

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2626 OF 2013

The Pachora Taluka Shikshan Sanstha Maryadit
Pachora, Tq. Pachora,
Dist. Jalgaon,
Through its Chairman
Mr.Sanjay Onkar Wagh,
Age-44 years, Occu-Agriculturist,
R/o Ring Road, Pachora,
Tq.Pachora, Dist. Jalgaon

PETITIONER

VERSUS

1. Additional Commissioner,
Nasik Division Nashik,
2. Additional Collector,
Jalgaon District, Jalgaon,
3. Sub Divisional Officer,
Pachora Sub Division, Pachora,
Dist. Jalgaon
4. Pachora Municipal Council,
Pachora, Dist. Jalgaon,
Through its Chief Officer

RESPONDENTS

Mr.M.S.Deshmukh h/f Mr.D.B.Shinde, Advocate for the petitioner.
Mr.D.B.Thoke, Advocate for respondent No.4.
Mr.V.S.Badakh, AGP for respondent Nos. 1 to 3.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 29/02/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. I have heard the learned Advocates for the respective sides at length. In the light of the order that I intend to pass considering the peculiar facts of the case and in the light of the judgments of this Court in the matter of Shrikant R. Sankanwar and others Vs. Krishna Balu Naukudkar, [2003(3) Bom.C.R. 45] and Bansrajidevi Bhuval Singh, Ramniranjan Singh and Others Vs. Byramjee Jeejeebhoy Pvt.Ltd., and others, [2006(6) BCR 51], I am not required to advert to the entire submissions of the learned Advocates.

3. From the submissions of the respective sides, it appears that the land S.No.47/2 is an agricultural land which is said to have been purchased by the petitioner on 31/12/1971. A mutation entry No. 3605 was effected and relevant entries in the records of rights were made on 20/03/1972. The said entries were certified by the Revenue Authorities on 23/04/1972.

4. On 15/03/1993, mutation entry No.4194 was effected in relation to land survey No.47/2 in the name of the respondent No.4 Pachora Municipal Council. This entry was certified on 28/05/1996.

5. The petitioner contends that as it noticed the change that has occurred on account of the mutation entry dated 15/03/1993, that it

preferred a RTS Revision Appl.No.42/2005 which was rejected by order dated 19/05/2006 primarily on the ground of delay. The RTS Appeal No.80/2006 preferred by the petitioner u/s 247 of the M.L.R.Code was partly allowed and the matter was remitted back to respondent No.3 / Authority for reconsideration on the basis of the record.

6. Grievance of the petitioner is that, by order dated 30/09/2008, respondent No.3 confirmed the order dated 19/05/2006. The petitioner preferred a RTS Appeal No.5/2009, which has been dismissed by order dated 25/06/2010. The litigation continued in between the parties till RTS Revision No.164/2011 was dismissed by order dated 20/10/2012.

7. The petitioner, therefore, submits that when there was no evidence before the revenue authorities with regard to the creation of rights on the property at issue in favour of respondent No.4, the revenue authorities could not have confirmed the mutation entry dated 15/03/1993 on a suspicious resolution said to have been passed subsequently on 16/07/1993. Mr.Deshmukh, learned Advocate for the petitioner, therefore, submits that this petition deserves to be allowed.

8. Mr.Thoke, learned Advocate for respondent No.4 vehemently submits that this case involves an issue of exchange of lands by the petitioner and respondent No.4 *interse*. Pursuant to the exchange of lands, the petitioner has erected a school and a playground on the portion of the land possessed by it, way back in 1986. Respondent No.4 has constructed a water tank on the land which is in its possession and intends to proceed with certain developmental activities on the said land. He, therefore, submits that this petition deserves to be dismissed.

9. I have considered the submissions of the learned Advocates for the respective sides.

10. This Court in the Shrikant Sankanwar case (supra) has concluded that mutation entries are only for fiscal purposes and are utilized for recovery of taxes and for taxation. They neither create any right or title nor any interest in favour of any person. Ultimately it is the Civil Court which decides the rights of the parties. Mutation entries carried out by Revenue Officers are subject to the result of civil proceedings and not vice-a-versa. It is also concluded that the revenue authorities are expected to consider the best evidence acceptable in Law while causing mutation entries or for altering such

entries. Similar is the ratio laid down by this Court in the case of Bansirajidevi Bhuval Singh (supra).

11. In my view, since the very aspect of exchange of lands thereby resulting in the creation of rights on the exchanged lands in favour of the petitioner and respondent No.4 is at issue, which is a disputed issue and which cannot be gone into by revenue authorities, whose authority is restricted to the extent of making mutation entries, it would be appropriate that the petitioner and respondent No.4 / Municipal Council get their rights decided through civil proceedings. The petitioner submits that it is intending of filing a civil suit / initiating civil proceedings in the nearest future.

12. In the light of the above, this petition is partly allowed with the following directions :-

- [a] In the event the petitioner initiates appropriate proceedings in respect of its rights on land Survey No. 47/2 admeasuring 1 Hectre 85 R within a period of 6 (six) weeks from today, the mutation entries at issue, especially the entry dated 15/03/1993 which is certified on 28/05/1996, shall be subject to the result of the civil suit.
- [b] Status-quo, as existing today, shall be maintained by the litigating sides for a period of 5 (five) months so as to enable

the petitioner to prefer an application under Order 39 Rule 1 of the CPC considering the contention / apprehension that respondent No.4 is likely to initiate developmental activities on the said land.

- [c] In the event such a suit is preferred within 6 (six) weeks from today by the petitioner, the Trial Court shall decide the application under Order 39 Rule 1 of The CPC after hearing the litigating sides within a period of 3 (three) months from the date of filing of the suit or 6 (six) weeks from today, whichever is earlier and shall decide the said application on its own merits without being influenced by the order of status-quo passed by this Court today.
- [d] In the event the petitioner fails to file a suit within 6 (six) weeks, as observed above, this protection being granted by this Court shall stand vacated after 6 (six) weeks from today.
- [e] Needless to state, that the civil Court would be deciding the right, title and interest of the litigating sides in the property at issue and all revenue entries / mutation entries shall be subject to the result of such suit.

13. Rule is made partly absolute in the light of the above directions.

14. Pending civil application does not survive and stands disposed of.

(RAVINDRA V. GHUGE, J.)