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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10976 OF 2014

Akhtar Hasan Rizvi

...Petitioner

V/s.

Kashiram Pandurang Khandebharad

(since deceased through LR's)

Chandrakant Kashiram Khandebharad & Ors.

...Respondents

.....
Mr. Prakash Lad a/w Mahesh Mishra I/b. Ravi Thankaian for the
Petitioner.

Mr. G. R. Rege a/w Shakuntala A. Mudbidri for Respondent Nos.1A, 1B(i)
(ii) and 2 to 5.

Mrs. V. S. Nimbalkar, AGP, for the Respondent-State.

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CORAM : A. K. MENON, J.

DATE : 12TH OCTOBER, 2015.

PC.:

This Writ Petition challenges a decision of the Revisional Authority in RTS No.3414/5089/Case No.153/J-5 whereby the Appeal filed by the respondent no.8 and others had challenged the order passed by the Additional Collector, Pune whereby the Revision Application filed by the present petitioner was admitted and the order passed by the Additional Collector Pune in Appeal No.151/2003 dated 2nd May, 2005 and the order

dated 27th February, 2004 passed by the Sub-Divisional Officer, Maval, were set aside and the mutation entries bearing no.824, 91 and 31 were confirmed.

2] The short controversy with which we are now concerned out of the dispute resulting from the change in the mutation entries. It is the petitioners case that property bearing Gat no.255 (old survey no.67/4) admeasuring 51 Ares at village Varsoli, Taluka Maval, District Pune was owned by Khandu Ganu Patekar. Thereafter vide a sale deed dated 3rd February, 1981 one Janardhan Darekar purchased the said property from the original owners. Subsequently, the name of Mr. Janardhan Dagdu Darekar came to be recorded in the Revenue Records vide mutation entry no.824 and 30. It is the petitioners case that they purchased the said property from said Mr. Darekar vide a sale deed dated 30th July, 1987 and as such his name came to be mutated in the Revenue Records vide entry bearing no.91 as seen from Exhibit B to the Petition, the extract from the record of rights issued by the Talathi, Varsoli, Pune. According to the petitioner the aforesaid mutation entry correctly recorded of his purchase as well as his right of ownership in its land. However, it is his grievance that thereafter, sometime in 1992, one Mahadev N. Khandelwal filed an application before the Sub-Divisional Officer, Maval, bearing R.T.S.

Appeal no.31 of 1992 under Section 247 of the Maharashtra Land Revenue Code, 1966 wherein he contended that the subject land was purchased by him under a sale deed dated 4th December, 1980 from the original owners Maruti Dagdu Patekar and Khadnu Ganu Patekar under the aforesaid sale deed which is a registered by conveyance no.1557 dated 4th December, 1980 and that the mutation entries no.824, 30 and 91 under which the petitioner's name was entered is required to be set aside.

3] The Sub-Divisional Officer vide order dated 27th February, 2004 dismissed the aforesaid application. The petitioner being aggrieved filed a Revision Application against the said order dated 2nd May, 2005. The said Revision Application was allowed and the orders passed by the Additional Collector and Sub-Divisional Officer were set aside. Being aggrieved by the said order, the respondent no.10 had filed the Revision Application which came to be decided on 10th August, 2014. The land was thereafter purchased by Kashiram Pandurang Khandebharad and others who claim to have purchased the land vide sale deed dated 4th March, 1986. The aforesaid persons claim to have purchased the said land from the said Khandelwal vide sale deed dated 4th March, 1983 also registered under document no.72 of 1983. The Revision Application thereafter came to be disposed of confirming the original order and setting aside the order

in favour of the petitioner.

4] Mr. Lad, the learned counsel appearing for the petitioners urged that the Revisional Authorities have no jurisdiction to entertain and adjudicate upon title of the petitioner or that of the respondents and therefore sought to assail the said order passed in the Revision Application by the Revisional Authority. He relied upon the provisions of Section 149 of the Maharashtra Land Revenue Code and submitted that the respondents were under an obligation to intimate to Tahsildar of the acquisition orally or in writing within a period of three months from the date of the acquisition upon which the Tahsildar required to give a written acknowledgement of the same. He relied upon the decision of a Single Judge of this Court in the case of ***Shrikant R. Sankanwar and Ors. V/s. Krishna Balu Naukudkar 2003 (3) Bom CR 45*** and submitted that the impugned order cannot be sustained inasmuch as the contesting respondents who claim through Mr. Khandelwal were not in compliance of Section 149 and therefore being violative of the provisions of Section 149 the impugned order is deserves to be set aside restoring the entry passed in favour of the petitioners vide mutation entry no.91 and prior entries bearing mutation entry no.824 and 30.

5] On the other hand, it was submitted on behalf of the respondent nos.1 to 5 who are present purchasers was the contesting respondent claiming the ownership of the properties even under Section 149 such notification is not required to be given where the properties is purchased under a written document. Further more the learned counsel pointed out that under Section 154 of the Code when any document purporting to create, assign or extinguish any title to, or any, charge on, land used for agricultural purposes, or in respect of which a record of rights has been prepared and is registered under the Indian Registration Act, 1908, it is the duty of the officer to send the intimation of such transaction to the Talathi of the village as prescribed by the rules under the code and therefore it was the duty of the registering officer also to intimate the concerned parties so that record of rights correctly reflects the transfer of ownership of the said property. There is much substance in this submission and in my view it is not as if the petitioner is being deprived of his right to claim title to the said property . To a query from the Court as to whether the petitioner had adopted a legal proceedings to establish/safeguard his title as against the claim of the present respondent, the Court is informed that no proceedings have been initiated. The only grievance of the petitioner is that the impugned order could not by any means grant title to the present respondents. Be that as

it may I find that in the facts of the present case that this Court need not to interfere in its writ jurisdiction. It is always open for the petitioner to establish and secure title claimed by him of the property. It is clarified that the observations made in this order will not come in the way of the petitioner seeking to establish title over the suit property. In the circumstances I pass the following order:

- i) The Writ Petition is dismissed.
- ii) There will be no orders as to costs.

(A. K. MENON, J.)