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

CIVIL WRIT PETITION No. 12800 OF 2019

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|-----|---|-----|---------------------------|
| 1. | Bhimrao Jagu Ingavale)
since deceased through its LRs.) | | |
| 1A. | Annaso Bhimrao Ingavle, Age 39 yrs.)
Occu. Agriculture, R/o. A/Post. -)
Wahagaon, Tal. Karad, Dist. Satara) | | |
| 1B. | Aruna Maruti Thorat, Age 30 years,)
Occu. - Household, R/o. Wathar,)
Tal. Karad, District Satara) | | |
| 1C. | Ashwini Santosh Thorat, Age 25 yrs.)
Occu. Household, R/at – Korati,)
Tal. Karad, district Satara) | | |
| 1D. | Smt. Sahabai Bhimrao Ingavale,)
Age 65 years, Indian Inhabitant,)
R/at Wahagaon, Taluka Karad,)
District Satara) | | |
| 2. | Mohan Jagu Ingavale, Age 70 years,)
Occu. - Agriculture, R/at – Risavad,)
Taluka Karad, district Satara) | ... | <u>Petitioners</u> |

Vs.

- | | |
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| 1. | Baburao Ganpati Ingavale)
since deceased, through LRs.) |
| 1A. | Smtt. Savitra Baburao Ingavale,)
Age about 55 years, Occu. Household)
R/o. Risavad, Taluka Karad)
District Satara) |
| 1B. | Sou. Alka Chandrakant Chavan,)
Age about 39 years, Occu. Agriculture)
R/o - Post – Yashwantnagar,)
Taluka Karad, District Satara) |

- 1C. Abaso Baburao Ingavale Age 37 years)
Occu. Agriculture, R/o. Gujar Chawl,)
Room No. 3, Chawl No. 10,
Ballayani,)
2. Avinash Ramchandra Ingavale,)
Age 36 years, Occu.- Agriculture,)
3. Amol Ramchandra Ingavale,)
Age 36 years, Occu. - Agriculture)
4. Smt. Kalawati Ramchandra Ingavale)
Age 70 years, Occu. - Agriculture)

R/at Risavad, Taluka Karad)
District Satara)
5. Smt. Leelabai Shamrao Deshmukh,)
Age 70 years, Occu. - Agriculture,)
R/at Risavad, Taluka Karad)
District Satara)
6. Dattatraya Shripati Jadhav,)
Age 75 years., Occu – Agriculture)
7. Suresh Krushnarao Desai,)
Age 61 years, Occu. Agriculture)
Respondent Nos. 6 & 7)
R/o A/p Umbraj, Behind Nerikar)
Vakhar, Post – Road, Taluka Karad)
District Satara)
8. Superintendent of Land Records,)
Satara)
9. Deputy Director of Land Records,)
and Resettlement Commissioner)
[Land Surveyor], Pune Division,)
Office : New Administration Bldg.)
1st floor, Opp. Vidhan Bhavan, Pune)
- 10 The State of Maharashtra,)

Through Secretary,)
Revenue Department, State of)
Maharashtra, Mumbai ... **Respondents**

Mr. P. S. Dani, Sr. Counsel a/w Ajay Dange, S. D. Chavan, for the
Petitioners.

Mr. Dilip Bodake, for the Respondent Nos. 1 to 7.

Ms. M. S. Bane, AGP for Respondent Nos. 8 to 10.

CORAM : C. V. BHADANG, J.

JUDGMENT RESERVED ON : FEBRUARY 5, 2020

JUDGMENT PRONOUNCED ON : MAY 29, 2020

JUDGMENT :

. Rule made returnable forthwith. The learned counsel for
the respondents waive service. Heard finally by consent of parties.

2 The challenge in this petition is to the order dated
19.8.2019, passed by the Hon'ble Revenue Minister in Review petition
No. RTS 3518/6382/PK205/J-5A. By the impugned order, the Learned
minister has allowed the application for review filed by the respondent
Nos. 1 to 7.

3. The brief facts necessary for the disposal of the petition
may be stated thus:

. Land Survey No. 226/2 (Gat No. 791) and 226/3 (Gat No.
797) of village Risvad Taluka Karad Distt Satara, form the subject

matter of dispute. According to the petitioners the said land was owned by their predecessor Jagu Ingavale and he was cultivating the said land which is now being cultivated by the petitioners. The petitioner Bhimrao (since deceased) and the petitioner Mohan filed an application on 20.7.2001 before the Resettlement Commissioner challenging the consolidation scheme in respect of the said land and more particularly Survey Nos. 226/2 and 226/3 . That application was filed against the respondent Nos. 1 to 4 who claimed to be the owners of the said land on the basis of a mutation entry (ME) No 4202 dated 20.9.1969. The respondent Nos. 5 to 7 claim to have purchased the said land from the respondent Nos. 1 to 4.

