by Mr. Godbole.

19) Petitioner believes that land bearing Survey No.1/1, which came to the share of his grandfather Ganpati S Pachundkar, is actually the land on which Grampanchayat

House Nos.34A and 35 are situated. He has relied upon Mutation Entry No.1866 recording partition and allotment of land bearing 1/1 in favour of Ganpati Pachundkar. However, said land bearing survey No.1/1 was a large portion of land admeasuring 9 acres and 38 gunthas, which according to Petitioner came to be recorded in the name of Ganpati's son Dinkar after completion of Phalani Bara Scheme Form No.12 on 26 December 1969 vide Mutation Entry No.4338. It is Petitioner's case that in the Grampanchayat Assessment Register pertaining to the year 1960-61 there are entries in the name of Petitioner in respect of 2 Houses bearing Nos.34A and 35. According to the Petitioner the land bearing Survey No.1/1 on which Grampanchayat House property Nos.34A and 35 were constructed, together with abutting open space was not included in the city survey conducted for Village-Ranjangaon Ganpati Grampanchayat in 1978. However, admittedly no steps were taken by the Petitioner or any of his family members challenging the city survey conducted in the year 1976-77. For the first time on 27 August 2012, Petitioner thought of filing CTS Appeal No.2473 of 2012 *qua* House Property No.34A in which he made following prayers:

I] Appeal may kindly be allowed.

II] That the proceeding in respect of suit property i.e. Grampanchayat Old Milkat No.34/A its revises No.622/1 having Godown Imarat admeasuring 234 ft x 180 ft & Vihir Bakhal Pad admeasuring 80 ft x 90 ft situated & located at Kanjawane Road of Village-Ranjangaon Ganpati, Tal-Shirur, Dist-Pune may kindly be remanded back to the Deputy Superintends of Land Records, Shirur for conducting fresh City Survey Enquiry in respect of the suit

property u/s 20(2) of the Maharashtra Land Revenue Code & further may kindly be directed to verify grampanchayat record of the suit property by giving separate City Survey Number to the suit property & same may kindly be recorded in the name of the appellant by carrying necessary correction in the City Survey Record & Map forthwith.

III] Record & proceeding from the file of the concern authorities may kindly be call for & examined.

20) In respect of House Property No. 35 he filed CTS Appeal No.2918 of 2013 on 26 August 2013 with following prayers:

I] Appeal may kindly be allowed.

II] That the proceeding in respect of suit property i.e. Grampanchayat Old Milkat No.35, its revise No.622/2 having Godown Imarat admeasuring 170 ft x 140 ft situated & located at Karanjavane Road of Village-Ranjangaon Ganpati, Tal-Shirur, Dist-Pune may kindly be remanded back to the Deputy Superintendent of Land Records, Shirur for conducting fresh City Survey Enquiry in respect of the suit property u/s 20(2) of the Maharashtra Land Revenue Code & further may kindly be directed to verify grampanchayat record of the suit property by giving separate City Survey Number to the suit property & same may kindly be recorded in the name of the appellant by carrying necessary correction in City Survey Record and Map forthwith.

III] Record and proceeding from the file of the concern authorities may kindly be call and examined.

IV] And pass any such other order which is deem fit in the interest of justice.

21) It is the case of the State Government as well as Grampanchayat that the action of the Petitioner in filing two CTS Appeals in 2012-13 is attributed to election of Smt. Swati D. Pachundkar (Petitioner's daughter-in-law) as Sarpanch of the Grampanchayat. It appears that she functioned as Sarpanch of Grampanchayat Ranjangaon Ganpati during 2013 to 2017. It is

the contention of Grampanchayat that she took disadvantage of her position and included name of Petitioner against House Property Nos.34A and 35 at the relevant page of the Register pertaining to 1960-61 after noticing that the entries in the said register were wiped out due to water. It would be relevant to reproduce the allegations of interpolation made by the Grampanchayat in Appeal preferred before DSLR in respect of House Property No.34A. Paragraph Nos.3 to 8 of the CTS Appeal No.4353 of 2019 read thus:

