

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3867 OF 2019
WITH
INTERIM APPLICATION NO.2747 OF 2025
AND
INTERIM APPLICATION NO.2746 OF 2025

Abdul Malik Mohmmad Hussein
Madoo (since deceased) through
his legal representatives

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. Pralhad Paranjape with Mr. Manish Kelkar for the
petitioner/applicant.

Ms. Savina R. Crasto, AGP for respondent Nos.1 to 4-
State.

Mr. Shailendra S. Kanetkar with Mr. Kedar Kanetkar,
Mr. Vinay J. Bhanushali and Mr. Pujan Patel for
respondent No.5.

Mr. Sandesh Patil with Mr. Chintan Shah i/by Ms.
Anusha Amin for respondent No.7.

CORAM : AMIT BORKAR, J.

DATED : APRIL 21, 2025

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- 2.** Leave to amend to delete rest of the respondents, as according to the petitioner, respondent No.5 is the only contesting respondent who filed review application. Amendment to be carried out forthwith.

3. The petitioner, by filing this writ petition under Article 226 of the Constitution of India, has challenged the legality and validity of the order dated 10th January 2019 passed by respondent No.1 in Review Application bearing No. RTS/2715/388/P.K./J-4. The said order, according to the petitioner, suffers from legal infirmity and overlooks material findings of the Civil Court in relation to the ownership and possession of the land in question.

4. The facts relevant for adjudication of the present petition are as follows: Mutation Entry No. 3286, which is annexed at Exhibit “A” to the petition, forms the genesis of the dispute. By this entry, the area held by the petitioner in Survey No. 181/1A has been reduced from 2 Hectare 55 R to 1 Hectare 52 R. The petitioner asserts that he is the lawful owner of the entire 2 Hectare 55 R on the basis of a judgment and decree passed in Regular Civil Suit No. 249 of 2000. The said suit was decided by the Civil Court, wherein the land admeasuring 7 Acres 19 Gunthas from Survey No. 181/1 was the subject matter of adjudication. The Civil Court, upon evaluation of the evidence, recorded a categorical finding that the predecessor-in-title of the petitioner had proved ownership and possession over the suit land. Consequently, the petitioner’s predecessor was declared as owner of the land admeasuring 7 Acres 19 Gunthas, which is equivalent to 2 Hectare 55 R.

5. Once there is a binding adjudication by a competent Civil Court declaring the petitioner’s predecessor as the owner of land admeasuring 2 Hectare 55 R, the same cannot be unsettled or disturbed by Revenue Authorities while exercising limited powers

under Sections 150 and 159 of the Maharashtra Land Revenue Code, 1966. It is well settled that revenue entries are intended for fiscal purposes and cannot override or nullify the findings of a Civil Court regarding title. However, in the present case, the effect of Mutation Entry No. 3286 is such that the petitioner's entitlement has been arbitrarily reduced to 1 Hectare 52 R, without any legal foundation or adjudicatory basis.

6. It is not in dispute that in the earlier round of proceedings, the petitioner had succeeded in securing favourable orders from the authorities up to the level of the State Government. However, in the second round of litigation arising out of the same Mutation Entry No. 3286, the order dated 24th April 2018 passed by the competent authority had clearly noted that the Civil Court had held the petitioner to be the owner of 2 Hectare 55 R in Survey No. 181/1A. Notwithstanding the said finding, the Hon'ble Minister, by the impugned order dated 10th January 2019, proceeded to review the earlier decision by taking a view that the judgment of the Civil Court had the effect of extinguishing the rights acquired under a registered sale deed and that in the absence of an express declaration from the Civil Court to that effect, the previous order could not be sustained.

7. Upon careful perusal of the material placed on record, it becomes evident that the title document in favour of respondent No.5 pertains to Survey No.181/1B, whereas the judgment and decree passed by the Civil Court, which has attained finality, clearly establishes the title of the petitioner in respect of Survey No.181/1A, admeasuring 2 Hectare 55 R. Thus, the land in respect

of which respondent No.5 claims right is entirely distinct and separate from the land adjudicated in favour of the petitioner by the Civil Court.

8. In view of the above factual position, this Court is of the considered opinion that respondent No.1, while exercising the limited power of review, could not have undertaken a reappraisal of facts or reopened the matter on merits. The power of review, as settled by catena of decisions of the Hon'ble Supreme Court, is not akin to appellate jurisdiction. Review can only be exercised in rare and limited situations, such as when there is an error apparent on the face of the record, which is so self-evident that it does not require elaborate reasoning or detailed analysis to identify. The review power is not to be used for rehearing the matter afresh or to substitute a different view on disputed facts.

9. However, in the present case, the approach adopted by respondent No.1 in passing the impugned order dated 10 January 2019 amounts to reopening the entire issue as if sitting in appeal over the earlier decision. Such an exercise clearly exceeds the permissible scope of review. It is further significant that the title of the petitioner over Survey No.181/1A admeasuring 2-H-55-R stands concluded by the judgment of the Civil Court, which binds all subordinate authorities including the revenue machinery. Respondent No.5's sale deed pertains to a different survey number, namely 181/1B, and hence no prejudice can be claimed by respondent No.5 in relation to the land falling in Survey No.181/1A. Therefore, allowing review at the instance of

respondent No.5 was wholly unwarranted and without jurisdiction. The impugned order thus cannot be legally sustained.

10. Accordingly, Rule is made absolute in terms of prayer clause (b)(i) of the writ petition. There shall be no order as to costs.

11. It is clarified that this Court has not expressed any opinion on the merits of the claim of respondent No.5 in relation to Survey No.181/1B. The liberty of respondent No.5 to adopt appropriate legal remedies, as may be available in law, is expressly kept open. If such proceedings are instituted, the concerned forum shall decide the same uninfluenced by the observations made in the present judgment, as those are confined to the legality of the review order impugned herein.

12. In view of disposal of the writ petition, all pending interlocutory applications stand disposed of.

(AMIT BORKAR, J.)