

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7471 OF 2015

Gram Panchayat, Wangi

... Petitioner

V/s.

Ramchandra Sakharam Jadhav & Ors.

... Respondents

Mr. M.B. Deshmukh for petitioner.

Ms. Aparna D. Vhatkar, A.G.P. for State.

CORAM : M.S. SONAK, J.

DATE : 16 JUNE, 2016.

PC. :

1 The challenge in the present Petition is to the order dated 09.09.2014 made by the Minister (Revenue), allowing the Appeal instituted by the Respondent No.1 against the order dated 22.05.2014 made by the Deputy Director, Land Records.

2 This Petition concern the entries in revenue records relating to Survey No.337. There is no dispute that the name of the petitioner Panchayat was recorded in the revenue records right from the year 1983. After considerable delay, respondent No.1 applied for inclusion of his name in the survey records and consequently deletion of the name of the Panchayat.

3 The Superintendent of Land Records by order dated 26.02.2010 allowed the prayer made by respondent No.1. If the said

order is perused, it does appear that the main reason given by the Superintendent, was the absence of the representative of Panchayat.

4 The petitioner Panchayat then appealed to the Deputy Director, Land Records, which appeal was allowed by the order dated 22.05.2014. The Minister (Revenue) has, however, set aside the said order.

5 Upon perusal of the impugned order, I am satisfied with the same calls for interference. The impugned order, quite heavily relies upon the N.O.C. issued by the Panchayat to respondent No.1 to operate a flour mill and the taxes recovered in respect thereof. However, there is no serious consideration of the petitioner's contention that the N.O.C. had been granted to operate the flour mill from the house in the adjacent property which is admittedly owned and occupied by respondent No.1 and the collection of taxes is also in respect of the said premises. The learned counsel for the petitioner has contended that on the basis of such N.O.C., respondent No.1 has encroached into the adjacent property and, therefore, there is no question of affecting any mutation.

6 At this stage, it is not possible to examine as to whether respondent No.1 has indeed encroached upon the property survey No.337. However, learned counsel for the petitioner is right that necessary consideration was required to be afforded to his plea. The learned counsel for the petitioner also alleged that the original order made by the Superintendent of the Land Record proceeds on the basis that the Panchayat failed to remain present. Taking into consideration

and the circumstance that the Panchayat is the petitioner, I am satisfied that the Superintendent of Land Records ought to have afforded an additional opportunity to the Panchayat before directing changes in survey records, which were in the name of Panchayat since the year 1983. For all these reasons, the impugned order is set aside.

7 Notwithstanding setting aside the impugned order in the facts and circumstances of this case would not be appropriate to merely uphold the order made by the Deputy Director of land records. Instead, it would be more appropriate if matter is remanded to the Superintendent of land records so that both respondent No.1 as well as the petitioner have full opportunity to place relevant material before him. Accordingly, even the order dated 22.05.2014 made by the Deputy Director and the order dated 26.02.2010 made by the Superintendent of land records are hereby set aside. The matter is remanded to the Superintendent of land records who shall decide the application of respondent No.1 afresh after giving every opportunity to both the petitioner as well as respondent No.1 to put forth their respective case.

8 The petitioner and respondent No.1 to appear before the Superintendent of land records on 08.08.2016 at 3.00 p.m. and produce authenticated copy of this order. Further, the petitioner is directed to serve a copy of this order upon the respondent No.1. In case respondent No.1 does not appear before the Superintendent of land records on the date given, the Superintendent of land records is requested to issue an appropriate notice to the respondent No.1.

9 Rule is accordingly made absolute to the aforesaid extent.
There shall be no order as to costs.

10. All concerned to act on the basis of authenticated copy of
this order.

(M.S. SONAK, J.)