३. वरील मुद्द्या मधील नोंद खोटी असल्याबाबतचा आणखी एक सबळ पुरावा म्हणजे प्रस्तुत जाबदेणार क्र ५ श्री. आनंदराव दिनकर पाचुंदकर यांचे नावे जुन्या रजिष्टर वर झालेली नोंद मिळकत क्र. ३४ अ हि सन १९६० - ६१ ला झाली असे गृहीत धरले तरी प्रस्तुत जाबदेणार क्र ५ श्री. आनंदराव दिनकर पाचुंदकर यांची जन्म तारीख ०१/०६/१९४८ आहे असे त्यांच्या शाळेतील रजिष्टर नं. १३४ वर नोंदवीलेली आहे. त्या आर्थी ग्रामपंचायत नमुना नं. ८ रजिष्टर मध्ये नोंद घेताना प्रस्तुत जाबदेणार क्र ५ श्री. आनंदराव दिनकर पाचुंदकर यांचे वय केवळ १२ वर्षे (अज्ञान) एवढे होते. अर्थात सदरची बोगस नोंद मागाहून केली असुन त्याचा उपयोग तपास / चौकशी कामी करुन घेऊन तपास / चौकशी अधिकारी यांची दिशाभुल केलेली आहे.
४. ग्रामपंचायत रेकॉर्ड व दि. ०२/०४/२०१९ रोजी ग्रामपंचायतीने दिलेला दाखला पाहता सन १९६० - ६१ मध्ये ग्रामपंचायत मिळकत क्र. ३४ अ वर्णन छप्पर ३८x२० व बखळ १८०x२३४ मालकाचे नाव आनंदराव दिनकर पाचुंदकर व मिळकत नं. ३५ वर्णन छप्पारापुढे बखळ १७०x१४० मालक आनंदराव दिनकर पाचुंदकर आशा नोंदि आहेत. सन १९६० - ६१ पासुन पुढील रजिष्टर ला या नोंदि दिसुन येत नाही. सन २००९ - १० ला मिळकत नं .६२२/१ व ६२२/२ मालक आनंदराव दिनकर पाचुंदकर आशी नोंद अढळून येते. म्हणजेच मधील ४८ वर्षे या नोंदि ग्रामपंचायत मिळकत रजिष्टर ला नव्हत्या . अर्थात त्या बाबत तथाकथीत मालक आनंदराव दिनकर पाचुंदकर यांनी पंचायतीकडे कोणतीही तक्रार, लेखी अर्ज इत्यादि केलेले नाहीत किंवा त्याचा कर ही भरलेला नाही . कारण गावठाणातील त्यांच्या मुळ घर मिळकत नं ६३१ पै. हेच फक्त त्यांच्या मालकीचे होते.
५. प्रस्तुत जाबदेणार क्र ५ श्री. आनंदराव दिनकर पाचुंदकर यांची सुन व विद्यमान जिल्हा परिषद सदस्य सौ . स्वाती दत्तात्रय पाचुंदकर या सन २०१३ ते २०१७ या कालावधीत ग्रामपंचायत रांजणगाव गणपती येथिल सरपंच होत्या. त्यांनी सत्तेचा गैरवापर करुन ग्रामपंचायतीच्या जुन्या भिजलेल्या कर आकारणी रजिष्टर मध्ये जुना नमुना नं. ७ वर त्यांच्या सासरे प्रस्तुत जाबदेणार क्र ५ श्री. आनंदराव दिनकर पाचुंदकर यांच्या नावाची बोगस नोंद करुन

मिळकत नं. ३४ अ व ३५ मध्ये मालक सदरी श्री. आनंदराव दिनकर पाचुंदकर यांचे नाव नोंदवीले व त्या नोंदिच्या आधारे पुढे नोंदि ओढून सीटी सर्व्हे च्या चौकशी अधिकारी यांची फसवणूक केलेली आहे.

