IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 LETTER PATENT APPEAL NO. 12 OF 2013
WITH CA/1177/2013 IN LPA/12/2013

KISAN BABU PAWAR
VERSUS
THE STATE OF MAH AND ORS
...
Advocate for Appellant : Mr. Garud N.C.
AGP for Respondents/State : Mr. S.B. Yawalkar
Advocate for Respondents : Mr. V.A. Dhakne for R/7
...

CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.
DATE : 21.06.2017.

P.C. :-

. This appeal is directed against the order passed by learned Single Judge dated 24.07.2012 in writ petition no. 6046 of 2012. The order of the learned Single Judge reads as under:

> *"1. An order passed by the Additional Commissioner, allowing the revision application presented by the respondent is subjected to challenge in this Petition.*
>
> *2. The petitioner claims to be purchaser of tenanted property. The purchase itself is against the provisions of Tenancy Act. Since the purchase itself was opposed to the provisions of Tenancy Act, the Additional Commissioner was justified in adopting the view that cognizance of transaction need not be taken.*

> *3. I do not find any illegality in the order passed by the Additional Commissioner in confirming the orders passed by the Naib Tahsildar and the Sub Divisional Officer. Petition is devoid of substance, hence stand rejected."*

2. It is common ground that the petitioner was the original respondent before the Additional Commissioner, Aurangabad Division, Aurangabad. A revision petition was filed by the contesting respondent to this appeal Ashok Pandurang Pawar (respondent no.7 to the writ petition and respondent no.7 to this appeal as well).

3. Ashok challenged the order of the Additional Collector, Beed dated 29.10.2011. The Additional Commissioner after hearing both sides held that the judgment and order of the Naib Tahsildar Revenue, Patoda dated 15.11.2010 and that of the Sub-Divisional Officer, Beed dated 15.04.2011 have to be confirmed and the order of the Additional Collector Beed should be set aside.

4. Aggrieved by such an order of the Additional Commissioner, the appellant-petitioner filed a writ petition in this Court and which came to be rejected with the above observations.

5. The essential dispute is about revenue entries. It is too well

settled to require any reference to the case law that the revenue entries do not decide much less conclude the issue of right, title and interest in any immovable property by themselves. They do not uphold or demolish any deeds and documents. It is the competent Civil Court which must decide this contested issue. In such circumstances, the petitioner's remedy was not to bring a writ petition in this Court but to institute a substantive suit and establish his right, title and interest in the immovable property, irrespective of any findings by the revenue officials. Since, the appellant-petitioner filed this writ petition and invited such an order as is re-produced above, we are of the view that in the larger interest of justice he should not have been non suited. The learned Single Judge should have protected the rights and equities by balancing them. It was not necessary for the learned Single Judge to have rendered any conclusive opinion or decisive finding but he should have noted, with great respect, the underlying essential dispute. After we have noted it, we are of the opinion that instead of going into any wider or larger controversy, interest of justice would be served, if we clarify that irrespective of the findings in the order of Additional Commissioner, the appellant-petitioner can bring a civil suit and establish his right, title and interest in the immovable property. By keeping open all contentions, we dispose of this Letters Patent Appeal.

6. We clarify that none of the observations of the learned Single Judge shall bind the competent Court while adjudicating the issue noted above and deciding the suit if brought before it. By clarifying that we express no opinion on the legality and validity of the sale deed in favour of the appellant-petitioner and keeping open all contentions, the Letters Patent Appeal is disposed of.

[MANGESH S. PATIL, J.] **[S.C. DHARMADHIKARI, J.]**

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