

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO. 30221 OF 2016**

Shri Eknath Ganpat Pasalkar & Ors.

..Petitioners

Vs.

Shri Ramdas Yamanappa Akkale & Ors

..Respondents

Mr. S. K. Shinde i/b Mr. T. D. Deshmukh for the Petitioners

Mr. S. D. Rayrikar AGP for the Respondent No.3

CORAM : R. M. SAVANT, J.

DATE : 21st NOVEMBER, 2016

P.C.

1 The rejection of the stay application by the Additional Collector, Pune by the impugned order dated 24-11-2016, is the subject matter of the above Writ Petition. The lands in question are Gat No.733B, Hissa No.10B admeasuring 1 Hectare 62 Ares and Gat No.733B, Hissa No.10B, admeasuring 1 Hectare 21 Ares situated at village Patas, Tal Daund, Dist Pune. The said lands were allotted to the Petitioners as project affected persons and accordingly their names were entered in 7/12 extracts of the said lands. It seems that the Petitioners executed an Agreement to Sale in favour of the Respondents on 6-7-2007 on the basis of the terms and conditions mentioned in the said agreement. One of the conditions was that the Petitioners would execute the Sale Deed in favour of the Respondents on permission being obtained from the Competent Authority under the said Resettlement Act. It seems that inspite of the said permission obtained, the Respondents did not

fulfill their obligations under the said Agreement to Sale. The Petitioners however had executed a registered Power of Attorney dated 6-7-2007 in favour of the Respondents as a consequence of which the Respondents executed a Sale Deed in their favour in respect of the lands in question. The Petitioners therefore filed Special Civil Suit No.62 of 2012 seeking declaration that the Sale Deed dated 21-1-2011 executed by the Respondents in their own favour was illegal, null and void. In the said Suit, the Respondents filed counter claim seeking specific performance of the agreement to Sale dated 6-7-2007, notwithstanding the Sale Deed executed by them in their own favour on 21-1-2011. It seems that the Respondent had filed an application for interim injunction in the counter claim filed by them. The said application came to be rejected by the Trial Court holding that the Respondents had failed to prove their lawful possession of the land in question. The Respondents it seems filed an application with the Talathi for entering their names in 7/12 extract on the basis of the said Sale Deed dated 21-1-2011. The Talathi accordingly acted on the said application and entered the names of the Respondents vide Mutation Entry No.11224. Against the said Mutation Entry, the Petitioners preferred RTS Appeal No.257 of 2011 before the Sub Divisional Officer (SDO). The SDO by order dated 8-10-2012 directed the Talathi to conduct fresh inquiry with respect to certification of Mutation Entry No.11224. The Talathi on such directions conducted a fresh inquiry and cancelled the Mutation Entry in the 7/12 extract.

2 The Respondents aggrieved by the said order dated 31-5-2013 passed by the Talathi preferred RTS Appeal No.576 of 2013 before the SDO. The SDO allowed the said Appeal preferred by the Respondents as a result of which Mutation Entry No.11224 came to be restored. The Petitioners have therefore preferred RTS Second Appeal No. 777 of 2016 before the Additional Collector. In the said Appeal, the Petitioners preferred an application for stay. The said application for stay has been rejected by the Additional Collector on the ground that the Sale Deed dated 21-1-2011 in favour of the Respondents being as yet not cancelled or set aside, the Petitioners would not be entitled to interim reliefs. The Additional Collector has also referred to the Suit filed by the Petitioners as also the counter claim filed by the Respondents.

3 In my view, having regard to the aforesaid background of facts, it would be just and proper to direct the Additional Collector to hear and decide the said Appeal latest by 31-1-2017. Till then status-quo in respect of the Mutation Entry is directed to be maintained. The Learned AGP Mr. S. D. Rayrikar is directed to communicate the instant order to the concerned authorities.

4 With the aforesaid directions, the above Petition is disposed of.

[R.M.SAVANT, J]