

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2581 OF 2024

Sudam Krishna @ Kushaba Pathare
(since deceased) through his legal heirs:-
Satish Dilip Amarale & Ors.

.. Petitioners

Versus

The State of Maharashtra & Ors.

.. Respondents

.....

- Mr. Sugandh Deshmukh i/by Mr. Vaibhav Thorve, Mr. Aniket Kanawade & Irvin D'Souza, Advocates for Petitioners
- Ms. Savita Prabhune, AGP for Respondent Nos. 1 to 4

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 30, 2025

P. C.:

1. Heard Mr. Deshmukh, learned Advocate for Petitioners and Ms. Prabhune, learned AGP for Respondent Nos. 1 to 4. None appears for Respondent No.5(i) the contesting Respondent.

2. Present Writ Petition is filed to challenge the validity of judgment & order dated 20.06.2022 passed by Hon'ble Minister of State for Revenue in RTS Revision Application No. 3421/297/Matter No. 229/J-5 arising out of the order dated 29.10.2020 passed by the District Superintendent, Land Record, Pune (DSLRL, Pune) in Consolidation Appeal No. 4252 of 2021 and corrigendum order dated 16.04.2021 passed by the Deputy Superintendent, Land Record, Khed (DSLRL, Khed) and order and notice dated 30.06.2021 issued by the District Superintendent, Land Record, Pune under Rule 28 of the

Bombay Prevention of Fragmentation of Consolidation of Holdings Act, 1947 (for short "**the said Act**") to set aside the proceedings initiated before the DSLR, Khed.

3. The facts which are relevant for adjudication of the present proceedings are as under:-

3.1. Petitioners are heirs and legal representatives of late Sunita Dilip Amrale, the original Applicant in RTS proceedings. Subject land is Gat No. 149 (Old Survey No. 34/2) admeasuring 3 H. 87 Ares situated at Koregaon Khurd, Taluka Khed, District Pune. According to Petitioners, the subject land originally stood in the name of Sudam Pathare by virtue of mutation entry No. 1/1964. Said Sudam Pathare expired in 1970 upon which mutation entry No. 240/1970 was effected deleting his name and impleading names of Indubai (wife of Sudam Pathare) and Sunita (daughter of Sudam Pathare) as holders of the subject land.

4. Mr. Deshmukh, learned Advocate for Petitioners would submit that the above position stood until 2015 when the private Respondent i.e. Respondent No. 5(i) Shakuntala Nanasaheb Sawant filed RTS proceedings to challenge mutation entry No. 1/1964 on the premise that the subject land belonged to her. He would submit that by order dated 24.06.2016, DSLR, Pune rejected the RTS Application on the

ground of delay. He would submit that being aggrieved the said Shakuntala Nanasaheb Sawant filed Revision Application No. 64/2016 before the Deputy Director of Land Records. He would submit that by order dated 11.05.2017, DDLR rejected the Revision Application. He would submit that the order dated 11.05.2017 was thereafter never challenged by the said Shakuntala Nanasaheb Sawant and the matter rested over there.

4.1. He would next submit that said Respondent No. 5(i) - Shakuntala Nanasaheb Sawant thereafter filed fresh Application under Section 31A of the said Act (Fragmentation Act) before the DSLR, Pune for the same cause of action i.e. for setting aside mutation entry No. 1/1964 on the ground that she is entitled to the said land by virtue of a Sale Deed in favour of her predecessor-in-title dating back to 1954. He would submit that by order dated 28.09.2019, DSLR, Pune dismissed the said Application whereupon challenge was maintained before the DDLR, Pune. By virtue of order dated 29.10.2020, DDLR, Pune allowed the Appeal by condoning the humongous delay on the ground of principles of natural justice without assigning any reasons and directed mutation entry No. 1/1964 in respect of the subject land admeasuring 9 Acres 23 Gunthas pertaining to old Survey No. 34/2 and Gat No. 149 to be deleted. Before proceeding further, he has drawn my attention to the challenge

maintained before the DDLR, Pune by Respondent No. 5 against the order dated 28.09.2019 wherein it was the case of Respondent No. 5 herself that land admeasuring admeasuring 3 H. 87 Ares out of Survey No. 34 and Gat No. 149 was the subject matter of dispute between parties *qua* mutation entry No.1 of 1964 and the Appeal is filed by her before the Authority. This fact is confirmed on reading unnumbered paragraph No. 3 of the order dated 29.10.2020 at page No. 31 of the Petition and when juxtaposed with operative clause (3) of the operative part of the same order appended at page No. 37 of the Petition the reference is to 9 acres and 23 Gunthas.

