IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3274 OF 1994

Ravindra Kisanlal Tiwari … Petitioner

vs.

Sitaram Karamchand Dange and others. … Respondents

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Mr. Amey Deshpande for petitioner.

Ms. Sonal a/w Mr. Rohit Gupta a/w Mr. Jahan Choksi i/b Divya Shah Associates for respondent No.1.

Mrs. Vaishali Nimbalkar, AGP for respondent Nos.3 to 7

Ms. Sangeeta Jadhav i/b Suresh Kumar for respondent Nos.2 and 3.

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CORAM : M. S. SONAK, J.

DATE : 21st NOVEMBER, 2015.

P.C.:

1. The challenge in this petition is to the order dated 09/03/1993 made by the Principal Secretary (Review Appeal and Revision) in Revision Application No.S-30-3092/CR/609/L-6-CR-1213/92 (A & R) and order dated 29/11/1985 made by the Commissioner, Nashik Division in Appeal Desk No.292/84, 323/84 and 324/84. The said orders are hereinafter referred to as the impugned orders.

2. By the impugned orders, the Commissioner and the Secretary have set aside orders dated 23/07/1984, 11/03/1982 and 09/01/1982 made by Additional Collector, Sub-Divisional Officer (S.D.O.) and Aval Karkun (AK) respectively in the matter of mutation

Entry Nos.16547 and 16545. On the basis of the said mutation entries, the names of respondent Nos.1 and 2 respectively came to be entered in the survey records with regard to which the petitioner has claimed right, title and interest.

3. Hearing in this petition was deferred for considerable length of time on account of pendency of Writ Petition No.4003 of 1993 which has since been disposed of by Judgment and Order dated 10^{th} September, 2014. The respondents claimed to be the owners of the suit properties to which the mutation Entry Nos.16547 and 16545 pertain, on the basis of purchase of the suit properties in public auction held under the provisions of Income Tax Act, 1961. The petitioner had raised serious issues with regard to such auction and the consequent purchases thereat. It was the case of the petitioner that the respondents are not agriculturist and therefore, the respondents had no legal right to purchase the suit properties, which according to petitioner, are agricultural properties. It was the further contention of the petitioner that the auction held by the Income Tax Authorities was in respect of only $1/4^{th}$ portion of one of the suit properties i.e. property surveyed under 615/1-A total admeasuring about 37 Gunthas.

4. After about 14 years from the date of confirmation of the sale of the suit properties in favour of respondents, the Tax Recovery Officer (T.R.O.) issued notice in relation to the certificate of sale.

Ultimately, by order dated 12th June, 1991, an order was made that the sale in question pertains to 1/4th portion of the properties surveyed under No.615-1-A. The said order was not interfered with by the Commissioner of Income Tax, on the ground that the order dated 12/06/1991 made by the T.R.O. was not appealable.

5. The Division Bench of this Court, by its Judgment and order dated 10th September, 2014 has however, set aside order dated 12/06/1991 made by the T.R.O. purporting to exercise powers under Rule 87 of Schedule II of the Income Tax Act, 1961. A Division Bench of this Court has made it clear that the order dated 12/06/1991 was being set aside on the ground that the T.R.O. did not have any jurisdiction to exercise such powers under the provisions of Rule 87 of Schedule II and that too, after a lapse of 14 years from the date of confirmation of the sale. The Division Bench of this Court declined the invitation to be drawn into disputed questions of fact or disputed questions of title.

6. The impugned orders have merely interfered and set aside the orders made by Additional Collector, Sub-Divisional Officer, Aval Karkun in relation to mutation entries in the revenue record. Considering that respondents had claimed title to the suit properties on the basis of certificates of sale issued in auction proceeding under the Income Tax Act, 1961, it cannot be said that there is any jurisdictional infirmity in the impugned orders. That apart, it is settled position in law

that mere entries in revenue records are not in any manner determinative of title in respect of the suit properties. Basically, for these reasons, there is no case made out to interfere with the impugned orders.

7. It is, however, clarified that any observation made in the impugned orders will not influence the competent courts in dealing with substantive proceeding relating to rights and titles of the parties to the suit properties. It is further clarified that this court has *inter alia* not delved into the merits with regard to claims of rights and titles of either parties to the suit properties. Accordingly, all contentions of all parties including inter alia contentions with regard to limitation, etc. are specifically kept open.

8. With the aforesaid observations, rule is discharged. There shall be no other as to costs.

(M. S. SONAK, J.)