



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.1029 of 2022

Prakash Marotrao Kadam (Dead) through L.Rs.

vs.

The Divisional Commissioner, Amravati Division, Amravati and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. V.N. Patre, Advocate for the Petitioner.
Mrs. D.I. Charlewar, A.G.P. for Respondent Nos.1 to 4.
Mr. H.V. Dhage, Advocate for Respondent No.5.

CORAM: ROHIT W. JOSHI, J.

DATE : 20th SEPTEMBER, 2025.

Heard.

02. Respondent No.5 sold an agricultural land to the deceased-petitioner vide sale-deed dated 28/08/2014 acting on behalf of her two minor children, who were owners of the suit property. It will be pertinent to mention here that prior to the execution of sale-deed on 28/08/2014, she had filed an application under Section 8 of the Hindu Minority and Guardianship Act, 1956 (*hereinafter referred to as "Act" for the sake of brevity*) seeking permission to alienate the property. However, the said application was withdrawn. It is thus clear that the property of minors is sold by the mother without permission as contemplated under Section 8 of the Act.

03. In view of the sale-deed dated 28/08/2014, the subject property was mutated in the name of the deceased-petitioner. Initially, the mother challenged the mutation entry. However, the said objection was withdrawn. Having withdrawn the objection to the mutation, respondent No.5-mother filed an appeal challenging the mutation entry before the Sub Divisional Officer. The said appeal was

allowed vide order dated 30/03/2017 remanding the matter to the Tahasildar for fresh enquiry. The petitioner preferred appeal against the said order of remand before the Additional Collector. The Additional Collector vide order dated 22/01/2018 not only dismissed the appeal, but also set aside the mutation entry in favour of the petitioner. The petitioner, therefore, preferred revision before the Divisional Commissioner. The said revision is dismissed vide order dated 25/01/2020. In such circumstances, the present petition is filed challenging the aforesaid orders passed by the revenue authorities.

04. The learned Advocate for respondent No.5 confirmed that both the minor children have now attained majority in the year 2018 and 2020 respectively. It is well settled that sale of property belonging to a minor governed by the Act by a natural guardian is not void *ab initio*, but only voidable at the instance of the minor children. It is open for the children to challenge the alienation after attaining majority.

05. Since, the sale-deed is not void and admittedly as on date, it is not set aside by any Court of competent jurisdiction, the mutation entry in favour of the petitioner needs to be restored. It must also be stated that the Sub Divisional Officer had merely remanded the matter to the Tahsildar for fresh enquiry. Respondent No.5 was not aggrieved by the order of remand inasmuch as she did not file any appeal challenging the said order. Surprisingly, in the appeal preferred by the petitioner, the Additional Collector has not only dismissed the appeal, but passed an adverse order to the interest of the appellant by directing cancellation of the mutation entry. The Additional Collector has obviously acted in excess of jurisdiction. The Revisional Authority has also failed in correcting this jurisdictional error.

06. In view of the above, the petition deserves to be allowed and is allowed in the following terms.

07. The orders passed by respondent No.1- Divisional Commissioner, Amravati Division, Amravati, respondent No.2- Additional Collector, Yavatmal and respondent No.3-Sub Divisional Officer, Umarkhed, District Yavatmal on 25/01/2020, 22/01/2018 and 30/03/2017, respectively, are hereby quashed and set aside. Mutation Entry No.717 with respect to the land admeasuring 0.96 hectare in Field Survey No.115, is restored. It will be open for the children of respondent No.5 to challenge the sale-deed in accordance with law.

08. There shall be no order as to costs.

JUDGE

**sandesh*