६. मौजे रांजणगाव गणपती येथिल सीटी सर्व्हे सन १९७७-७८ सालच्या दरम्यान झाल्याचे दिसून येते. त्या वेळी नगर भू मापन हक्क चौकशी झाली. त्या वेळी उपरोक्त दावा मिळकती वर कोणताही बांधकाम किंवा वहिवाट नव्हती त्यामुळे सदर जागेची मोजणी करण्याचा प्रश्नच नव्हता. तसेच त्यावेळी सन १९६० - ६१ साली झालेल्या मिळकत नं. ३४ अ व ३५ बाबत प्रस्तुत जाबदेणार क्र ५ श्री. आनंदराव दिनकर पाचुंदकर यांनी कोणताही दावा केला नव्हता कारण त्यांची गावठाणातील मुळ जागेची नोंद झाली होती. तसेच सीटी सर्व्हे चे काम पूर्ण झाले नंतर सर्व्हे मध्ये घेण्यात आलेल्या नोंदि प्रसिध्द करून त्या बाबत हरकती सुचना मागवीण्यात येतात. त्यावेळी ही प्रस्तुत जाबदेणार क्र ५ श्री. आनंदराव दिनकर पाचुंदकर यांनी सदर दावा मिळकती बाबत कोणताही हरकत किंवा सुचना संबंधीत अधिकारी यांचे कडे दाखल केली नव्हती . त्यावरून सुध्दा सदरची नोंद सीटी सर्व्हे चे काम पूर्ण झाले नंतर सुमारे ३६ वर्षांनी केलेली आहे. त्या वरूनही जुन्या रजिष्टर मध्ये वोगस नोंद करून त्या नोंदि च्या आधारे भू मापन क्र. ७३५ हि नोंद संबंधित अधिकारी यांची दिशाभूल करून करण्यात आल्याचे स्पष्ट पणे दिसून येईल.

७. कर आकारणी रजिष्टर जुना नमुना नं. ७ सन १९६०-६१ मध्ये मिळकत नं. ३४ अ व ३५ ला घेतलेली तथाकथित नोंद काय आधारे घेतली या बाबत कोणताही पुरावा नाही. दावेदार प्रस्तुत जाबदेणार क्र ५ श्री. आनंदराव दिनकर पाचुंदकर यांचा नोंद करणे बाबतचा अर्ज त्यावर ग्रामपंचायतीने घेतलेला ठराव इत्यादि कोणतेही रेकॉर्ड नाही. त्यावरून दावा मिळकतीची नोंद सर्व ग्रामपंचायत सदस्यांना अंधारात ठेऊन मागाहून करण्यात आल्याचे स्पष्ट पणे दिसून येते. एवढेच नव्हे तर पुढे कित्येक वर्षांनी करण्यात आलेली नोंद मिळकत नं. ६२२/१ व ६२२/२ या बाबतही कोणताच ठराव, अर्ज इत्यादि नोंदि साठी अवश्यक असणारी कागदपत्रे नाहीत किंवा सन १९६० - ६१ च्या नोंदि वरून पुढिल नोंद घेतल्याचा उल्लेख नाही. तसेच मध्यंतरीच्या काळात या नोंदि का नव्हत्या याचाही खुलासा नाही .

या सर्व बाबी वरून सदरची बोगस नोंद सन २०१२ - १३ च्या दरम्यान करण्यात आली असावी हे स्पष्ट पणे दिसून येईल .

८. ग्रामपंचायत नमुना नं. ८ हे रजिष्टर प्रत्यक्ष वापरातील मिळकतीची आकारणी केल्याची नोंद वही आहे. मात्र त्यात सन १९६० ते २०१० पर्यंत आकारणी केल्याचे दिसून येत नाही. सदर आकारणी यादि म्हणजे भारतीय नोंदणी कायद्याच्या कलम १७ नुसार नोंदणीकृत दस्तान्वये संपादित मिळकतीचा दस्त अगर पुरावा नाही . नगर भू मापन हक्क चौकशीच्या वेळी सन १९७८ साली सदर दावा मिळकत मोकळी जागा असल्याने त्यावर कोणतेही बांधकाम नसलेने त्याची मोजणी करून त्याचा मालकी हक्क घोषित केला नाही असे स्पष्ट होते. गावठाणातील मोकळी जागा ही शासन / सार्वजनीक मालकीची (ग्रामपंचायत मालकीची) असते. त्या मोकळ्या जागेचा दावा करताना हक्क संपादना बाबत अगर वडिलो पार्जित मालकी हक्क असले बाबत भक्कम पुरावा असणे अवश्यक आहे. तरच चौकशी अधिकारी विचार करू शकतील. या सर्व बाबींचा विचार मा. उप अधीक्षक भूमी अभिलेख शिर्ूर यांनी केलेला नाही.

