

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1662 OF 2014

Indira Chhabilal Jadhav,
Age. 44 yrs., Occ. Household,
R/o. Rameshwar Tanda, Tq. Amalner,
Dist. Jalgaon,
At present 'Drongiri' 210, Lokgram,
Kalyan (East), Tq. Kalyan,
Dist. Thane. ...Petitioner.

Versus

1. The State of Maharashtra.
2. The Deputy Director,
Land Record Nashik Region,
Nashik. ...Respondents.

Advocate for Petitioner : Shri V.B. Patil.
AGP for Respondent Nos. 1 & 2 : Shri S.P. Deshmukh.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 05th July, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the order dated

25/06/2013, passed by respondent No. 2, by which, the said authority has declined to consider the appeal preferred by the petitioner under Section 247 of the Maharashtra Land Revenue Code.

3. I have considered the submissions of Shri Patil on behalf of the petitioner and the learned AGP on behalf of the respondents.

4. A peculiar situation is put forth by this petition. The petitioner claims to have purchased a portion of land bearing gut No. 65/2-B/1 on 03/07/2007. Measurement of the land indicated encroachment up to 19 Ares. The petitioner preferred R.C.S. No. 47/2007, which has been dismissed by the Trial Court. He then preferred a Regular Civil Appeal, which was also dismissed by the Appeal Court. His Second Appeal is now pending before this Court.

5. In the meanwhile, an adjacent owner, by name Prakash Ukha Vanjari, filed R.C.S. No. 71/2007, with regard to his land

bearing gut No. 65/2A/1B. The petitioner is not a party to the said suit as there is no grievance by the said plaintiff against the petitioner. An application Exhibit 22, was filed by Prakash Ukha Vanjari for appointment of the Court Commissioner. Vide order dated 08/07/2010, the Trial Court, while allowing the application and appointing the S.L.R.O., Jalgaon, as a Court Commissioner, directed the measurement of the land of this petitioner as well as Prakash Ukha Vanjari. However, all earlier reports of the T.I.L.R. were set aside, thereby leading to setting aside the report of T.I.L.R. dated 16/04/2009 and 10/09/2009, which indicated encroachment of 19 Ares in the land of the petitioner. Prakash Ukha Vanjari thereafter, conveniently withdrew R.C.S. No. 71/2007, after the report of the S.L.R.O. Dated 28/10/2010, was submitted which indicated encroachment of only 2 Ares in the land of the petitioner.

6. Aggrieved by the above, the petitioner approached respondent No. 2 for considering the validity of the Court Commissioner's report dated 28/10/2010. By the impugned order, respondent No. 2 declined to entertain the appeal filed by

the petitioner on the ground that he can approach the same Court which has passed the order in R.C.S. No. 71/2007. Apparently respondent No. 2, has lost sight of the fact that the said suit was withdrawn by said Prakash Ukha Vanjari on 21/01/2012.

7. It is settled law that a litigant who has suffered a legal injury, cannot be rendered remediless. In the present case, the petitioner can neither approach the Trial Court which has disposed of R.C.S. No. 71/2007, nor is respondent No. 2 willing to consider his appeal.

8. In the light of the above, this petition is partly allowed. The impugned order dated 25/06/2013, is quashed set aside and the appeal filed by the petitioner, bearing Outward No. 6993/2013, is restored to the file of respondent No. 2. The petitioner shall appear before respondent No. 2 on 04/08/2017 at 3.00 p.m. and shall continue to participate in the proceedings on such dates on which the matter would be posted. Needless to state, respondent No. 2, shall consider the grievance of the

petitioner on it's own merits and the order dated 8/07/2010, passed below exhibit 22 in R.C.S. No. 71/2007 shall not influence respondent No. 2 and shall not be an impediment for respondent No. 2 to decide the appeal of the petitioner.

9. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

S.P.C.