

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

WRIT PETITION NO.489 OF 2024

Baswaraj Anandrao Birajdar
V/S

....Petitioner

The Government of Maharashtra & Ors.

....Respondent

Mr. Ashutosh Kulkarni with Ms. Simran Raut and Ms. Irfan Unwala *for the Petitioners.*

Ms. V.R. Raje, AGP *for Respondent / State.*

Ms.Vrushali Maindad with Ms. Shaheen Kapadia *for Intervener / Respondent No.8.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 17 FEBRUARY 2025.**

P.C.:

1. Petition challenges order dated 7 July 2023 passed by the Hon'ble Minsiter (Revenue) partly allowing the Revision Application filed by the Petitioner and while setting aside the orders passed by the Additional Divisional Commissioner, Additional Collector and Sub Divisional Officer as well as Mutation Entry Nos.1286 and 4535, the Hon'ble Minster has directed preparation and certification of a fresh mutation entry indicating the position prior to execution of the Gift Deed in the record of rights relating to the land in question.

2. I have heard Mr. Kulkarni, the learned counsel appearing for Petitioner. Despite being served Respondent Nos.6A to 6C and 7A to 7C have preferred not to appear. I have also heard

Ms. Maindad, the learned counsel appearing for Respondent No.8, who is impleaded in the Petition consequent to the application for intervention being allowed.

3. After having considered the submissions canvassed by the learned counsel appearing for parties, it appears that a Gift Deed dated 29 October 1992 was executed in respect of the land in question in the name of Shri Shri Bal Tapaswi Mallinath Maharaj (Math). The said Gift Deed was given effect to in the revenue records by Mutation Entry No.1286. The Gift Deed was executed by Late Sharanappa Sakhare. Late Sharanappa's son Venkatesh Sharanappa Sakhare filed Suit No.98 of 2002, which was decreed with a declaration that the Gift was not binding on Venkatesh's share. It appears that subsequently Sharanappa also filed his own Regular Civil Suit No.160 of 2004, which was decreed by setting aside the entire Gift Deed. The decree passed by the Civil Court in Regular Civil Suit No.160 of 2004 was unsuccessfully tested by the Math before the District Court and later by filing a Second Appeal before this Court. After dismissal of the Second Appeal, Mutation No.4535 was prepared by the Talathi on 27 October 2016 for deletion of the name of Math. The Tahasildar however refused to certify the said entry, which decision came to be challenged by Sharanappa before SDO. SDO allowed the Appeal filed by Sharanappa and directed certification of Mutation Entry No.4535 having the effect of deletion of name of Math.

4. It appears that Petitioner is a mere devotee in the Math and has instituted Regular Civil Suit No.11 of 2007 and Regular Civil Suit No.365 of 2017. The SDO therefore directed that certification of Mutation Entry No.4535 would be subject to outcome of the said two Suits.

5. Petitioner got aggrieved by the order passed by the SDO and filed further Appeal before Additional Collector which came to be rejected by order dated 25 March 2022. The first Revision filed by the Petitioner before Additional Divisional Commissioner also met the fate of dismissal by order dated 8 February 2023. Before the Hon'ble Minister also, the Petitioner has essentially lost in his second Revision. However the Hon'ble Minister has technically set aside the orders passed by SDO, Additional Collector and Additional Divisional Commissioner as well as Mutation Entry Nos.1286 and 4535. The Hon'ble Minister has directed certification of a fresh mutation entry indicating the position of holding prior to execution of the Gift Deed in a simple language by the Tahasildar. Petitioner has filed the present Petition challenging the order of the Hon'ble Minister.

6. The first submission sought to be canvassed by Mr. Kulkarni that the Petitioner has fully succeeded before the Hon'ble Minister in getting the orders passed by the SDO, Additional Collector and Additional Divisional Commissioner set aside and that the Hon'ble Minister has contradicted himself by

directing certification of a fresh Mutation Entry reflecting position prior to the execution of the Gift Deed. I am unable to agree. The orders passed by SDO, Additional Collector and Additional Divisional Commissioner as well as Mutation Entry Nos.1286 and 4535 are set aside by the Hon'ble Minister only for technical reason for avoiding for confusion. The Hon'ble Minister has ultimately intended to give effect to the decrees passed in the two Civil Suits instituted by Sharanappa and Venkatesh. The Math has admittedly lost upto this Court in respect of validity of the Gift Deed. The Gift Deed is held to be invalid right upto this Court. Therefore Mutation Entry No.1286 recording the name of the Math based on the said Gift Deed was required to be set aside. However since the language employed in Mutation Entry No.4535 was not clear and unambiguous, the Hon'ble Minister has directed certification of fresh mutation entry. I therefore do not find any patent error in the order passed by the Hon'ble Minister.

7. In fact this Court does not appreciate the attempts made by a mere devotee in challenging the order of the SDO right upto the Hon'ble Minister. Having lost before the Civil Court, the Math has not taken any steps for challenging Mutation Entry No.4535 and has acquiesced in its certification. It is merely a devotee who challenged the order of the SDO before the Additional Collector, Divisional Commissioner and the Hon'ble Minister. Now a person claiming to be incharge of the Trust has

sought intervention in the present Petition as Respondent No.8 and claims to represent the Math. The Math was a party to Regular Civil Suit No.160 of 2004 and cancellation of the Gift Deed has been upheld right up to this Court after hearing the Math. Now neither devotee nor prerson claiming to be incharge of the Math can be permitted to file independent proceedings for the purpose of nullifying the effect of the decree passed in Regular Civil Suit No.160 of 2004.

8. I therefore do not find any valid reason to interfere in the order passed by the Hon'ble Minister. Writ Petition being devoid of merits is accordingly **rejected**. No order as to costs.

(SANDEEP V. MARNE, J.)

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