तसेच उपरोक्त दावा मिळकतीच्या नोंदी बाबत मा. जिल्हा अधीक्षक भूमी अभिलेख पुणे यांनी दिलेल्या निर्णया मधिल आदेश क्र. २ प्रमाणे महाराष्ट्र जमीन महसुल अधिनियम १९६६ चे कलम २०(२) प्रमाणे मुळ अभिलेख तपासुन शासनाच्या हित संबंधास बाधा येते किंवा नाही याचीही दखल घेतल्याचे दिसुन येत नाही. त्यामुळे सदर झालेली नोंद हि शासनाच्या /ग्रामपंचायतीच्या मिळकती वरील अतिक्रमण असल्याचे दिसुन येते. उपरोक्त नोंदी बाबत शासनाच्या / ग्रामपंचायतीच्या हितसंबंधास बाधा येत असल्यामुळे त्याची फेर चौकशी करणे अवश्यक आहे.

22) The sheet anchor of Petitioner, in support of his claim, is the Grampanchayat Assessment Register of 1960-61, in which his name is reflected in respect of House Nos. 34A and 35. The DSLR has relied on the entries in the said Grampanchayat Assessment Register of 1960-61 while passing order dated 31 July 2013 for directing assignment of CTS number to the land bearing house No. 34A. Another document relied upon by DSLR for passing order dated 31 July 2013 in Petitioner's favour is the Assessment Register for 2009-10 to 2011-12. Thus, the entire case of Petitioner hinges squarely on the entries made in the said two Registers.

23) Mr. Sakhare has placed on record original Assessment Register of Grampanchayat of the year 1960-61. Perusal of the same shows that entries therein were mostly made in ink pen and either the entire Register, or most part of it, was submerged in water at some point of time and many of the entries thereon have been erased. It is the allegation of contesting Respondents that water was deliberately poured on the Register for erasing the old entries and for interpolating new entries. Whatever may be the reason, destruction of many of the original entries in the Register on account of water is most certain. The entries in the

name of the Petitioner are to be found at Serial Nos.51 and 52 in the said Assessment Register. On the relevant page, most of the other entries are erased but the two entries relating to the Petitioner are prominently seen. The entries are as under:

अ. नं	रस्त्याचे नाव	मिळकतीचा नंबर	मिळकतीचे वर्णन	मालकाचें नांव
५१	करंजावणे मार्ग	३४ अ	छप्पर ३८' x २० बखळ १८० x २३४	आनंदराव दिनकर पाचुंदकर
५२		३५	छप्परापुढे बखळ १७०' x १४०	आनंदराव दिनकर पाचुंदकर

24) It cannot be a matter of coincidence that while most of the entries on the concerned page are erased, the two entries in the name of the Petitioner can still be prominently seen. To my eyes, *prima facie* there also appears to be difference in the use of ink in respect of the two entries as compared to the other erased entries. Another unique feature of the concerned Register is that wherever original entries are erased on a particular page due to water, presence of said entries can be seen to some extent on the reverse of the page when the page is held against the light. However, when it comes to the two entries made in respect of the Petitioner, the same are not prominently seen on the reverse of the concerned page. There are also interpolations of words such as 'बखळ 180 x 234' and 'छप्परापुढे बखळ 170 x 140'. The word 'पुढे' is clearly in different ink as compared to the word 'छप्परा'. The following photograph of the concerned page of Grampanchayat Assessment Register for 1960-61 would indicate prominent presence of selective entries in the name of Petitioner when other entries are mostly wiped out:

Page No. 21 of 32
19 March 2025

25) *Prima facie*, the entries in the concerned Register pertaining to the year 1960-61 appear to be highly doubtful. For the purpose of present proceedings, it is not really necessary to delve deeper into this aspect and as and when Suit is filed claiming title in respect of the land in question, the Civil Court will be able to decide the issue of authenticity of the said entries by assessing the evidence.

26) It is Petitioner's case that Old Grampanchayat Milkat Nos.34A and 35 were later assigned House Nos.622/1 and 622/2 and accordingly reliance is placed on entries made in Assessment Register (Specimen No.8) for the years 2009-10 to 2012-13. Mr. Sakhare has placed on record the original Register, which again *prima facie* shows that relevant page on which entries relating to House Nos.622/1 and 622/2 are made is doubtful piece of document. Thickness of the concerned page as compared to the other pages would show that a fresh page is pasted on the relevant entries in the Register as the thickness of the concerned page is twice that of the other pages in the Register. It clearly appears that there is pasting of portion of the page in respect of the entries bearing House Nos.620/1, 620/2, 621, 622, 622/1 and 622/2. Thus, *prima facie* there appears to be interpolation in the Assessment Register pertaining to entries in respect of House Nos.622/1 and 622/2 as well.