4.2. Next Mr. Deshmukh would submit that Petitioners being aggrieved challenged the order dated 29.10.2020 before the Hon'ble Minister who has by virtue of the impugned order dated 20.06.2022 rejected the Revision and confirmed the order dated 29.10.2020. As sequitur of the same, mutation of the name of Respondent No. 5 (i) Shakuntala Nanasaheb Sawant / Shakuntala Muktaji Bute has been directed to be mutated in respect of 9 Acres and 23 Gunthas out of the subject land belonging to the Petitioners.

5. Insofar as Respondent No. 5 i.e. late Muktaji Anaji Bute is concerned, according to his legal heir he is survived by his legal heir i.e. Shakuntala Nanasaheb Sawant. She is the principal contesting party before the Court in the present Petition. Record of the Registry

shows that on 30.04.2022 she is duly served. In fact she is represented by Advocate on record who has filed his vakalatnama on 08.07.2024. Thereafter whenever the matter has been listed and has reached, learned Advocate for Respondent No. 5(i) has appeared. On 24.02.2025 it was informed to the Court by her Advocate that Respondent No. 5(i) had expired on 14.06.2024 but he did not know whether she is survived by any legal heir since despite addressing letter to her address, he has received no response to the same. In that view of the matter on 24.02.2025 this Court directed Advocate for Respondent No. 5(i) to provide names of her legal heirs failing which the Court would permit the Petitioner to publish a notice in the local newspaper relating to filing and pendency of the present Petition so that the Petition could be heard. Accordingly on 17.03.2025 this Court passed order directing Petitioners to publish notices in respect of unserved Respondents in the newspapers 'Lokmat' and 'Sakal' Pune Edition. The said publication having been made, affidavit of service dated 28.04.2025 has been filed in this Court and as per Bailiff report all Respondents have been duly served. Petition thereafter appeared on board on 30.04.2025 when it was adjourned to 24.06.2025 by giving last chance to heirs of Respondent No. 5(i) to remain present. Petition has reached hearing today and once again none appears for Respondents. Hearing of the Petition cannot be protracted in view of

the above since Respondents have been duly served as can be seen from the record of the case.

6. After hearing Mr. Deshmukh and perusing the record of the case, it is *prima facie* seen that Respondent No. 5(i) Shakuntala Nanasaheb Sawant having failed in her endeavour in 2015 to challenge mutation entry No. 1/1964 upto the revision stage before the DDLR, abandoned the said proceedings and did not challenge the order passed by the DDLR any further. However she filed Application under Section 31A of the said Act before the DSLR for setting aside the said mutation entry No. 1/1964 which was incidentally dismissed by the DSLR. However the said dismissal was reversed by the DDLR and upheld by the State in Revision but while doing so, the DDLR has condoned the humongous delay without assigning any reasons.

7. It is seen that in the first instance when the Application under Section 31A of the said Act is filed before the DSLR for the first time for setting aside mutation entry No. 1/1964 on 05.11.2018, there is admittedly delay of 54 years on the face of record. That apart challenge to mutation entry No. 1/1964 is not maintainable considering that the said mutation entry has already been deleted in 1970 on expiry of the original holder / owner of the land namely Sudam Krishna @ Kushaba Pathare by virtue of mutation entry No. 240/1970 and the names of Indubai (wife of Sudam Pathare) and

Sunita (daughter of Sudam Pathare) came to be mutated as holders of the subject land. Hence before the issue of delay, the basic challenge of Respondent No. 5(i) in the proceedings initiated under Section 31-A of the said Act was itself at fault and not maintainable since the challenge was in respect of delayed mutation entry i.e. 1/1964. That apart it is *prima facie* seen that even according to the Application filed by Respondent No. 5(i) for deletion of mutation entry No. 1/1964, it was only in respect of 3 Acres whereas the DDLR while allowing the Application has allowed the same in respect of 9 Acres 23 Gunthas which is *prima facie* preposterous and impermissible. Thirdly it is seen that despite the delay writ large on the face of record, the DDLR while considering the dismissal order dated 28.09.2019 passed by DLSR has merely condoned the delay on technical ground (तांत्रिक कारण) without assigning any reasons whatsoever. This is *prima facie* seen when the order dated 29.10.2020 appended at page Nos. 31-37 when read shows that despite there being a humongous delay of more than 54 years, the same has not been dealt with at all. By virtue of the order dated 29.10.2020, it is seen that though it is an admitted position that Sudam Krishna Pathare was the holder of land from 1964 to 1970, his name was deleted on his demise and name of his wife Indubai and daughter Sunita came on record at the then time. However, the DDLR has considered the Application filed by Respondent No. 5(i) before the

DSLRL under Section 31A of the said Act by giving his imprimatur on entitlement to the subject land under the said Act which is not permissible in quasi-judicial proceedings.

