



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**WRIT PETITION NO. 2251 OF 2018**

SHAIKH FAKIR MOHAMMED SHAIKH DIWAN  
*VERSUS*  
LAXMAN KASNYA RATHOD AND OTHERS

...

Advocate for the Petitioner : Mr. Vijay V. Deshmukh  
AGP for Respondents-State : Mr. R. B. Dhaware  
Advocate for Respondents No. 2 and 4 : Mr. Ravindra B. Ade

...

**CORAM : SIDDHESHWAR S. THOMBRE, J.**

**Date : 6<sup>th</sup> May, 2026**

**ORDER :-**

1. Heard the learned counsel for the respective parties.
2. The present petitioner is aggrieved by the order passed by the Learned Revenue and Forest Minister dated 09.01.2018 in Appeal-2017/Case No.90/J-7A, whereby the Learned Minister dismissed the Revision Application filed by the petitioners, confirming the order dated 30.11.2016 passed by the Additional Divisional Commissioner, Aurangabad in Ror/Rev/Pet No. 185/2014. Furthermore, under Clause 3 of the impugned order, the Learned Minister directed the Tahsildar to regularize the encroachment of Respondent Nos. 1 to 4 on the government land.



3. Mr. Deshmukh, learned counsel for the petitioner, strenuously submitted that the petitioner has been in possession of the property since the period of the Nizam Government. However, in 1962, an entry was recorded as "Kharij Khata" (Government land). Prior to this 1962 entry, the names of the petitioner's ancestors was consistently recorded as cultivator and possessor in the revenue records.

4. In 2005, the petitioner filed an application seeking to delete the "Kharij Khata" entry and to record their names in the ownership column. Pursuant to this, the Collector directed the revenue authorities to conduct an inquiry. Based on the inquiry report, the Sub-Divisional Officer (SDO), vide order dated 31.10.2011, maintained the "Kharij Khata" entry regarding Gut No. 112, finding the land to belong to the Government. Aggrieved by the SDO's decision, the petitioners filed an appeal before the Additional Collector. By an order dated 14.06.2013 (referencing proceedings initiated earlier in 2013), the Additional Collector allowed the appeal, set aside the SDO's order, and directed the deletion of the "Kharij Khata" entry, ordering the petitioners' names to be recorded in the ownership column.



5. Subsequently, the Additional Divisional Commissioner, while hearing an appeal filed by Respondent Nos. 1 to 4, set aside the Additional Collector's order. The petitioners then approached the State Government by filing a Revision under Section 257 of the Maharashtra Land Revenue Code.

6. Learned counsel for the petitioner submitted that while dismissing the petitioner's revision, the learned Minister granted relief to the Respondents by directing the regularization of their encroachment, which was beyond the scope of the revision. The Minister failed to consider old revenue records, including Shetwar, Khasra Pahani Patrak and evidence showing the land was granted by the Nizam Government. The appeal filed by Respondent Nos. 1 to 4 before the Additional Commissioner was hopelessly time-barred. The Additional Collector's order was passed on 14.06.2013, but the challenge was only mounted on 17.02.2014 without an application for condonation of delay. It is contended that the revenue records since 1938 consistently show the petitioner's possession. Despite this, the Learned Minister dismissed the Revision without considering these material aspects.

7. In support of these contentions, the learned counsel for



the petitioner relies upon the following judgments :

- **Siddappa Rama Patil Vs. Sattur Laxman Kole [2005(1) ALL MR 123]**
- **Bansarajidevi Wd/o. Bhuwal Singh and Others Vs. M/s. Byramjee Jeejeebhoy Pvt. Ltd. And Others [2006(6) Mh. L. J. 95]**
- **Narayan Laxman Patil Vs. M/s. Gala Construction Company Pvt. Ltd. (2015 AIR SCW 633)**

8. Per contra, Mr. Ade, learned counsel for Respondent Nos. 2 and 4, noted that Respondent Nos. 1 and 3 were deleted vide orders dated 19.01.2026 and 02.02.2026. He submitted that the Respondents are in actual possession of the property as encroachers. He specifically contended that the petitioners were never in custody of the property and that revenue inquiries revealed the petitioners were not residing in the village. Consequently, since 1962, Respondent Nos. 1 to 4 have been in possession of the land.

9. The Respondents asserted that they only gained knowledge of the proceedings after the Additional Collector's order dated 14.06.2013. Upon knowledge of the order, they challenged it



before the Additional Commissioner, Aurangabad. The learned Counsel argued that the Respondents' possession is substantiated by the Tahsildar's report and a panchnama. He further pointed out that a canal has been constructed by the State Government on the property.

10. It is the Respondents' contention that as the petitioners are not in possession, the Learned Minister rightly dismissed the revision and directed the regularization of the Respondents' encroachment in accordance with government policy. To further substantiate the fact of possession, the Respondents relied upon the panchnama conducted by the revenue authorities, which explicitly records their possession of the land.

