

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3329 OF 2015
Neetabai Sukhdev Pawar Vs. Additional Collector Buldhana & Ors.

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Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
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Court's or Judge's Order

Shri K. P. Sadavarte Adv for petitioner.
Shri K. R. Lule AGP for respondent nos. 1 to 4.
Shri R. G. Kavimandan Adv for respondent 5.

CORAM: A.S.CHANDURKAR J.

DATED: 02nd DECEMBER, 2015.

Petitioner herein is aggrieved by the order dated 27.04.2015 passed by the Additional Commissioner, Amravati thereby partly allowing the revision application filed by respondent no. 5 and directing the name of petitioner as well as respondent no.5 to be entered in the revenue records.

The dispute between the parties relates to the right claimed in respect of Gat No. 184, 187 and 188. It is the case of the petitioner that one Sukhdev Kachru More was the real owner and he expired on 11.07.1987. It is the further case that the will stated to be executed on 27.06.1987 by said Sukhdev was a bogus

will and the respondent no.5 had no legal right in the same. Initially the petitioner along with one Drupadabai had filed Regular Civil Suit no. 65 of 1999 against the respondent no. 5 and another defendant for permanent injunction. During pendency of said suit, proceedings were initiated by respondent no.5 for taking necessary mutation entry. The Sub Divisional Officer on 20.07.2010 dismissed said appeal as a result of which the name of the petitioner was included in the revenue records subject to outcome of civil proceedings. This order was challenged by respondent no. 5 by filing revision application in which the Additional Commissioner has passed the impugned order.

Shri K. P. Sadavarte, learned counsel for the petitioner submitted that the Additional Commissioner had no jurisdiction to record any finding that the will dated 27.06.1987 appeared to be a bogus will. It was submitted that a certified copy of said will was obtained from the Civil Court which was received on 16.12.1999 and the Additional Commissioner proceeded on the basis that while the stamp paper was dated 06.12.1999, the will was executed on 27.06.1987. He, therefore, submitted that the impugned order was liable to be set aside.

Shri R. G. Kavimandan, learned counsel for respondent

no. 5 supported the impugned order. He submitted that the civil suit between the parties was still pending and the application for temporary injunction moved by the petitioner had been rejected by the trial Court which order was confirmed by the appellate Court. He submitted that unless validity of the said will is duly proved, names of legal heirs were required to be taken on record.

I have duly considered the respective submissions and I have perused the documents on record. It is not in dispute that Regular Civil Suit No. 65 of 1999 filed by the present petitioner seeking relief of permanent injunction is pending before the civil Court. The plaint indicates that the petitioner is claiming entitlement on the basis of will dated 27.06.1987. In this background therefore it was not open for the Additional Commissioner to have considered the validity of will dated 27.06.1987.

The submission made on behalf of the petitioner that the certified copy of said will was received on 06.12.1999 while the date of execution of the will was 27.06.1987 appears to be justified from perusal of said documents. Hence to that extent the Additional Commissioner was not justified in observing that the will appeared to be bogus.

However at the same time it is also to be noted that said will is the basis for seeking relief before the Civil Court. Until the said right is duly proved, the direction issued by the Additional Commissioner to record names of all legal representatives does not appear to be illegal. Thus by observing that the adjudication by the Civil Court would bind the parties and the revenue proceedings would be subject to outcome of the civil proceedings, there is no reason to interfere in the writ petition. Writ Petition is therefore dismissed. No costs.

JUDGE

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