27) Another vital aspect casting serious doubt about genuineness of entries in the Register of 1960-61 is the age of the

Petitioner during that year. The date of birth of Petitioner is 1 June 1948 and there is no dispute about the same. This would mean that his age in the year 1960-61 was 12 years. It therefore becomes highly doubtful as to how name of a minor son, aged 12, could be recorded in Grampanchayat Assessment Register in the year 1960-61 in absence of any corresponding entries in the name of his father or grandfather prior to that year. Interestingly, both grandfather as well as father of Petitioner were alive in the year 1960-61 as grandfather -Ganpati passed away in the year 1968 and father -Dinkar passed away on 31 January 1999. However, instead of making entries in the name of grandfather or father, how the same could be made directly in the name of minor child aged 12 years is difficult to comprehend. This again would cast serious doubt about authenticity of the said entries.

28) Petitioner's daughter-in-law was Sarpanch at the relevant time and it is the allegation of Grampanchayat that she has facilitated the said interpolations. To my eyes, *prima facie* there appears to be gross interpolations in respect of both the Grampanchayat Registers pertaining to the years 1960-61 and 2009-10 to 2012-13. Petitioner has invoked jurisdiction of this Court under Article 227 of the Constitution of India and after noticing *prima facie* case of interpolations in the Grampanchayat Registers coupled with the fact that Petitioner's daughter-in-law functioned as Sarpanch of the village, this Court would be loathe in exercising the jurisdiction in Petitioner's favour particularly

when the litigation relates to mere revenue entries made for fiscal purposes. If relief is declined to the Petitioner, no loss or prejudice would be caused to him as he can always file a civil suit claiming title in respect of the land in question. Once this Court comes to a *prima facie* conclusion that there are gross interpolations in the Grampanchayat Assessment Registers, this Court would not turn blind eye to the said factor and decide the petition only on the basis of technical pleas raised by the Petitioner about the manner in which the proceedings are dealt with by the Hon'ble Minister.

29) The jurisdiction of this Court under Article 227 of the Constitution of India is corrective in nature and in exercise of that jurisdiction, this Court is not supposed to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. Reference in this regard can be made to ***Garment Craft V/s. Prakash Chand Goel***¹ in which it is held in paragraph 15 as under:-

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The

¹ (2022) 4 SCC 181

jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

30) Chief Justice M. C. Chagla speaking for the Division Bench in *State of Bombay Vs. Morarji Cooverji*² has held as under:

42. This is, on the contrary, a case where the premises requisitioned for a public purpose are occupied by a Government servant and are sought to be taken possession of by the landlord by asking the Court to throw the Government servant out and restore possession to the landlord when that landlord has never shown his need of those premises by occupying them himself. **Therefore, this is clearly a case where justice is not on the side of the petitioner, it is on the side of the State, and we see no reason why we should grant any relief to the petitioner.**

xxx

44. With respect to the learned Judge, the matter is much more serious than merely the question of this particular vacancy of 1956 not being relevant to the vacancy which is the subject-matter of the requisition order. **On a writ petition, as we have already said, the petitioner has not merely to show good faith, but he has not to suppress any facts and has also to show that justice lies on his side.** If the learned Judge had taken these circumstances into consideration and then had come to the conclusion that the discretion should be exercised in favour of the landlord, then undoubtedly we would not have interfered with the order passed by the learned Judge.
(emphasis added)

² 1958 Bom Law Reporter Vol LXI 318

31) Thus while invoking writ jurisdiction of this Court it is necessary for the Petitioner to demonstrate that the justice is on his side. In a case where this Court notices that the justice is not on the side of the Petitioner, it would not interfere in the order merely on technical reasons. The High Court would always decline grant of relief where the Petitioner seeks to invoke writ jurisdiction to secure undue benefit. The law in this regard is expounded by three judges Bench of the Apex Court in ***M. P. Mittal Vs. State of Haryana and Ors.***³ in which it is held as under:

