

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1718 OF 2014

Sudha wd/o Gajanan Kunte
Age: 76 years, Occ: Nil,
R/o 5-5-37, Osmanpura,
Kranti Chowk, Aurangabad.

... Petitioner

Vs.

1. The State of Maharashtra and Ors.
Through Deputy Director of Land Record,
Aurangabad.
2. The City Survey Office,
City Survey Officer,
Aurangabad.
3. The Municipal Corporation of Aurangabad,
Through Municipal Commissioner,
Aurangabad.
4. Mrs. Manasi w/o Arun Joshi,
Age: 50 years, Occ: Service,
R/o M-2-201, Sector 13,
Navi Mumbai.
5. Shriram s/o Gajanan Kunte,
Age: 46 years, Occ: Service,
R/o. Dhayadhan Apartment,
Opp. Gokhale Park-III,
Chinchwadgoan, Pune.

... Respondents

Mr. Milind M. Joshi, Advocate for the petitioner.
Mr. S.K. Tambe, AGP for respondent-state.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 10-08-2016.

ORAL JUDGMENT :

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

2. The petition is pending while the matter has been coming up often before this court, there has been absence on behalf of the respondents except learned AGP representing the government authorities.

3. The petitioner contends that she is owner of the property bearing CTS No. 14516/A-3 bearing Municipal House No. 5-5-37/P ad-measuring 282.6 sq.mtr situated in Kranti Chowk, Aurangabad pursuant to a registered sale deed executed in favour of her husband way back in 1978. Learned counsel for the petitioner further refers to long lineage of transfers of said property from various persons up to the registered sale deed to her husband in 1978. He further points out that, after acquisition of ownership over aforesaid property while it was Municipal Council then, petitioner had applied for construction permission, however, subsequently Municipal Council was converted in to Municipal Corporation, as such, he had re-applied for construction permission, which was duly granted and the construction over the property had come up and completion certificate had also been issued in favour

of her husband by municipal corporation. Learned counsel further points out that, even the State government had recovered non-agricultural charges with penalty from her husband in respect of said property. He submits that, however, since his possession and residence over the property was being interfered with and obstructed, the husband forced to move a civil action against the corporation by way of regular civil suit no. 126 of 2010 which came to be duly decreed restraining corporation from causing any obstruction to the possession of plaintiff over the property without following due course of law.

4. Learned counsel further contends that, while the Divisional Commissioner, Aurangabad who was also holding an additional charge of the Aurangabad Municipal Corporation as an Acting Commissioner of the Corporation suddenly had directed to suspend the entries in respect of ownership in the PR card of survey no. 54. Learned counsel submits that, land survey no. 54 comprises various pieces of land under different city survey numbers one of which is the petitioners property having devolved on her through husband along with respondents no. 4 and 5. Apprehending threat to the rights, a writ petition had been filed before this court bearing no. 257 of 2009, the division bench of the high court had directed not to act upon suspended entries till petitioner is granted opportunity and hearing in accordance with law and status quo was

directed to be maintained. Accordingly, petitioner along with several similarly affected persons under the order passed by the Divisional Commissioner, Aurangabad/Acting Commissioner of Municipal Corporation against his order of directing suspension of the entries in P.R. card of survey no. 54 had approached the Superintendent of Land Records, Aurangabad. The superintendent of land records had confirmed the order passed by the Divisional Commissioner/the Acting Commissioner of Municipal Corporation. Aggrieved by said order passed by Superintendent of Land Records, the other owners over C.T.S. No. 54 had approached Deputy Director of Land Records, Aurangabad. Their appeals have been allowed and the matter is now pending before the revisional authority at the instance of respondent no.3, Aurangabad Municipal Corporation. In petitioner's case there had been delay of about 32 days in approaching the Deputy Director of Land Record. Delay condonation application of the petitioner had been initially rejected by Deputy Director of Land Record against which the petitioner were required to approach this court under writ petition no. 6078 of 2011. The high court had set aside the order rejecting delay condonation imposing cost of Rs.1000/- on the petitioner, directing the Deputy Director of Land Record to decide the appeal of the petitioner on merits.

5. Accordingly appeal came be to be numbered as no.

1212 of 2011 before the Deputy Director of Land Record. However, under operative order the Deputy Director of Land Record refused to pass any effective order getting bogged down under a consideration that, since the matters in respect of land survey no.54 are pending before the Hon'ble Minister (Revenue) it would not be appropriate to pass orders and as such the matter was disposed of without any orders further directing the petitioner to approach the state under revision for redressal of his grievance.

6. Learned counsel states that, while the same authority in respect of similarly situated persons had decided on merits in favour of the appellants, the petitioners case in spite of directions of the high court, instead of being decided as per the order of the high court, the Deputy Director of Land Record has erroneously declined to pass orders on merits. He submits that, this would cause grave prejudice to the petitioner. Before the revisional authority, the petitioner would be forced to make an approach where as the things are otherwise since on merits, the petitioner's case being similar to the cases of other appellants whose appeals have been decided by Deputy Director of Land Record in their favour, petitioner is entitled to similar kind of treatment.

7. Having regard to submissions and further that, there is no particular resistance to aforesaid, having regard to the facts as

has been narrated hereinabove it appears that it would be expedient that, the Deputy Director of Land Record decides on the appeal as had been filed by the petitioner against the order of Superintendent of Land Records on merits as had been directed by this court in writ petition no. 6078 of 2011. The request under the writ petition, under the circumstances appears to be legitimate, as such, impugned order stands set aside. The parties are relegated again to Deputy Director of Land Record for decision on appeal as directed under writ petition 6078 of 2011. Writ petition accordingly stands allowed. Rule is made absolutely accordingly in aforesaid terms.

8. The appeal of the petitioner be decided as early as possible preferably within a period of three months from the date of receipt of this order. Writ petition stands disposed of. Learned counsel for the petitioner states that, petitioner would cause appearance before the appellate authority on 23-08-2016.

(SUNIL P. DESHMUKH)
JUDGE

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