

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4625 OF 2014

Shri Areppuzhekara Chandi Joseph. .. Petitioner
Vs
Dr. Shyam Gholap and Another. .. Respondents
—
Shri Shekhar Jagtap i/by J Shekhar and Co for the Petitioner.
Shri S.N. Patil, AGP for Respondents.
--

CORAM : A.S. OKA & A.K.MENON, JJ
DATED : 22ND JANUARY 2015

ORAL JUDGMENT : (PER A.S.OKA, J)

. Heard learned counsel appearing for the Petitioner and the learned AGP for both the Respondents. Forthwith taken up for final disposal considering the narrow controversy involved.

2. This Petition is filed by the Petitioner not for challenging the order dated 20th February 2014 passed by the First Respondent, but for pointing out the manner in which the proceedings have been conducted by the First Respondent. The First Respondent at the relevant time was the Sub-Divisional Officer, Mangaon Division, District - Raigad. The learned AGP has placed on record a letter dated 14th January 2015 addressed to the Government Pleader, High Court

(Appellate Side), Mumbai, by the Revenue and Forest Department, instructing the Government Pleader to represent the First Respondent who is impleaded in his personal capacity. The said letter is taken on record and marked "X" for identification.

3. The issue concerns RTS Appeal No.99 of 2013 filed by one Shri Dattatraya Balkrishna Shinde against the Petitioner herein. The said Appeal was preferred for challenging the Mutation Entry No.1162 recorded in relation to the land bearing Gat No.530A at village Khandad, Taluka- Mangaon, District- Raigad. The Mutation Entry was made on the basis of a Registered Sale Deed dated 31st December 2012 executed by the Appellant in the said Appeal by which he purported to sell the said land to the Petitioner in the present Petition. The contention in the Appeal was that certain cheques issued by the Petitioner towards consideration payable under the Sale Deed were dishonoured and, therefore, the Sale Deed itself was illegal.

4. In Paragraph 11 onwards, the Petitioner has set out as to what transpired on various dates fixed for hearing of the RTS Appeal No.99 of 2013. It is stated that on 28th January 2014 and 11th February 2014, the First Respondent was on tour and accordingly, the case was adjourned to 20th February 2014. It is further alleged in Paragraph 14 of the Petition that on 20th February 2014, the First Respondent was not

available and he was on tour and accordingly, an entry was made in the Roznama. It is alleged that the Advocate for the petitioner was present on that day in the office of the First Respondent and as the First Respondent was not present, the case was adjourned till 1st April 2014. It is stated that the Advocates representing the Petitioner and the Appellant in the Appeal signed the Roznama and left the office of the First Respondent. It is stated that on 20th March 2014 when the Petitioner visited the office of Talathi at Village Khandad, he learnt that his name has been deleted from the Record of Rights on the basis of the order dated 20th February 2014 passed by the First Respondent. Therefore, he immediately rushed to the office of the First Respondent on 20th March 2014. He applied for certified copies of several documents. However, a reply was received that the record of the Appeal has been handed over to the First Respondent which is not received back. It is stated that on 25th March 2014, the Petitioner received certified copies of the relevant documents. It is pointed out that the Roznama of 20th February 2014 records that the Appeal was closed for decision. It is pointed out that on 20th February 2014 itself, the First Respondent handed over the charge of the post of Sub-Divisional Officer at Mangaon on account of his transfer. Therefore, it is contended that the judgment dated 20th February 2014 has been rendered in a suspicious circumstances. Therefore, a prayer is made for taking a disciplinary action against the First Respondent.

5. There is a reply filed by the First Respondent which is affirmed on 18th December 2014. In the reply, in Paragraph 5, the First Respondent has stated that the Appeal was fully heard on 24th October 2013 and thereafter, he had kept the judgment ready. He has stated that as the Petitioner sought time for amicable settlement, he did not pronounce the judgment. He has stated that apart from the judgment in RTS Appeal No.99 of 2013, he had kept the judgments even in three other Appeals ready which were also kept on 20th February 2014. Paragraph 8 of the said affidavit reads thus:

“8. I say that on 20th February 2014, I had attended my office as per the scheduled time. I say that on the same day at 11.00 a.m., I pronounced and declared the judgment in all the four matters. I say that the aforesaid matters were at serial Nos.20, 39 and 45 respectively on my daily board on 20.2.2014. However, in view of the fact that the office matters were only pronouncement of judgment I thought it proper to pronounce the judgment immediately as soon as my court assembled, since it would have been pointless to keep the parties waiting all day long for merely pronouncement of judgment. The rest of the matters were required to be heard hence I thought it prudent to declare four matters first. I sat that at around 11:20 a.m or so Smt. Prashali Jadhav, Deputy Collector, attended my office and handed over to me a copy of my transfer order. Having received the transferred order, I did not deem it fit to continue the board and therefore I asked my subordinate to discharge the board.”

6. In Paragraph 9, he has stated that though he had pronounced the judgment in all the four Appeals, the Roznama of 20th February 2014 was wrongly written by the concerned Clerk by recording that the First Respondent was on tour. In paragraphs 10 and 11 of the Reply, it is stated thus:

“10. I say that since it was my board which was discharged, I was required to sign the roznama and while signing the roznama I realized the error that he had written the same roznama, as in all other matters, in the four matters in which I had passed a judgment.

