

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

WRIT PETITION NO. 2854 OF 2016

Rakshitkukmar s/o Shivaji Aher
age 30 years, occ. Advocate
r/o "Shanta" Ramkrishna Nagar
Parbhani, Tq. & Dist. Parbhani.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary
Revenue and Forest Department
Mantralaya, Mumbai 32.
2. The Deputy Director of Land Records
Aurangabad Region, Aurangabad.
3. Ashok s/o Bajirao Aher
age 65 years, occ. Pensioner
r/o "Shanta" Ramkrishna Nagar
Vasmat Road, Parbhani
Tq. & Dist. Parbhani
4. The Vaishya Nagari Sahakari Bank ltd.
Main Branch, Sardar Patel road,
Parbhani
Tq. & Dist. Parbhani

.. RESPONDENTS

Mr. I.D. Maniyar, advocate for petitioner.
Mr. A.B. Basarkar, AGP for the State.
Mr. V.A. Bagdia, advocate for respondent no. 3.
Mr. M.V. Navandar, advocate for respondent no. 4.

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**CORAM : S. B. SHUKRE, J.
DATE : 31st JANUARY, 2017.**

ORAL JUDGMENT :

1. Heard.
2. Rule. Rule made returnable forthwith.

3. Heard finally by consent of learned counsel for the respective parties.

4. On going through the impugned order dated 12th January, 2016, it is noticed that it is based upon the reasons which stand in contra distinction with each other. Respondent no. 2 agrees that the question of ownership is an issue which can be decided only by a Civil Court and yet, reaches a conclusion that he can decide the issue involving justification for recording mutation entry in the name of petitioner or in the name of respondent no. 3.

5. It is true that mutation entry serves only fiscal purpose and nothing more. That is the settled law. But, while recording mutation entry, the concerned authority is also required to take into consideration the right of the party to get the property mutated in its name as, this right would certainly be linked with the issue of ownership of that property. Tomorrow, if the issue of ownership is decided against that party, naturally and consequentially, a change would have to be made to the mutation entry. Therefore, in a case as the present one, where a civil suit for deciding the issue of ownership is pending between the parties, it is better, for the sake of convenience and also to avoid multiplicity of mutation entries, that the appeal filed challenging the mutation entry, itself is kept pending till the issue of ownership is decided. In such a case, it will also be in the interest of parties that the original mutation entry, which has been under challenge in the appeal, is also kept in abeyance till the issue of ownership is finally decided by the competent civil Court. Needless to mention that, in the present case, temporary injunction under Order 39 Rules 1 and 2 of the

Code of Civil Procedure has already been granted by the competent Civil Court and, it appears that by this injunction, petitioner has been restrained from creating any third party right in the property in dispute till final disposal of the suit. This order also indicates that possession of respondent no. 3 has been protected. Of course, this order is under challenge before the appellate Court. But, no stay to the effect and operation of the order granting temporary injunction has so far been granted by the appellate Court. This would provide additional reason for me to hold that even the basic mutation entry, in respect of which dispute has been raised, is kept in abeyance till the issue of ownership is decided by the competent Civil Court.

6. In this view of the matter, I am of the view that this writ petition deserves to be allowed and it is accordingly allowed with costs. Further proceedings of appeal pending before respondent no. 2 are stayed until final disposal of Spl. Civil Suit No. 9/2015 and, till that time, mutation entry no. 6758 is also kept in abeyance. Rule made absolute in above terms.

(S. B. SHUKRE)
JUDGE