4. The case made out by the petitioners is that a consolidation scheme under the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of holdings Act 1947 (Act for short) was made applicable to the village in the year 1969. In the said scheme Survey No. 226 was divided into four hissas, which were eventually converted into Gat No 798 (Survey No 226/1), 792 (Survey No. 226/4) , 791 (Survey No. 226/2) and 797 (Survey No. 226/3). Indisputably Survey Nos. 226/2 and 226/3 were allotted to Ganu Krishna Ingavale who is the grandfather of the respondent Nos. 1 to 4. Survey Nos. 226/1 and 226/4 were allotted to Jagu Sawala the

predecessor of the petitioners. As indicated earlier the dispute in the present petition is only as regards Survey No. 226/2 (Gat No. 791) and 226/3 (Gat o 797), which according to the petitioners were wrongly recorded in the name of Ganu Krishna vide ME No. 4202.

5. The petitioner Bhimrao (since deceased) and the petitioner Mohan, challenged the said entry before the Resettlement Commissioner. That application was made over to the District Superintendent of Land Records (DSLRL for short). The DSLRL by an order dated 20.7.2009 dismissed the said application.

6. Feeling aggrieved the Petitioners challenged the same before the Deputy Director of Land Records Pune (DDLRL for short) in Consolidation Appeal No. 1358/2009 under section 247 of the Maharashtra Land Revenue Code (Code for short). The DDLRL by an order dated 3.4.2012 allowed the appeal and directed the name of the petitioners being recorded in respect of the said lands after following procedure under section 31 A of the said Act.

7. The respondent Nos. 1 to 7 challenged the same in a revision application under section 35 of the said Act before the Revenue Minister. It appears that the said revision application was made over to the Principal Secretary for disposal. The Principal Secretary after hearing the parties by an order dated 22.11.2017 partly

allowed the same and remitted the matter back to the DDLR for deciding it afresh. Feeling dissatisfied with the order, the respondent Nos. 1 to 7 filed an application for review before the Revenue Minister, purportedly under section 258 of the code, read with section 35 of the said act. The Revenue Minister by the impugned order has allowed the review and has set aside the order of remand passed by the DDLR. The net result is that the ME No. 4202 stands confirmed. This is how the petitioners are before this court.

8. It may be mentioned that the petitioners filed RCS No. 286/2002 before the competent civil court at Karad for declaration of title over the suit property. That suit was dismissed by the civil court on 2.5.2008.

9. I have heard Mr Dani the learned senior counsel for the petitioners and Mr Bodke the learned counsel for the respondent Nos. 1 to 7. I have also heard the learned AGP for the respondent Nos. 8 to 9. With the assistance of the learned counsel for the parties I have gone through the record.

10. Mr Dani the learned counsel for the petitioners has made the following submissions:

(i) That the impugned order is passed without bringing on

record the legal representatives of the petitioner Bhimrao (respondent No. 1 before the Hon'ble Minister) who died on 12.5.2019. It is submitted that thus the order having been passed against a dead person, is non est and deserves to be set aside on this count alone. It is submitted the matter was adjourned in order to enable the the respondent Nos. 1 to 7 (the petitioners before the Hon'ble Minister) to take steps for bringing the legal heirs of the deceased Bhimrao on record. It is submitted that the matter was never fixed for hearing on merits and could not have been so fixed, unless the legal representatives of Bhimrao, were brought on record. Thus the impugned order is passed without giving opportunity of hearing to the petitioners and the legal heirs of Bhimrao.

- (ii) It is submitted that the review was not maintainable under the provisions of the said act. The Hon'ble Minister has not considered the issue of the maintainability of the review application. In any event the review application was required to be placed before the same officer that is the Principal Secretary and could not have been decided by the Hon'ble Minister.
- (iii) It is submitted that Land Survey No. 226/2 and 226/3 was all

along in possession of Jagu, the father of the original applicants and after his death of the petitioners. The learned counsel in this regard has placed reliance on ME No. 2693 dated 27.11.1962 and ME No. 2992 dated 30.5.1966 in order to submit that the land was mutated in the name of Balkabi the mother of the petitioners Bhimrao and Mohan. It is submitted that in view of the said entries the private respondents have no right title or interest in the said lands.

- (iv) It is submitted that the minister failed to see that as per entry No. 3083 dated 24.5.1967 late Balkabai had mortgaged the said property in favour of Satara District Bhuvikas Bank (“said Bank” for short).
- (v) It is submitted that the petitioners challenged the mutation entry No. 4202 immediately after the knowledge about the said entry in the year 2001. It is submitted that the Hon’ble Minister was not justified in holding that the challenge to the said entry was belated.
- (vi) It is submitted that there was no error in the order passed by the learned Secretary requiring interference.