8. It is seen that the said Authority has observed that in 1955 the fragmentation of original Survey No. 34/1 took place into 3 parts out of which 1 Acre 26 Gunthas came to the share of Gopala Rama Pathare, 8 Acres 8 Gunthas came to the share of Kushaba Rama Pathare and 9 Acres 19 Gunthas came to the share of Bhau Laxman Ghanvat. He has come to the conclusion that out of 8 Acres 8 Gunthas coming to the share of Kushaba @ Krishna Pathare, the area admeasuring 3 Acres 0 Guntha out of Survey No. 34/2 (part) belonged to the predecessor-in-title of Respondent No. 5(i) . He has noted that there was registered sale deed dated 05.02.1957 in respect of this area of 3 Acres in the name of Muktaji Anaji Bute, the predecessor-in-title of Respondent No. 5(i). Thereafter he has concluded that this area out of Survey No. 34/2 and the name of Muktaji Anaji Bute was deleted without any order of the Competent Authority thereby depriving the said Muktaji Anaji Bute of his right in Survey No. 34/1. Hence on this ground the DDLR has concluded that substantive right of Muktaji Anaji Bute out of Survey No. 34/2 admeasuring 3 Acres was part and parcel of Survey No. 34/1 which came to the share of Kushaba @ Krishna Rama Pathare. Such a conclusion establishing right and title on the

basis of a Sale Deed of 1957 in Fragmentation Act proceedings filed in 2018 for the first time cannot be allowed. There have been several intervening events thereafter apart from the delay. It is seen that Kushaba was the father of Sudam Pathare. It is seen that from 1955 to 1964, the name of Kushaba Rama Pathare was mutated in respect of subject land. Thereafter from 1970, the names of Indubai and Sunita were mutated in respect of the subject land and thereafter by further mutation entry No. 921, the names of Petitioner before me was substituted in respect of the subject land.

9. When the aforesaid details are seen as emanating from the order dated 29.10.2020, it is not clear as to how the area of 9 Acres and 23 Gunthas is declared to be belonging to Respondent No. 5(i). The impugned order of the DDLR suffers from gross infirmities and illegality. That apart the exercise undertaken by the DDLR under Section 31A of the said Act and giving direction to mutate name of Respondent No. 5(i) in respect of the area admeasuring 9 Acres 23 Gunthas out of old Survey No. 34/2 pertaining to Gat No. 149 even cannot be substantiated on the basis of the incidents stated therein. Merely by referring to fragmentation of the land in the year 1955 and stating that there was a registered sale deed in respect of adjacent area of Survey No. 34/1 which was wrongly included in old Survey No. 34/2, there is no other incriminating material on record for the DDLR

to come to such a conclusion. The conclusion arrived at by the DDLR in his order dated 29.10.2020 virtually decimates the longstanding revenue entry from 1955 onwards and all subsequent events until 2018 when Respondent No. 5 (i) has made the Application before the DSLR.

10. It is seen that this Application made before the DSLR under Section 31A of the said Act was only after being unsuccessful in the RTS Proceedings for the same cause of action. That apart it is also seen that the said Application was filed after a humongous delay of more than 54 years. By virtue of deciding the said Application by order dated 29.10.2020 which has been upheld by the State in Revision proceedings, the DDLR Pune has virtually declared the title in respect of the subject land / subject property in favour of Respondent No.5(i). Substantial disputed questions of facts have been decided by virtually resulting in deciding the title to the subject property by the DDLR, Pune, rather to a much larger area than what was the subject matter of the alleged dispute. Rather it would have been appropriate if the DDLR, Pune would have directed Respondent No.5(i) to have approached the Civil Court of original jurisdiction to ascertain her right in accordance with law. The order dated 29.10.2020 is on the face of record not sustainable for all the aforesaid reasons. The impugned order dated 20.06.2022 of the State confirming and

upholding the order dated 29.10.2020 is also therefore not sustainable. Both the orders dated 29.10.2020 and 20.06.2022 deserve to be quashed and set aside. Needless to state that Respondent No. 5(i) or any other private Respondent claiming any right, entitlement and interest in the subject land or any portion out of the subject land is entitled to approach the Civil Court having original jurisdiction to determine their substantive right, entitlement and interest in accordance with law. All issues of the parties are expressly kept open. The aforesaid twin orders dated 29.10.2020 passed by the DDLR and 20.06.2022 passed in Revision by the State are quashed and set aside. Resultantly Petition succeeds.

11. Writ Petition is allowed in the above terms.

Amberkar

[MILIND N. JADHAV, J.]

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