11. I say that I therefore struck out the errors in the roznama and made correction in all the four cases. I say that the petitioner is merely making wild allegations against me because the appeal was decided against him. I say that the allegations of malice and abuse of power made against me are incorrect and unjust.”

7. We have perused the record of the Appeal produced by the Respondents. The Roznama of the RTS Appeal No.99 of 2013 shows that on 30th September 2013, certain submissions were heard. A direction was recorded in the Roznama that a copy of the Appeal Memo should be provided. From the Roznama, it appears that the submissions of the Appellant in the Appeal were heard and a direction was given to provide a copy of the Appeal Memo to the present

Petitioner. The Roznama dated 24th October 2013 does not record that the submissions were heard on that date. It merely records that the Advocate for the Respondents submitted WS (presumably Written Submissions). Thereafter, on 18th November 2013, 28th January 2014 and 11th February 2014, the Appeal was adjourned as the First Respondent was on tour. On 16th December 2013, both the Advocates were present and it does appear that for compromise, the Appeal was adjourned.

8. On 11th February 2014, the Appeal was adjourned to 20th February 2014. Admittedly, on 20th February 2014, the Roznama was written mentioning that the First Respondent was on tour. Going by the affidavit of the First Respondent, by striking out the Roznama which was already signed by the Advocates for the parties, he made following entry in the Roznama “both parties present (R) already submitted WS before. Appeal closed for decision”. Though the First Respondent claims that he has himself corrected the Roznama, the same does not record that he delivered the judgment. The learned AGP tried to submit that whenever the judgment is pronounced, similar entry is made in the Roznama which is apparent from the Roznama appearing in three other cases. However, it is very difficult to accept the said submission as the Roznama specifically records that the Appeal was closed for decision. There is no reference in the Roznama to the fact

that the judgment was pronounced though admittedly the First Respondent corrected the Roznama of 20th February 2014 after it was signed by both the Advocates.

9. There is one more aspect which needs to be noted. In Paragraph 8 of the Reply, the First Respondent has stated that the matters in which the judgments were pronounced, were at Sr.Nos.20, 39 and 45 on the daily board of 20th February 2014. He has stated that at 11.00 a.m, he himself pronounced the judgments without calling for any other matter on the ground that he wanted to ensure that the parties should not unnecessarily wait in the Court. He stated that at around 11.20 a.m., the Deputy Collector handed over his transfer order and thereafter, he immediately discharged the board.

10. After having perused the record and after having perused the affidavit of the First Respondent, prima facie, we find merit in the contention raised by the Petitioner that an inquiry is called for. The inquiry will have to be ordered considering the manner in which the RTS Appeal No.99 of 2013 and other three Appeals were disposed of by the First Respondent. Even going by the affidavit and the Roznama, prima facie, it appears that it is difficult to accept the contention that the judgment was pronounced on 20th February 2014.

11. The order of the First Respondent is already a subject matter of an Appeal preferred by the Petitioner which is pending before the Collector of District Raigad-Alibag. The merits of the order will be tested in the said Appeal.

12. Nevertheless, considering the allegations made by the Petitioner and prima facie findings recorded by this Court as above, it is necessary that an appropriate higher revenue officer holds an inquiry into the allegations made by the Petitioner about the manner in which the RTS Appeal No.99 of 2013 has been disposed of.

13. We, accordingly, direct the District Collector, Raigad-Alibag to call for the record of the RTS Appeal No.99 of 2013 as well as the RTS Appeals Nos.73, 74 and 94 of 2013 and to hold an inquiry on the basis of the averments made in this Petition. If after holding an inquiry and after giving an opportunity to the First Respondent of being heard, the Collector comes to a conclusion that any illegality or irregularity has been committed by the First Respondent, he will have to initiate the appropriate proceedings against the First Respondent. It is obvious that in the inquiry, the Collector will record the statements of the parties to the Appeal and their respective Advocates as well as statements of the

members of the staff working in the office of the Sub-Divisional Officer, Mangaon and the statement of the Successor of the First Respondent.

14. Accordingly, we dispose of the Petition by passing the following order:

ORDER :

- (a) The record of the RTS Appeal No.99 of 2013 as well as the RTS Appeal Nos.73, 74 and 94 of 2013 produced by the learned AGP before this Court shall be directly transmitted by the office of the Government Pleader to the District Collector, Raigad-Alibag;
- (b) The office of the Government Pleader shall also forward copies of this Petition along with a true copy of this order to the District Collector of District Raigad-Alibag;
- (c) The District Collector of Raigad will hold an inquiry as observed above;

- (d) After holding an inquiry, the District Collector of Raigad shall pass an appropriate order as expeditiously as possible and preferably within a period of four months from today;
- (e) If on holding inquiry, he finds that the First Respondent has committed any illegality or irregularity, he will submit a report to the Appropriate Authority for initiating action against the First Respondent;
- (f) We, however, make it clear that the findings recorded in this judgment and order are only tentative and prima facie findings and independently of the said findings, the District Collector of Raigad shall hold an inquiry on the basis of the material available on record and on the basis of the statements recorded by him;
- (g) We also make it clear that the Collector will not be influenced by the tentative findings recorded in this judgment and order;

(h) An authenticated copy of this order shall be supplied by the office of the Government Pleader to the District Collector, Raigad;

(i) The Petition is disposed of on above terms.

(A.K.MENON, J)

(A.S. OKA, J)