

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

921 WRIT PETITION NO. 7145 OF 2013

ANIL VITTHAL DUDILE AND OTHERS
VERSUS
CHANDRAKANT VITTHAL DUDILE AND OTHERS

Shri. V.D. Gunale, Advocate, for petitioners.

Shri. V.P. Golewar, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 27 SEPTEMBER 2016

ORDER:

1) The petition is filed to challenge the order made by the District Superintendent of Land Records on 26-6-2013 on an application filed by respondent Chandrakant Dudile for making correction in the record. Both the sides are heard.

2) It appears that the scheme of consolidation of holding was implemented in village Murambi in the year 1984. It is the case of Chandrakant that under a sale deed dated 17-11-1984 he had purchased the portion of 5 acres

and 13 gunthas from Survey No.45/A and portion of 2 acres and 2 gunthas from Survey No.45/AA. It is his case that due to this transaction he had become owner of 7 acres 15 gunthas and this portion ought to have been shown in his name in land Gat No.102 which was formed after consolidation from Survey Nos.45/A and 45/AA. He has specifically contended that he is owner of at least of the portion of 2 hectares 97 R and he is in actual possession of this area. On the basis of this contention, the order is made by the District Superintendent to the officers to see that the area is measured after taking charges of measurement from Chandrakant and then make a proposal if some error is noticed in the record.

3) The learned counsel or the present petitioners placed reliance on the decision given by this Court in **Writ Petition No.1936 of 2015** (Vyankat v. Namdeo), **Writ Petition No.3834/2012** (Gunda Tuka v. Pandharinth Ramrao) decided at Principal Seat and decision in **Writ Petition No.3135/1996** with Second Appeal No.88/2015 decided at Principal Seat (in case of Dattu Appa v State of Maharashtra) and made submission that in view of the

scheme of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and the provision of section 32 of the said Act, the same authority could not have made such order and the record could have been challenged before appellate authority.

4) On the other hand, learned counsel for the respondents placed reliance on some observations made in the Apex Court in the case reported as **2013 AIRSCW 1526 (State of Orissa v. Mesco Steels Ltd.)**. In this case the Apex Court has laid down that if the officer of the Department makes communication to the officer and something is to be done on the basis of that communication, the said communication cannot be called as decision or order and so that cannot be challenged in the proceeding like writ petition.

5) It appears that suit is filed by present petitioner Anil Dudile for removal of encroachment of 57 R portion alleged made by Chandrakant over his portion. Present petitioner had also purchased some portions of land Survey Nos.45/A and 45/AA on 17-11-1983 itself from the

owner. Thus, the matter is pending before Civil Court for deciding the title at least of Anil and that can be decided on the basis of sale deeds. On the other hand, there is power with the officer of the Land Records to correct clerical mistake. When it is the case of the present petitioner that respondent Chandrakant is in possession of at least 57 R portion of the petitioner and both are relying on the sale deeds executed in their favour, the factual position needs to be ascertained by the officers. Only for doing so, the District Superintendent has asked his officers to ascertain the factual position. That record will certainly help both the sides and also the Civil Court. In view of these circumstances, this Court holds that there is no possibility of interference in the aforesaid communication made by the District Superintendent of Land Records to his officers to take measurement. The petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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