5. Now there is no dispute that the appellant knowingly and deliberately entered into the Guarantee agreement, and is liable as Guarantor to make payment of the dividend due from Messrs Depro Foods Limited. Nor is it disputed that the amount due, with interest, stands at Rs 2,02,166 — in respect of the period ending with the year 1977. It was not contended that the appellant in fact does not possess sufficient funds or cannot avail of sufficient personal property for the purpose of discharging the liability. The record also shows that before instituting coercive proceedings, the Assistant Collector provided the appellant an opportunity to pay up the amount due from him, and that the appellant made no attempt to discharge the liability. When that is so, we are of opinion that he is not entitled to relief in these proceedings. **The appeal arises out of a writ petition, and it is well settled that when a petitioner invokes the jurisdiction of the High Court under Article 226 of the Constitution, it is open to the High Court to consider whether, in the exercise of its undoubted discretionary jurisdiction, it should decline relief to such petitioner if the grant of relief would defeat the interests of justice. The Court always has power to refuse relief where the petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetuate an unjust gain.** This is a case where the High Court was fully justified in refusing relief. On that ground alone, the appeal must fail.

(emphasis added)

32) I am therefore, not inclined to exercise jurisdiction under Article 227 of the Constitution of India in the present Petition after noticing gross interpolations in the Grampanchayat

³ (1984) 4 SCC 371

Assessment Registers. There is no denial to the fact that entire case of the Petitioner is premised on the entries made in the Grampanchayat Assessment Register for the year 1960-61 relating to House Property Nos.34A and 35. His case is also premised on entries made in the Grampanchayat Assessment Register pertaining to the years 2009-10 and 2012-13 relating to entries of House Nos.622/1 and 622/2. Entries in both those Registers *prima facie* appear to be highly doubtful and may not form a credible piece of evidence at least for the purpose of decision of issue relating to survey and revenue entries. Said Registers can be subjected to stricter scrutiny of evidentiary rigour as and when Petitioner decides to claim title in respect of the land in question. As of now, it is too dangerous to rely upon entries made in the said two Registers for holding that Petitioner owned or possessed concerned two houses in the year 1960-61. Therefore, challenge of the Petitioner in Writ Petition No.13952 of 2023 to the order passed by the Hon'ble Minister must be seen through prism of *prima facie* interpolations noticed in the Grampanchayat Assessment Registers. True it is that the Hon'ble Minister or any other authority has not premised their orders by accepting the allegations of interpolations. However, as a Constitutional Court, when *prima facie* case of interpolations is noticed in the Registers, it would be impermissible to turn blind eye to the act of interpolation and proceed to examine the correctness of the order passed by the quasi-judicial authorities as if this Court is exercising ordinary jurisdiction. The Hon'ble Minister may have technically erred in granting relief in favour

of Respondent-Grampanchayat in appeal preferred by the Petitioner. However, since the very case of the Petitioner is based on doubtful entries made in the Registers, I am not inclined to exercise the jurisdiction under Article 227 of the Constitution of India, particularly when Petitioner can always claim title to the land by filing a suit.

33) Exercise of extraordinary jurisdiction under Article 227 of Constitution of India in Petitioner's favour would virtually make Petitioner owner of the land in question which, according to Mr. Kumbhakoni is worth crores of rupees. The land, in which no one claimed ownership for 34 long years and which consequently fell in ownership of the Government as per Section 20 of the Code, is sought to be put in Petitioner's private ownership merely by conduct of survey exercise. The survey exercise and assignment of CTS number and entry of Petitioner's name in revenue records is based squarely on entries in the Grampanchayat Registers, genuineness of which is highly doubtful. Therefore if this Court accepts the technical pleas of non-challenge to DSLR's order dated 31 July 2013 or the Hon'ble Minister granting relief in favour of Grampanchayat in Petitioner's appeal, the same would assist Petitioner in claiming title over the land based on doubtful entries in assessment registers. This Court would not permit its extraordinary jurisdiction to be used for achieving something which may not really be due to Petitioner. On the other hand, relegating Petitioner to the remedy of civil suit would ensure that proper

inquiry on the touchstone of evidentiary rigour is conducted to find out whether Petitioner is the owner of the land in question or not.

