

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8667 OF 2014

Smt. Anubai Nago Bhoir	..	Petitioner
VS.		
Dharma Bhau Patil & Ors.	..	Respondents

Mr. R. D. Suryawanshi for Petitioner.
Mr. Amit Gharte for Respondent No. 1.
Mr. Abhijit Deshmukh for Respondent No. 2.
Mr. A. R. Metkari – AGP for Respondent Nos. 3 to 6.

CORAM : M. S. SONAK, J.
DATE: 13 JANUARY 2015

P.C. :-

1] This petition is directed against order dated 1 June 2014 made by the Minister (Revenue) setting aside the order made by the Additional Commissioner dated 9 May 2013. The Additional Commissioner, in terms, had allowed the petitioner's revision against the order dated 3 November 2010 made by the Deputy Collector (Appeals). The Deputy Collector (Appeals) by judgment and order dated 3 November 2010, in terms, had set aside the order dated 2 July 2009 made by the SDO, Thane, in the matter of mutation effected on 12 September 1990, whereby the name of the petitioner was deleted in respect of the properties in question.

2] From the record, it transpires that the mutation which was effected in the year 1990 was appealed against by the petitioner after delay of almost 17 years before the SDO. The SDO, without going into the issue of delay, allowed the petitioner's appeal. The same was set aside by the Deputy Collector (Appeals), the Additional Commissioner, remanded the matter to the SDO for fresh reconsideration. The Minister (Revenue) has now upset the order made by the Additional Commissioner, primarily on the ground that no sufficient cause was shown in preferring appeal against mutation entry after lapse of almost 17 years.

3] There is no jurisdictional error or perversity in the impugned order made by the Minister (Revenue). However, the learned counsel for the petitioner contended that the authorities which have decided against the petitioner have primarily relied upon an affidavit purportedly made by the petitioner on 18 April 1990 to the effect that there has been a family arrangement, in terms whereof the petitioner has no right in respect of the properties in question. The learned counsel for the petitioner however pointed out that this affidavit is fabricated and gotten up document. This, according to the learned counsel, is evident from the circumstance that the person who is said to have identified the affiant is the father of the petitioner, when in fact petitioner's father had expired way back in

1964. The learned counsel therefore contends that on basis of such a fabricated document no mutation could have ever been effected.

4] The learned counsel for respondent no. 1 on the other hand contends that there has been a family arrangement, in terms whereof, the petitioner disclaimed rights to the properties in question, but was allotted certain other properties in lieu of such disclaimer. Further, the petitioner has already acted upon such arrangement and sold the properties allotted to her. In any case, there is no explanation whatsoever for the delay of 17 years in questioning the mutation entry. For all these reasons, the learned counsel for respondent no.1 submitted that the impugned order ought not to be interfered with.

5] Having considered the submissions made by the learned counsels and having perused the record, as noted earlier, I find that there is no jurisdictional error or perversity in the impugned order made by the Minister (Revenue). Even if we proceed on the basis that there are discrepancies in the affidavit upon which respondent no. 1 relies, nevertheless, the main issue involved was delay of 17 years in approaching the SDO in matter of mutation entry. The petitioner has not satisfactorily explained the delay and this is the reason why the authorities have not entertained the petitioner's

plea. That apart, the dispute, as raised, merely pertains to mutation entries in revenue records. It is settled position in law that such entries are by no means determinative of title. In order to establish title, it is for the parties to approach the appropriate civil court. The petitioner, being aware of this position in law, has already instituted a civil suit in the Court of Civil Judge, Senior Division at Thane. This is an additional reason as to why no interference is called for with the impugned order.

6] It is clarified that the observations made in this order are not intended in any manner to reflect upon the merits or demerits of the title of the respective parties to the properties in question. All issues in this regard are kept expressly open.

7] With the aforesaid observations, the present petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)