

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7712 OF 2016

- 1] Deorao S/o Maruti Deokar
Age – 30 years, Occu – Agriculture,
R/o Mardi, Tq. Lohara,
Dist. - Osmanabad
- 2] Tatyasaheb S/o Nagorao Patil,
Age – 39 years, Occu – Agriculture,
R/o Makni, Tq. Loahara,
Dist. - Osmanabad
- 3] Kishor S/o Janardhan Sathe
Age – 55 years, Occu. - Agriculture,
R/o Makni, Tq. Lohara,
Dist. - Osmanabad

.. Petitioners

VERSUS

- 1] The State of Maharashtra,
Through the Secretary,
Revenue & Forest Department,
Maharashtra State, Mantralaya,
Mumbai – 32
- 2] The Tahsildar, Lohara,
Tq. Lohara, Dist. - Osmanabad
- 3] The Sub-Divisional Officer,
Omerga, Dist. - Osmanabad
- 4] The Sub-Registrar,
Lohara, Tq. Lohara,
Dist. - Osmanabad
- 5] The Dy. Superintendent of
Land Records, Lohara,
Tq. Lohara, Dist. - Osmanabad

6] Smt. Jyoti Chavan,
Age – Major, Occu. - Service,
As Tahsildar, Lohara,
Dist. - Osmanabad

7] Tamanna Chanbasappa Ghongade
Age – 70 years, Occu. - Agriculture,
R/o Loahara, Tq. Lohara,
Dist. - Osmanabad

.. Respondents

Mr. Sachin V. Kuptekar, Advocate i/b Mr. V.D. Salunke, Advocate for the petitioner

Mr. A.R. Kale, A.G.P. for the respondent/State

Mr. V.C. Solshe, Advocate for respondent no. 7

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

DATE : 16-06-2017

ORAL ORDER :

1. The counter affidavit / rejoinder of the petitioners is filed. However, the Advocate of the contesting respondent no. 7 proceeds on the basis of denials. We record that none of the allegations against respondent no.7 have been admitted by the seventh respondent.

2. The petitioners have challenged the legality and validity of communication dated 20/01/2015 from the Tahsil office, Lohara signed by the Tahsildar. This informs the Sub Registrar of Assurances, Lohara, Tq. Lohara that as far as land survey no. 177 is concerned, the total area is 6 H and 20 R. There are about 8 sub-divisions. These sub-divisions

survey no. 177/1, 177/2/1, 177/2/2, 177/3, 177/4/1, 177/5, 177/6, 177/7, 177/8 are Inami lands. These are subject matter of certain proceedings, on account of breach of the terms and conditions of which they were granted. In such circumstances, no transactions and particularly in the nature of sale should be allowed to be registered by the Sub-Registrar of Assurances and the registration of deeds / documents should be kept in abeyance till a no-objection certificate is obtained from the Tashil office.

3. The petitioners have contended that they are agriculturists residing in different villages in Lohara Taluka of Osmanabad district. They are owners of land survey no. 177/1 admeasuring 46 R and 177/4//1 admeasuring 53 R situated in this village. They rely upon a registered sale deed dated 15/06/2013. They do not dispute that original land survey no. 177, namely, inam of village Lohara admeasures 6 H 20 R, namely, 15 A and 20 G. Eight part / pot hissas match the description in the communication from the Tahsildar, however, the petitioners assert that there was a consolidation scheme and implemented in the village in the year 1980 and 8 gat numbers are formed having different area. The petitioners relied upon 7/12 extracts. They would submit that Taluka Inspector of Land Records, Lohara has also communicated to the Tahsildar the details of these gat numbers.