11. It was further submitted that the State Government has already constructed a canal on the said property. The Respondents maintained that the Learned Minister correctly dismissed the revision, as the relief granted was based on the actual ground reality of the Respondents' possession. The Respondents argued that it was not necessary for them to initiate separate proceedings for seeking regularization, as the Minister exercised his authority to direct the revenue machinery to regularize the existing



encroachment in their favor.

12. The learned AGP, submitted that the subject land, identified under Gut No. 112, is unequivocally "Sarkari Kharij Khata" (Government Land). It is the categorical stand of the State that the land is in the absolute vesting and possession of the Government and neither the petitioners nor the private respondents have any legal right, title, or interest over the same.

13. The learned AGP further contended that the claims of possession made by both the petitioners and the respondents are unsubstantiated by the actual state of the revenue records. The entry of "Kharij Khata" recorded in the year 1962 remains valid and subsisting, and there is no evidence to suggest that the Government's title was ever lawfully divested. Regarding the respondents' claim of encroachment, the AGP submitted that any alleged occupation of Government land does not confer a vested right to regularization.

14. The learned AGP denied the petitioners' claim of ancestral possession, asserting that the inquiry conducted by the revenue authorities through the SDO clearly concluded that the



land belongs to the Government. It was further submitted that as a canal has been constructed on the property by the State, the land is being utilized for a public purpose. Therefore, the State maintains that the land must be protected from any private claims of ownership or regularization. The AGP prays that the orders seeking to record private names in the ownership column or directing the regularization of encroachment be set aside to safeguard the Government's title.

15. After hearing the learned counsel for the respective parties and perusing the material on record, there is no dispute regarding the nature of the subject land. The revenue records and the panchnama report submitted by the Tahsildar concurrently establish that the property is Government land. Although the petitioner is reflected in certain records as cultivators and possessors, the fact remains that in the year 2005, he sought to delete the "Sarkari Kharij Khata" entry to record their names in the ownership column.

16. When this Court specifically queried the petitioner's counsel regarding the source of their title, no document was produced to demonstrate absolute ownership. The petitioner's



contention that the land was originally granted by the Nizam Government and that records might exist with the Andhra Pradesh Government following the State Reorganisation of 1956 is not supported by any evidence on record. While the revenue entries may show long-standing cultivation by the petitioner's fore-father, such entries, by themselves, do not confer title.

17. The Additional Collector, while passing the order dated 14.06.2013, failed to appreciate that once land is identified as Government property, the revenue authorities have no jurisdiction to record a private party as the "owner" without a valid grant or title deed. By directing the petitioners' names to be entered in the ownership column based solely on possession, the Additional Collector exceeded his jurisdiction. It is a settled position of law that revenue entries are maintained primarily for fiscal purposes and do not determine the title or ownership of a property.

18. Regarding the issue of limitation raised by the petitioners, it is noted that Respondent Nos. 1 to 4 challenged the Additional Collector's order before the Additional Commissioner. The Respondents, who are illiterate, contended they received no notice of the 2013 order despite being parties. They applied for a certified copy in December 2013 and filed their revision promptly



thereafter.

19. Furthermore, the petitioners failed to produce any allotment letter or grant from the State. Mere permission to cultivate Government land, or long-term occupation thereof, does not ripen into ownership. The SDO's initial rejection of the petitioners' application was, therefore, legally sound, and the Commissioner and the Learned Minister were justified in setting aside the Additional Collector's erroneous findings.

20. However, this Court finds significant merit in the petitioner's challenge to Clause 3 of the Learned Minister's order. The Minister, while dismissing the petitioner's revision, directed the revenue authorities to regularize the encroachment of Respondents No. 1 to 4. Such a direction is legally unsustainable. It is an established principle that a party cannot seek or be granted the relief of regularization within a revision proceeding filed by an adversary, especially without a specific policy or legal right being established.

21. More importantly, the Hon'ble Supreme Court in the landmark case of **Jagpal Singh & Others vs. State of Punjab & Others [(2011)11 SCC 396]** has held that long-term lateral encroachment on Government or community land cannot be



regularized. The Court categorically directed all State Governments to eject encroachers rather than regularize such illegalities.

22. In the absence of any specific Government policy produced by Respondent Nos. 1 to 4 that would allow for such regularization, the Minister's direction in Clause 3 is in direct contravention of the above judgment.

23. In view of the above, the order of the Learned Minister is found to be correct insofar as it maintains the land as Government land, but it is unsustainable regarding the regularization of encroachment. Hence, following order :-

**ORDER**

I. The Writ Petition is **partly allowed**.

II. The impugned order passed by the Learned Minister dated 09.01.2018 is hereby quashed and set aside only to the extent of Clause 3, which directed the regularization of encroachment in favor of Respondent Nos. 1 to 4.

III. The District Collector is directed to take immediate and necessary steps to remove all encroachments on the subject Government land by following the due procedure of law.

**(SIDDHESHWAR S. THOMBRE, J.)**