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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5804 OF 2017

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| 1. | Kamlakar s/o Ananda Patare
Age - 45 years, Occ - Service
R/o B.I.T. Chal, Building No. 3,
Room No. 274, Majhgaon,
Mumbai | PETITIONERS |
| 2. | Raghu s/o Vithoba Narsale,
Age - 55 years, Occ - Agriculture
R/o Gooregaon, Taluka - Parner,
District - Ahmednagar | |

VERSUS

- | | | |
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| 1. | The Additional Commissioner (Revenue)
Nashik Division, Nashik | RESPONDENTS |
| 2. | The Additional Collector,
Ahmednagar | |
| 3. | The Sub - Divisional Officer,
Parner, Ahmednagar | |
| 4. | The Tahsildar, Parner,
District - Ahmednagar | |
| 5. | Sidharth Ambu Patare,
Age - 45 years, Occ - Agriculture | |
| 6. | Bhivsen Ambu Patare,
Age - 43 years, Occ - Agriculture | |
| 7. | Manisha Ananda Patare,
Age - 40 years, Occ - Household | |

All above R/o Goregaon,
Taluka - Parner, Nehru Nagar,
Pimpri, Pune, 18

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Mr. Nitin V. Gaware, Advocate for the petitioner

Mr. S. N. Kendre, AGP for respondent - State
Mr. D. R. Jethliya, Advocate for respondents No. 5 to 7

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 2nd AUGUST, 2017

ORAL JUDGMENT:

1. Rule. Rule is made returnable forthwith and heard learned advocates for the parties finally with consent.

2. There is no particular dispute in respect of factual position that pursuant to sale deed executed in favour of present petitioners, mutation entry bearing No. 2853 had been taken around 2010 and the same had been subjected to litigation and the last of the orders passed in revision by Additional Commissioner is subject matter of present writ petition.

3. Mr. Gaware, learned advocate purports to point out that in similar situation, as a matter of fact his contention is present petition is a left out matter, writ petition No. 12743 of 2016 had been allowed and the matter was remitted to revisional authority.

4. Learned advocate submits that the petitioners have purchased property on exclusive separation of properties taking place among family members, under a compromise. The

property had been purchased under a registered deed of sale. Pursuant to sale deed, authority of first instance, Tahsildar, had approved mutation entry under his orders, whereas, in appeal therefrom before Sub Divisional Officer, at the instance of respondents, the same purportedly had been set that aside, primarily for some civil litigations were pending and he had directed to enter petitioners' names in other rights column rather than in ownership. As such, the petitioners had been in appeal before Additional Collector. Additional Collector had allowed the appeal directing reinstatement of petitioners' names in ownership column. That order of Additional Collector had been subject matter of challenge before Revisional Authority. Learned advocate submits that revisional authority has decided the matter rather cursorily without letting the petitioners to have a proper opportunity to deal with the matter. He further purports to point out that Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, which had weighed with the authority, no particular material in respect of the same can be said to have been made available, except submissions on behalf of the respondents. He, therefore, urges to treat present writ petition similarly as circumstances have been treated in writ petition No. 12743 of 2016.

5. Learned advocate Mr. Jethliya appearing on behalf of the respondents submits that the respondents have taken a specific objection with regard to registration of sale deed, having regard to position as would be emerging from provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act. The same may not have been ostensibly referred to by two authorities namely, Sub Divisional Officer and the Additional Collector, yet factual position is that transaction of sale is affected by application of said enactment. In the circumstances, order rendered by Sub Divisional Officer was correct, also for different additional reasons in the same. The appellate authority, however, unnecessarily got overwhelmed by the aspect that deeds are registered and as such, under the rules of Maharashtra Land Revenue Code, it had been incumbent to record names of petitioners in ownership column. Revisional authority, in the circumstances, according to learned advocate, has rightly adjudged the matter and has passed the order impugned in present writ petition.

6. Mr. Jethliya submits that Additional Commissioner, while deciding the revision, has rightly taken into account respective land areas from various land gut numbers and had appreciated

the same to be constituting fragment, pursuant to the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act.

7. Perusal of the order, however, shows that besides the reference to respective areas from respective land gut numbers, it has not been made clear under impugned order what had been fragment under the enactment for the area concerned or for that matter any notification has been there in this respect.

8. Apart from aforesaid, reasons which have been appearing in the order dated 31st January, 2017 in writ petition No. 12843 of 2016, refer to that judgment of the Commissioner falls short of consideration of litigations referred to in paragraph No. 8 of said order in writ petition. In said writ petition, the court also further appears to have considered that it had been necessary for the Additional Commissioner to apply mind to the material aspects involved in the case. The court, under the circumstances, had deemed it appropriate to remit the matter to the revisional authority for reconsideration afresh of the matter in accordance with law by giving opportunity to contesting parties and to decide the same expeditiously.

9. Taking overall view of the matter, facts and circumstances

of the case in present matter as well would call for a similar treatment as has been given to the matter in writ petition No. 12743 of 2016.

10. As such, writ petition succeeds partly. Impugned order dated 21st October, 2016 passed by Additional Commissioner, Nashik Division, Nashik in RTS Revision No. 422 of 2011 stands set aside. RTS Revision No. 422 of 2011 is restored to its position as had been subsisting before impugned decision has taken place. Revisional Authority to proceed with the matter as expeditiously as possible, giving opportunity to contesting parties and dispose of the same preferably within a period of three months from the date of appearance of the parties. Parties to appear before revisional authority on 21st August, 2017. Rule is made absolute in aforesaid terms.

11. It is further made clear that observations made hereinbefore in this order are for the purpose of decision in writ petition and have efficacy no further. Revisional authority shall decide the matter on its own merits without getting bogged down by observations made in this order.

[SUNIL P. DESHMUKH, J.]