Then the petitioners rely upon a further sub-division of survey no. 177/4 admeasuring 83 R into two parts i.e. 177/4/1 and 177/4/2 admeasuring 53 R and 30 R respectively. They rely upon annexure 'B' which are copies of the 7/12 extracts of these gat numbers. The petitioners submit that they intended to purchase gat numbers 177/1 and survey no. 177/4/1 from their owners. Accordingly, they caused publication of a public notice through their Advocate evincing their interest in these lands and informed the public at large that in the event anybody has any objection to the transactions which are proposed between the owners and petitioners, they must raise their objections within the specified time. The petitioners then state that no objection was raised by any respondent or for that matter anybody else as well. That is how they purchased the land by registered sale deed dated 15/06/2013 for a consideration of Rs.38,34,000/-. It is then claimed that this land situated in Lohara comes in the city area. There was a gram panchayat. The procedure was followed and some plots were sold. One of the villager has objected to the entries in the record of village panchayat and for the sale, objections were forwarded to the Block Development Officer, Panchayat Samiti, Lohara. However, the Block Development Officer passed an order annexure 'E', holding that there was nothing illegal in the transaction.

4. Then seventh respondent lodged objections with each and every Authority set out in paragraph 7 of the petition. Paragraph no.7 and 8 of the Petition read as under:-

“7. The Petitioners submit that, the Respondent No.7 Chanbasappa Tamanna Ghongde lodged objection to each and every authority i.e. Gram Panchayat, Tahsildar, Collector, Lok ayukta and raised objection that, it is an Inam land of Vyankatesh Devasthan Trust and therefore the Petitioners may not be allowed to dispose of the said land. The Petitioners submit that, in view of the letter of the Respondent No.7 dated 25.08.2014 the Tahsildar issued letter to the Deputy Superintendent of Land Record and asked information. The Respondent No.5 who informed that, as per record 2 A of land in Survey No. 177 is a Inam land of Balaji Devasthan. However, there is no boundaries, there is no record who is in possession of area and therefore in which gat number Inam land appears. It was asked to submit report of the same. The copy of complaint dated 25.08.2014 by the Respondent No.6 and letter dated 17.01.2015 by the Tahsildar Lohara to the Deputy Superintendent of land Records are annexed here at **Exhibit 'F'**.

8. The Petitioners respectfully submits that, Tahsildar is not aware of the nature of Inam, kind of Inam, boundaries of Inam land etc. she asked information from the Superintendent of Land Records. However, without getting any information from the

competent authority she issued letter dated 19.01.2015 she is not aware about the details of the Inam land therefore file is submitted to the S.D.O. However without any information and record with the Tahsildar she wrote impugned letter dated 20.01.2015 to the Sub-Registrar, Lohara stating that, land survey No.177 having 8 pot hissas is the Inam land. Conditions of Inam are violated therefore no transactions of the said land can be registered without no objection of the Tahsildar. The copy of letter dated 19.01.2015 issued by the Tahsildar to the S.D.O. is annexed here at **Exhibit 'G'** whereas the copy of impugned letter dated 20.01.2015 issued to Sub-Registrar Lohara is annexed here at **Exhibit 'H'**. ”

5. Then in paragraph no.9 of the Writ Petition, the petitioners state that they applied for the requisite information by giving an application under the Right to Information Act, 2005. They obtained information about the inam land, kind of inam, boundaries or gat number of inam land etc. The office of the Land Records by information dated 11/02/2015 and 10/07/2015 supplied this information. Thereafter, they sought information from the office of the Tahsildar as well. Then the petitioners allege that no details are forthcoming with regard to the status of the land as Inam land. They found that the seventh respondent has his own motives in objecting to the transactions. The petitioners categorically assert that respondent no.7 was pressurizing

them by raising some complaints.

6. However, as we have clarified above, we do not wish to go into these complaints for the simple reason that the admitted position is that the petitioners have approached a competent civil Court and filed a civil suit against the seventh respondent complaining about the obstruction and impediment created allegedly by him. That suit is admittedly pending. The petitioners have presently been protected by the interim arrangement. In these circumstances, the petitioners would complain that for a pure private dispute and raised by the seventh respondent and without ascertaining the position from the records, that the lands in question are not inam lands, the said communication has been issued. That communication is beyond the powers of the Tahsildar for that is the direct interference in the power, authority and jurisdiction of those incharge of registration of documents / instruments in terms of the Registration Act, 1908.

7. Learned Advocate appearing for the petitioners reiterated these contentions before us. He would submit that this Court can strike down this communication for the seventh respondent has ample remedies available to him in law, he can object to all the transactions and undertaken by the petitioners by approaching competent authorities and Courts. At his instance and at his behest, the Tahsildar should not have

issued the subject communication.