34) As observed above, entire genesis of the dispute ultimately boils down to the correctness of order dated 31 July 2013 regarding Grampanchayat Milkat No.34A. It is DSLR, who directed assignment of City Survey number and recording of name of the holder by his order dated 31 July 2013. However, said order dated 31 July 2013 is passed by the DSLR by blindly relying on entries made in Grampanchayat Registers. This Court has noticed a *prima facie* case of gross interpolations in the said Registers and Petitioner's daughter-in-law is found to have functioned as Sarpanch of the Village during the year 2013-14, during which time, the proceedings were initiated by the Petitioner. The ultimate order passed by the Hon'ble Minister results in restoration of status quo *qua* the land prior to 31 July 2013. Petitioner never filed any proceedings claiming any right, title or interest in the land after implementation of city survey in the year 1978. He maintained silence for over 34 long years after conduct of city survey and possibly thought of taking disadvantage of the entries made in the Grampanchayat Assessment Registers for conduct of fresh survey and mutation of his name in the revenue records. Since the result of the final order passed by the Hon'ble Minister appears to be acceptable in the unique facts and circumstances of the case, I am not inclined to interfere in Writ Petition No.13952 of 2023 merely because

Grampanchayat never challenged order dated 31 July 2013 or because Minister granted relief in favour of Grampanchayat in Appeal preferred by the Petitioner. The facts of the case are such that the Petitioner will have to ultimately seek a declaration of title in respect of the land in question.

35) The valuable piece of land cannot be offered on a platter to the Petitioner through survey and revenue proceedings, especially when he never challenged non-inclusion of the land in city survey conducted in the year 1978 nor his father and grandfather, who were the true decision makers at the relevant time, thought of filing any proceedings for assignment of city survey number for the land in question. *Prima facie* this appears to be a clear case of taking disadvantage of the factum of absence of any person's name in the revenue records for the purpose of inclusion of Petitioner's name by initiation of survey proceedings by relying on highly doubtful entries in Grampanchayat Registers. The route of survey proceedings cannot be taken for claiming title in respect of the land. The survey officers are not competent to record final finding about the authenticity of the entries made in the Grampanchayat Registers.

36) Because of the above reasons, this Court is not inclined to interfere in the impugned orders passed by the Hon'ble Minister as the same merely denies assignment of city survey number and inclusion of name of the Petitioner to the revenue records in respect of the land in question. The impugned orders passed by

the Hon'ble Minister does not result in extinguishment of claim of the Petitioner in respect of the land in question. He would always be free to file a civil suit seeking declaration of title by proving before the Civil Court that land bearing Survey No.1/1 which came to the Grandfather-Ganpati's share ultimately became House Nos.34A and 35 and later 622/1 and 622/2 and that therefore he is the owner in respect of the land and the structures thereon. A detailed enquiry by subjecting the claim to the evidentiary rigour can then be undertaken by the Civil Court which would also examine the issue about authenticity of entries made in the Grampanchayat Registers. As of now, this Court has merely recorded a *prima facie* finding of interpolations, which would obviously be subject to final findings recorded by the civil court. I am therefore not inclined to interfere in the impugned order challenged in Writ Petition No.13952 of 2023.

37) Coming to Writ Petition No.200 of 2024, the Petitioner has lost through out at the levels of DSLR, DDLR and Hon'ble Minister. The claim *qua* Grampanchayat House No.35, *qua* 622/2 is also premised on entries made in the Grampanchayat Registers for the years 1960-61 and 2009-10 to 2012-13. Therefore, findings recorded above relating to House Property No.34A would apply with equal force in respect of Writ Petition No.200 of 2024 as well.

38) Resultantly, I do not find any valid reason to interfere in the impugned orders passed by the Hon'ble Minister on 17

October 2023 in both the Petitions. Petitioner would be at liberty to file a civil suit seeking declaration of title in respect of the land in question and said suit shall be decided without being influenced by any of the observations made in the judgment.

39) Both the Petitions are accordingly dismissed. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]

40) After the judgment is pronounced, the learned counsel appearing for Petitioner in both the Petitions would pray for continuation of status-quo order passed by this Court on 10 November 2023. Request is opposed by the learned counsel appearing for Respondent-Grampanchayat as well as by the State Government. It appears that the Hon'ble Minister has directed eviction of the Petitioner from the lands by initiation of proceedings under Section 59 of Code. The Petitioner would thus have sufficient breathing time to challenge the present judgment before the Hon'ble Supreme Court by the time the proceedings are initiated under Section 59 of the Code for his eviction. In that view of the matter, it is not necessary to continue the status-quo order any further.

[SANDEEP V. MARNE, J.]