

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

WRIT PETITION NO. 4538 OF 2013

M/s. Shantai Group

... Petitioner

v/s

The State of Maharashtra & ors.

... Respondents

Mr.Y.S. Jahagirdar, senior counsel with Mr.S.S.Kanetkar for the petitioner.

Mr.P.K. Dhakephalkar, senior counsel with Mr.Prasad B. Kulkarni for the respondent No.5.

Mr.Vikas Mali, A.G.P. for the State.

Mr.Deepak More for the Resp. No.16.

***CORAM: MRS. VASANTI A. NAIK &
MRS. MRIDULA BHATKAR, JJ.***

DATED : 11TH MARCH, 2015

P.C.:

By this writ petition, the petitioner challenges the order of the Director of Land Records dated 31st December, 2012 allowing the revision filed by the petitioner and remanding the matter to the Superintendent of Land Records, for a fresh enquiry for measurement of the land of the petitioner and the respondent No.5.

The petitioner claims to be the owner of field survey

No.93/3/7, that was purchased from the predecessor in title of the petitioner, on 4th October, 2010. The respondent No.5 had purchased the adjoining field bearing survey No.93/3/2/1 by a sale deed dated 27th July, 2010. Before the land was purchased by the petitioner in October, 2010, the predecessor in title of the petitioner had measured the land through the Revenue Department in the year 2007. So also, after the respondent No.5 purchased the adjoining land, the land was got measured from the concerned authorities on 28th June, 2010. Being aggrieved by the measurement report, prepared on the request of the respondent No.5, the petitioner challenged the same and the said measurement report was cancelled by the Superintendent of Land Records. It appears that the respondent No.5, being aggrieved by the cancellation of the survey report in his favour, directly filed an appeal before the Director of Land Records without approaching the appellate authority as provided under the provisions of the Maharashtra Land Revenue Code. It is also necessary to note that the said appeal was made by the respondent No.5 on a letter head of the respondent No.5, who was then the Mayor of Pimpri-Chinchwad Municipal Corporation. The Director of Land Records entertained the appeal/representation filed by the respondent No.5 and directed the City Survey Officer to take appropriate steps against the cancellation of the report. It was held by the Superintendent of Land Records that, both the surveys i.e. survey conducted in the year 2007 and the one conducted in the year 2010 were wrong and a two member committee was constituted

for re-measurement of the land. Being aggrieved by the constitution of the two member committee, which is not permitted by the provisions of maharashtra Land Revenue Code, the petitioner filed the revision before the Director of Land Records. The revision filed by the petitioner was dismissed. In the meanwhile, the petitioner was served with a stop work notice by the Corporation thereby stalling the construction on the land purchased by the petitioner. The petitioner filed a writ petition challenging the order of stop work notice as also the order dismissing the revision filed by the petitioner. The writ petition was partly allowed. This Court found that the Director of Land Records could not have acted on a complaint made by the Mayor on his letterhead. The matter was remanded by this Court to the Director of Land Records. The Director of Land Records heard the revision filed by the petitioner and by the impugned order dated 31st December, 2012 partly allowed the same and directed the Superintendent of Land Records to decide the matter in regard to the measurement of the land by considering the complaint made by the respondent No.5 on his letter-head, as also the letter of the Director of Land Records, dated 23rd February, 2011 addressed to the District Superintendent of Land Records, that the cancellation of the measurement report in favour of the respondent No.5 was *prima facie* wrong. The petitioner has impugned the order dated 31st December, 2012 in the instant petition.

Mr.Jahagirdar, the learned senior counsel appearing for the

petitioner submitted that the Director of Land Records was not justified in remanding the matter to the Superintendent of Land Records, especially when this Court had directed the Director of Land Records by the judgment and order dated 21st July, 2011 to decide the revision filed by the petitioner and pass appropriate orders thereon. It is stated that, in any case, the Director of Land Records could not have directed the Superintendent of Land Records to consider the complaint made by the respondent No.4 on his letter-head as a Mayor and the communication of the Director of Land Records dated 23rd February, 2011 to the District Superintendent of Land Records that the order cancelling the report in favour of the respondent No.5 was incorrect. It is stated that the Superintendent of Land Records is expected to impartially decide the matter between the parties and a direction by the Director of Land Records to consider the complaint made by the respondent No.5 on his letter-head and also the opinion expressed by the Director of Land Records in the communication dated 23rd February, 2011 is bad in law.

Mr.Dhakephalkar, the learned senior counsel for the respondent No.5 fairly admitted that it was a bonafide mistake on the part of the respondent No.5 to have made a complaint to the Director of Land Records on the letter-head of the respondent No.5, as the Mayor of Pimpri-Chinchwad Municipal Corporation. It is, however, stated that the respondent No.5 is not a Mayor now and there is no question of influencing the District Superintendent of

Land Records in the matter of measurement of the land. It is submitted that the Superintendent of Land Records had cancelled the survey report in favour of the respondent No.5 without issuance of any notice to the respondent No.5 and left with no other alternative, the respondent No.5 made an appeal to the Director of Land Records to set aside the order cancelling the survey report in favour of the respondent No.5. It is stated that the Superintendent of Land Records may decide the matter in accordance with law within a time frame.

The learned Assistant Government Pleader for the respondent authorities supported the orders of the Director of Land Records and submitted that the Director was justified in remanding the matter to the Superintendent of Land Records as the Director of Land Records could not have carried out the measurement and made a report in respect thereof.

On hearing the learned counsel for the parties, it appears that the writ petition needs to be partly allowed by modifying the order of Director of Land Records dated 31st July, 2012. We do not find any irregularity in the order of the Director of Land Records remanding the matter to the Superintendent of Land Records for making a fresh enquiry in the matter of measurement, after hearing the parties concerned. The Director of Land Records is the revisional authority and therefore he could not have personally made the enquiry in the matter and measured the lands of the

petitioner and the respondent No.5. Though the Director of Land Records was justified in remanding the matter to the Superintendent of Land Records, the Director of Land Records was surely not justified in asking the Superintendent of Land Records to especially rely on the complaint made by the respondent No.5 on a letter-head, showing the respondent No.5 to be the Mayor of the Pimpri-Chinchwad Municipal Corporation. So also, the Director of Land Records could not have asked the Superintendent of Land Records to consider the opinion of the Director of Land Records, as expressed in the communication dated 23rd February, 2011 addressed by the Director of Land Records to the Superintendent of Land Records, as the Superintendent of Land Records could have been influenced by the said communication and the matter could not have been decided against the opinion of the Director of Land Records, the Superintendent of Land Records being a subordinate authority. The Director of Land Records could have only directed the Superintendent of Land Records to consider and decide the matter in accordance with law. We find that the Director of Land Records was not justified in directing the Superintendent of Land Records to consider the complaint on the letter-head of the respondent No.5 and also his opinion expressed in the communication, dated 23rd February, 2011.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned order is modified. The order of remand of the matter to the Superintendent of Land Records is confirmed.

The part of the order directing the Superintendent of Land Records to consider the two aforesaid documents is quashed and set aside. The Superintendent of Land Records should consider the contents of the complaint of the respondent No.5 without being influenced by the fact that the complaint is on the letter-head of the then Mayor. The parties are at liberty to tender additional material before the Superintendent of Land Records in support of their respective cases. The Superintendent of Land Records is directed to decide the matter as early as possible and positively within a period of six months.

Order accordingly. No order as to costs.

(MRIDULA BHATKAR, J.)

(VASANTI A. NAIK, J.)