8. To the Petition, despite issuance of the notices, we do not have any reply from the State and the other authorities. We would proceed on the footing that they have nothing to say with regard to legality and validity of the communication, as is impugned in the Petition. The seventh respondent has filed an affidavit. In the affidavit, the seventh respondent has sought to support the action of the Tahsildar. He would submit that the seventh respondent has been made a party respondent to the Petition by the petitioners though they are seeking no relief against him. The petitioners have used such an opportunity to make a false and baseless allegation against him. In paragraph 5 of the affidavit in reply (page 92 of the Petition), the seventh respondent states that though the petitioners have purchased survey no. 177/1 and 177/4/1 from their vendors but the same is inam land and already a dispute is going on between seventh respondent and the petitioners in civil court. It is in these circumstances that he would submit that there was a representation given by him and other Gram Panchayat members to the Collector, Osmanabad, Chief Executive Officer, Zilla Parishad, Osmanabad and the Block Development Officer, Lohara. That complaint pertains to the mutation of the alleged plots in favour of the petitioners. In response to that representation, the Chief Executive Officer,

Osmanabad, Zilla Parishad directed the Extension Officer, Panchayat Samiti, Lohara by letter dated 08/09/2014 to hold an Inquiry. Such an Inquiry is complete and the Extension Officer has submitted his report to the Block Development Officer. The Block Development Officer also gave his independent opinion that the mutation of the alleged plots has been done illegally and advised the Deputy Chief Executive Officer of the Zilla Parishad, Osmanabad, to take action against the responsible persons. On the basis of the report dated 02/12/2014, the Chief Executive Officer and Deputy Chief Executive Officer directed the Block Development Officer to take action against the persons responsible for the alleged discrepancies in the mutation entries but the Block Development Officer instead of taking action, conducted an enquiry and gave a clean chit. He gave the clean chit contradicting his earlier report. It is in these circumstances, the seventh respondent had to approach the Lok Ayukta of the Maharashtra State. He had also approached the Divisional Commissioner, Aurangabad, who directed that all the details of inam lands should be obtained. That is how the Deputy Chief Officer, Zilla Parishad, Osmanabad, by letter dated 06/10/2016 has informed the Collector that the plots are illegally mutated. The Nagar Panchayat, Lohara was directed to cancel these mutation entries and to take action against the responsible Block Development Officer.

9. It is in these circumstances, the seventh respondent would submit that he acted bonafide and the Tahsildar has only followed the directions of the Collector and Commissioner of the Revenue District. Therefore, no allegations against him should be taken into consideration by this Court.

10. What we have thereafter is an counter affidavit / rejoinder and to the extent that is relevant for the purpose of this Petition, we would refer to it. The respondent no. 7 states that the land is inam land and there is record i.e. Namuna No. 9 Inam Patrak, where it shows that 2 acres of land from survey no. 2-A 177 is an inam land, however, the petitioners assert that the lands under consideration survey no. 177/1 and survey no. 177/4/1 cannot be termed as Inam land. They would submit that the letter issued by the Tahsildar dated 29/07/2010 to the Collector contains information regarding Deosthan inam lands in old Lohara Taluka. So far as village Lohara (Budruk) and Lohara (Khurd) in respect of Vyankatesh Deosthan, the information is provided that it is regarding survey no. 177. Survey no. 177 admeasures 6 H and 20 R. The petitioners are not shown to be holding any Inam land. The revenue entries and record would indicate that the said survey numbers are not inam lands. The petitioners have also relied upon other documents in

paragraph no.2 of this counter affidavit. They have also relied upon the spot inspection by the Deputy Director of Land Records who has prepared a panchanama after the spot visit. He has clearly stated that there is no inam land. It is in these circumstances, the petitioners justify their action of filing Regular Civil Suit no. 140 of 2015 for injunction against the seventh respondent and his sons. They rely upon an order of temporary injunction passed by the Civil Judge Junior Division, Lohara dated 04/08/2016. They therefore assert that there is no inam land neither is there any record of the same. Still, the Tahsildar who had been posted there, has issued the impugned communication and recently joined Tahsildar is also interested in pursuing that course. However, the petitioners who are relying on certain old records, submit that there is no remark or entry in any records that the said land is inam land. Then, they rely upon the communication from the seventh respondent.

