

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO. 39 OF 2015
IN WP/6926/2008

VITHAL GITARAM GAIKWAD
VERSUS
STATE OF MAHARASHTRA AND OTHERS

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Advocate for Applicant : Shri Indani Madanlal S.
AGP for Respondents 1 to 3 : Shri Korde D.R.
Advocate for Respondent 4 : Shri Bhise B.B. h/f Shri Choudhari D.J.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 28, 2016

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PER COURT :-

1. The review petitioner had, vide prayer clause (c), sought the quashing of the order dated 19.2.2008 passed by the District Collector, thereby, allotting a portion of the land purportedly belonging to the petitioner, for erecting a construction to respondent No.4 Georai Taluka Agriculture Produce Market Committee.

2. Vide prayer clause (d) the petitioner has sought the setting aside of the mutation entry No.2956. Both these prayers were considered by this Court while disposing off Writ petition No.6926 of 2008.

3. Shri Indani submits that this Court by its order dated 23.1.2015 had considered the law laid down by this Court in the matter of Shrikant R. Sankanwar and Ors. Vs. Krishna Balu Naukudkar [2003 (3) Bom.C.R. 45] and had directed that the mutation entry No. 2956 would be subject to the result of RCS No. 223 of 2005. It is, therefore, submitted that the

impugned order of the District Collector, dated 9.2.2008, which is the basis of the mutation entry No. 2956, should have also been made subject to the result of RCS No. 223 of 2005. This aspect has been either inadvertently left out or has been erroneously not observed in paragraph No.6 of the order under review.

4. The learned AGP appearing on behalf of respondent Nos.1 to 3 submits that in the light of the law laid down by this Court in the matter of Shrikant R. Sankanwar (supra), the right, title and interest of a litigant can be decided only by the Civil Court. The District Collector has not decided any dispute with regard to the right, title or interest of any of the litigating sides. He, therefore, submits that the claim of the Review Petitioner with regard to the suit property will have to be decided only on the basis of the petitioner establishing his title over the suit land. Naturally, whether the District Collector has rightly allotted the land to respondent No.4 - APMC or not, could be decided by the trial Court by deciding the title of the review petitioner / original plaintiff over the suit land.

5. The learned AGP, therefore, submits that there is no reason to review the order passed by this Court dated 23.1.2015 and no purpose would be served by restoring the Writ Petition since this aspect of the District Collector allotting the land to respondent No.4 could also be subject to the result of the suit.

6. Learned Advocate for respondent No.4 - APMC submits that they were

given the permission to construct on the particular portion of the suit land by respondent No.2. It is not disputed that the said suit land is subject matter of RCS No. 223 of 2005. Respondent No.4 - APMC is also a defendant in the said suit. He, therefore, submits that this review petition be dismissed since the claim of the review petitioner to the title over the suit land would be decided by the trial Court.

7. I have considered the submissions of the learned Advocates and Rule 32 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 (hereinafter, referred to as the "Rules of 1971").

8. Rule 32 reads as under:-

"32. Concessional grants to co-operative institutions :-

(1) Building site may be granted on the recommendation of the Deputy Register of Co-operative Societies, to Co-operative Societies, (excluding co-operative housing societies and Co-operative Central Banks) for the construction of office buildings, godowns, starting of factories for processing of agricultural produce and the like in occupancy rights under section 40, [by the Collector, if the occupancy price of the land does not exceed Rs. 25,000 and, with the sanction of the Commissioner, if the occupancy price exceeds Rs. 25,000 but does not exceeds Rs. 1,00,000 and, with the sanction of the State Government in other cases.

(2) Such grant may be made on inalienable and impartable tenure and on payment of occupancy price equal to 50 per cent of the market value of the land prevalent on the date of the grant which

may be determined having regard to the factors specified in sub-rule (3) of Rule 26.”

9. It is apparent that the Collector can pass an order under Rule 32 on the recommendation of the Deputy Registrar of Cooperative Societies in favour of the Cooperative Societies, excluding the Cooperative Housing Societies and Cooperative Central Banks, for the construction of a building. Since the Collector has not passed any order, thereby, taking away the purported right or title of the review petitioner, ends of justice would be met by subjecting the impugned order of the Collector dated 19.2.2008 to the result of RCS No.223 of 2005. Though the petition was disposed off by subjecting the mutation entry to the result of the suit, the order of the Collector, dated 19.2.2008 does not find a mention in paragraph No.6 of the order of this Court dated 23.1.2015.

10. In the light of the above and after considering the submissions of the litigating sides, I find that the ends of justice would be met by slightly modifying paragraph No.6 of the order under review.

11. In the light of the above, the review petition is partly allowed. Paragraph No.6 of the order dated 23.1.2015 delivered by this Court in Writ Petition No. 6926 of 2008 shall read as under:-

“ 6. This Court, in the case of Shrikant R. Sankanwar and others Vs. Krushna Balu Naukudkar [2003 (3) Bom.C.R. 45], has

crystallized the law that revenue entries are only for fiscal purposes and do not decide or conclude the title or ownership of any individual. The judgment of the Civil Court would bind the revenue officers and all revenue entries shall be subject to the decision of the Civil Court, wherein, the right, title and interest of an individual can be established. As such, the impugned mutation entry No.2956 and the impugned order of the District Collector bearing No. RB/2/LND/1/2996 dated 19.2.2008 shall be subject to the result of RCS No.223 of 2005.”

12. The order dated 23.1.2015 stands corrected accordingly and the corrected copy be issued.

(RAVINDRA V. GHUGE, J.)

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