11. On the contrary Mr Bodke, the learned counsel for the respondent Nos. 1 to 7 has made the following submissions:

(i) That the consolidation scheme is of the year 1969 and the relevant mutation entry, is dated 20.9.1969 which is challenged for the first time in the year 2001. It is submitted that the Hon'ble Minister is right in holding that there is gross delay in challenging the said entry. It is submitted that the principal secretary has only gone on the aspect of the 7/12 extract reflecting the name of the said Bank till the year 1989 in holding that the consolidation scheme was not properly implemented. It is submitted that the Hon'ble Minister has rightly found that the challenge was only to the mutation entry No. 4202 and the DDLR was not justified in examining the validity of the consolidation scheme itself, which was beyond the scope of the challenge. It is submitted that the Consolidation scheme was approved on 25.2.1970 and had come into force from 28.3.1970. It is submitted that this court has held in the case of ***Gunda Tuka Vs Pandhari Shinde***¹ that after the expiry of the thirty days' period in which objections could be lodged to the draft scheme, no objection or challenge to the scheme could be entertained. It is submitted that the minister has also rightly found that the appeal under section 247 of the code was not maintainable before the DDLR. It is thus submitted that the order does not require interference.

(ii) It is submitted that the legal heirs have been brought on

1 1991 (1) Mh.L.J. 669

record in the review application and the parties had filed their submissions, as noticed by the Hon'ble Minister in para 3 of impugned order. It is thus submitted that the contention about the order having been passed without hearing the petitioners cannot be accepted.

12. I have considered the rival circumstances and the submissions made and I find that the petition has to partly succeed on a short count. When the review petition was filed before the Minister now deceased Bhimrao and the petitioner Mohan were the respondent Nos. 1 and 2. it appears that these respondents had entered appearance on 28.6.2018 through the power of attorney holder (PoA) Mr Nathuram Mohan Ingavale. Indisputably Bhimrao died on 12.5.2019. It is trite that on his death the power of attorney to the extent of Bhimrao did not survive. In other words after 12.5.2019 Nathuram had no authority to represent Bhimrao or his legal heirs/representatives. From the copy of the Rojnama dated 14.6.2019 it appears that the matter was adjourned, in order to enable the respondent Nos. 1 to 7 to bring the legal heirs of Bhimrao on record. On the same day an application was made on behalf of the petitioner No. 2 herein to dispose off the review application for want of steps to bring the legal heirs of Bhimrao on record. It does appear from the compilation filed on behalf of the respondent Nos. 1 to 7 that an application for bringing the legal heirs of Bhimrao on record, was filed on 3.7.2019. However

nothing has been placed on record nor brought to my notice that the said application was allowed and the names of the legal heirs were brought on record, much less to show that thereafter the legal heirs were noticed and were heard in the matter. Quite to the contrary the record discloses that on 17.7.2019 the matter was closed for orders after giving eight days time to the petitioners to file written submissions. The English translation of the said rojnama reads as under:

“Applicant, representative of respondent present. Giving eight days' time to the respondents to file written arguments the matter is closed for decision”

13. The said Rojnama is signed on behalf of Bhimrao (since deceased) and Mohan, by Nathuram. The previous rojnama dated 14.6.2019 is also signed by Nathuram as PoA of Bhimrao and Mohan. As noticed earlier after death of Bhimrao on 12.5.2019 Nathuram had no authority to represent the interest of Bhimrao. The record does not show that there is any specific order passed allowing the application for bringing the legal heirs of Bhimrao on record. The title clause of the impugned order also does not show the names of any such legal heirs were brought on record. Quite to the contrary, it shows the name of Bhimrao as respondent no1. Thus the observation in para 3 of the impugned order that the names of the legal heirs have been brought on

record appears to be not borne out of the record. In my considered view the petition will have to succeed on this count alone. In my view the impugned order could not have been passed behind the back of the legal heirs of Bhimrao. Inasmuch as I am remitting the matter back to the Hon'ble Minister, I do not propose to dwell on the other issues on merits lest it may prejudice either of the parties. Thus keeping the rival contentions, on merits open, the petition is partly allowed. The impugned order is set aside. The review application is restored back to the file of the Hon'ble Minister, for deciding it afresh on its own merits and in accordance with law, after bringing the legal heirs of Bhimrao on record. Parties to appear before the Hon'ble Minister on 6.7.2020. Rule is partly made absolute in the aforesaid terms with no order as to costs.

Vinayak
P.
Halemath

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Halemath
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Sd/-
C. V. BHADANG, J.