11. From perusal of these documents, we are of the opinion that even if the seventh respondent's Advocate would justify the impugned action, what is material and relevant is that the seventh respondent has ample remedies available to him. Even if the statutory authorities were assisting him and for some time but later on have allegedly backed out, he can proceed in his own and substantive proceedings. Presently, it would not be safe to rely upon his version and to justify the impugned action.

Equally, as far as petitioners are concerned, they may have impleaded the seventh respondent as party to this petition but their allegations against the seventh respondent are subject matter of a Regular Civil Suit, the details of which we have recorded above. That suit is pending. The seventh respondent and his family is party to the same and an order of temporary injunction is issued in favour of the petitioners. Without prejudice to the rights and contentions of both private parties in that suit, we have considered the legality and validity of the impugned communication.

12. We have found from the record that Tahsildar could not have issued the impugned communication unless there was a firm opinion recorded or a conclusion reached in accordance with law that the subject lands are inam lands. That entire survey no. 177 is inam land and that the sub-division made was not in accordance with law. That despite such sub-division being duly recorded and mutated, there is no sanctity to the recent revenue record for there are acts of omissions and commissions not only by private parties but at their behest by statutory authorities. None of these conclusions are reached by the Statutory Authorities and in accordance with law. Merely because he is acting under the directions or the orders of the authorities functioning under the Maharashtra Land Revenue Code, 1966, the Tahsildar should have been aware that it is a distinct statute. That may record entries in respect of certain lands but

that is to facilitate collection of land revenue. Such entries by themselves are not conclusive of the status as inam lands or the right, title or interest of any party in them. Equally, the State cannot, by issuing mere directions to effect changes or alteration in the revenue entries, arrive at a conclusion that no private transactions or documents in relation to such lands can be allowed to be recorded and even if deeds are executed, they should not be registered. These are private transactions between two private persons. They claim that these lands are not affected by any order or direction of the statutory authorities nor can they be subjected to any terms and conditions from the State. It may be that there is a conditional grant referred but presently that issue is not conclusively decided. There are disputes pending. The Tahsildar should have been cautious and careful when allegations and counter allegations are made by private entities and persons against each other. Either of them cannot be influencing the decision or action of the Tahsildar. The Tahsildar should have been aware that he must possess independent statutory power to interfere with the functioning of the authorities under the Registration Act, 1908. He has not referred to any such power flowing from that enactment or for that matter from the Maharashtra Land Revenue Code, 1966. He could not have proceeded to direct the registering authority not to register any documents without his no-objection. He should have been further aware that the Maharashtra Land

Revenue Code does not confer such powers in him. He cannot take over the functions of a civil Court. In the circumstances, the issue of right, title and interest of the parties to the civil suit in respect of these lands and their status are matters which must be decided by distinct statutory functionaries and under different statutes. The Tahsildar had no business therefore to direct the registering authority not to register any documents. It is common ground that even if these documents are registered, it is not as if the issue of right, title and interest in the immovable property, which is subject matter of the sale deed, is concluded. The issue can be raised and agitated irrespective of registered documents holding the field. In the circumstances, there is a clear dispute and the same is pending in a civil Court. Both the petitioners and the seventh respondent are aware that their remedy to question the transaction lies elsewhere. Even the seventh respondent travelled from authorities to authorities such as Collectors, Commissioners right upto the Lok Ayukta. He is also defending a civil suit. He has ample opportunities to defend the suit and even raise an independent claim. In such circumstances, we do not think that the Tahsildar was justified in issuing the impugned communication.

13. As a result of the above discussion, the Writ Petition succeeds. The impugned communication is quashed and set aside. However, we clarify that though we have quashed and set aside the

impugned communication, the issue of right, title and interest in the immovable property, status of the lands, can still be agitated and decided. That can be decided without being influenced by the outcome of this Petition.

14. We keep open all the contentions of the petitioners and the seventh respondent and clarify that we have not expressed any opinion on the same. There would be no order as to costs.

[MANGESH S. PATIL]
JUDGE

[S.C. DHARMADHIKARI]
JUDGE

arp/