

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

WRIT PETITION NO.9093 OF 2014

Smt. Chandrabhagabai Pundlik Vidhate

and others

.. Petitioners

Versus

Ashok Shaikshnik Sanstha

Through Satish Dhondulal Parakh and another

.. Respondents

Mr. M. M. Sathaye, for the Petitioners.

Mr. R. S. Apte, Senior Advocate i/by Mr. J. H. Oak, for the Respondent No.1.

Mr. S. D. Rayrikar, AGP for the Respondent No.2.

CORAM : R.M. SAVANT, J.

DATE : 24th JULY, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 18.06.2014 passed by the Revisionary Authority, by which order, the order passed by the Superintendent of Land Records dated 22.03.2010 as also the order dated 28.02.2012 passed by the Deputy Director of Land Records came to be set aside. The subject matter of the proceedings is the measurement carried out being MOR No.931 in respect of the land situated in Survey No.46/2/1. The said measurement was carried out pursuant to the application made by the Respondent No.1

herein sometime in the year 2008.

2. The Petitioners herein have a decree in their favour against one Haribhau Vidhate and others which is a decree passed in RCS No.416 of 1989 under which decree the heirs of the said Haribhau Vidhate were obligated to hand over possession of 24 Ares of land to the Plaintiff i.e. Pundlik Vidhate whose heirs are the Petitioners above named. What is significant to note that in the context of the present Petition that Haribhau Vidhate's heirs by registered Sale Deed dated 26.10.2005 have sold an area of 7 Acres to the Respondent No.1 which is in Survey No.46/1, whereas the Petitioners who are the heirs of the Pundlik Vidhate by registered Sale Deed dated 17.10.2005 have sold an area of 75 Ares in Survey No.46/2/1 in favour of the Respondent No.1. It is after the execution of the said Sale Deeds that the heirs of the Pundlik Vidhate who were the Plaintiffs in the said RCS No.416 of 1989 filed an application for execution of the decree in so far as handing over possession of 24 Ares is concerned. It appears that the Respondent No.1 was joined as a party Respondent to the said execution proceedings being Regular Darkhast No.68 of 2006. In view of the said Sale Deeds executed by the heirs of the original Plaintiff i.e. Pundlik Vidhate's heirs the stand taken by the Respondent No.1 in the said execution proceedings was that in view of the said Sale Deed dated 26.10.2005 executed by the heirs of Pundlik Vidhate

the said Darkhast Proceedings have become infructuous. However, the said Darkhast proceedings are pending as yet.

3. It is after the said Darkhast proceedings were filed that the Respondent No.1 herein sometime in the year 2008 applied for measurement of the lands which they had purchased vide the said Sale Deeds. The said application was objected to on behalf of the Petitioners. However, the said objection was not considered by the Authority who ventured to measure the land in the light of the registered Sale Deeds in favour of the Respondent No.1. The said measurement has been carried out by the TILR based on the said two Sale Deeds. The said measurement was challenged by the Petitioners by filing Appeal before the Superintendent of Land Records, Nashik. The Superintendent of Land Records allowed the Appeal and set aside the said measurement inter-alia on four grounds amongst which is the ground that the Darkhast proceedings were pending which he has referred to as Civil Proceedings. The said order passed by the Superintendent of Land Records was challenged by the Respondent No.1 by filing an Appeal before the Deputy Director of Land Records. The Deputy Director of Land Records did not deem it appropriate to interfere with the order passed by the Superintendent of Land Records and accordingly dismissed the Appeal No.SR-432/Nashik/10. The Respondent No.1 thereafter filed a Revision

Application before the State Government which Revision Application has been allowed by the impugned order dated 18.06.2014. The Revisionary Authority has adverted to the antecedent facts relating to the decree passed in favour of the said Pundlik Vidhate, the Sale Deed executed by the heirs of the said Pundlik Vidhate dated 26.10.2005 as also the Sale Deed dated 17.12.2005 executed by the heirs of the Haribhau Vidhate, the Revisionary Authority prima-facie found the contention raised on behalf of the Respondent No.1 that the land of 24 Ares which the heirs of the said Pundlik Vidhate were entitled to in terms of the decree in RCS No.416 of 1989 is covered by the Sale Deed dated 26.10.2005. The Revisionary Authority observed that if it is so covered the case for disputes arising would not be there and disputes would be settled. The Revisionary Authority has accordingly allowed the Revision Application and set aside the orders passed by the Superintendent of the Land Records and Deputy Director of Land Records. The Revisionary Authority has made his order subject to the proceedings which are pending in the Civil Court thereby referring to the execution proceedings.

4. The principal ground on which the order passed by the Revisionary Authority is assailed by the Petitioners is that the execution proceedings filed by them for executing the decree in respect of 24 Ares is pending and therefore, the Revisionary Authority ought not to have

exercised jurisdiction. The next contention of the Learned Counsel is that the area of 24 Ares is not covered by the 75 Ares which have been sold to the Respondent No.1 by the Petitioners. The Learned Counsel for the Petitioners was at pains to demonstrate from the record as to how the said 24 Ares land stands apart from the area of 75 Ares which the Petitioners have been sold to the Respondent No.1.

5. Per contra, the Learned Senior Counsel appearing for the Respondent No.1 by relying upon the Petitioners own description of the 24 Ares in the Darkhast Proceedings as also the description of the 75 Ares mentioned in the Sale Deed dated 17.12.2005 as also from the finding recorded by the Appellate Court in paragraph 22 would contend that the said 24 Ares are part of the 75 Ares sold by the Petitioners is fortified. Having perused the map Exh.100 which is part of the record of the Civil Court and the map Exh.90 which is also part of the record of the Civil Court and juxta-posed the same with the map which has been prepared pursuant to the measurement carried out in the year 2009, prima-facie at least at this stage there appears to be substance in the contention of the Learned Senior Counsel appearing on behalf of the Respondent No.1 that the area of 24 Ares is covered by the 75 Ares which have been sold to the Respondent No.1. That apart, what is required to be noted is the Respondent No.1 had sought measurement of the lands which it had

purchased vide two Sale Deeds, part of the said measurement is in controversy in the present proceedings. In my view, the Respondent No.1 having purchased the said area of 75 Ares from the Petitioners was entitled to get it measured. The order passed by the Revisionary Authority i.e. Hon'ble Minister for Revenue, State Government therefore does not suffer from any error or any illegality for this Court to interfere in its Writ Jurisdiction. As observed by the Revisionary Authority the said measurement would be subject to the civil proceedings which are pending. The said execution proceedings would undoubtedly be tried on their own merits and in accordance with law uninfluenced by any observations in the instant order. With the aforesaid directions, the Writ Petition is dismissed.

6. At this stage, the Learned Counsel for the Petitioner applies for continuation of the ad-interim relief. In the facts and circumstances of the case, said prayer is rejected.

[R.M. SAVANT, J]