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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.11765 OF 2013**

|                                                      |                 |
|------------------------------------------------------|-----------------|
| Vivek Keshav Purandare and Ors.                      | ... Petitioners |
| Vs.                                                  |                 |
| City Land Measurement and<br>Survey Officer and Ors. | ... Respondents |

Mr. Kedarnath R. Maniyar for the Petitioners.  
Ms. Aparna D. Vhatkar, AGP for the Respondent Nos.1, 3, 4 and 8 –  
State.

**CORAM : A.S. OKA &  
A.K. MENON, JJ.**

**DATE : 27<sup>th</sup> APRIL, 2017**

**P.C.**

1           On 10<sup>th</sup> April, 2014 notice was issued on this Petition to Respondent Nos.2, 5, 6 and 7. There is an office remark that notice of Respondent Nos.5 to 7 has been served. The order dated 26<sup>th</sup> September, 2014 passed by the Registrar (Judicial – I) records that service of notice to the second respondent shall be treated as a good service.

2           The controversy in this Petition is very narrow. The case made out by the Petitioners is that out of the land bearing Survey No.202 (present survey no.4853) admeasuring 13 Hectares and 27

Ares, the State Government acquired an area of 25 Ares and 17 Gunthas for establishing the factory of the Respondent No.5 - Company which is a Government of India undertaking. The Petitioners claimed that their ancestors were owners of the larger property. According to their case, a part of the larger property was sold by one of the co-owners by sale deed dated 5<sup>th</sup> April, 1957 to New India Development Corporation Private Limited. The contention of the Petitioners is that for the remaining area out of the land bearing survey No.202, the names of the Petitioners ought to have been shown in the 7/12 extract. According to the case of the Petitioners, their names ought to have been mutated in respect of an area of 41 Ares in the 7/12 extract.

3           The case made out in the Petition is that on 9<sup>th</sup> March, 2006 an application was made by the Petitioners for mutating their names in the 7/12 extract. The case made out in the Petition is that the Sub-Divisional Officer instructed the Tahsildar to order the City Survey Officer to measure the land for carving out an area of 41 Ares. It is the case made out by the Petitioners that on 18<sup>th</sup> March, 2006 survey fee of Rs.66,000/- was accepted from the petitioners against a challan. The case made out by the Petitioners is that the Constituted Attorney of the Petitioners could not remain present on the date fixed for survey. Therefore, the survey could not be carried out. Relying upon the

information obtained under the Right to Information Act, 2005 it is contended that the entire file has been misplaced and therefore, the survey could not be carried out.

4           The learned AGP represents the Respondent Nos.1, 3, 4 and 8. However, the learned AGP has not received any instructions. We have therefore, carefully perused the Petition and annexures to the petition. The limited prayer in this Petition under Article 226 of the Constitution of India is for issuing a writ of mandamus to complete the procedure for measurement of the land in question within stipulated time and to reallocate or return the land measuring 41 Ares.

5           At the outset, we must make it clear that in the writ jurisdiction under Article 226 of the Constitution of India, we cannot decide the issue of title claimed by the Petitioners. Therefore, an order of allotment of area of 41 Ares cannot be issued in writ jurisdiction unless the petitioners establish their title in relation to the said area.

6           Exhibit -H to the Petition is a copy of the letter dated 2<sup>nd</sup> May, 2006 addressed by the Survey Officer, Pimpri Chinchwad to the Tahsildar, Haveli, Pune. The said letter records that an application for survey of the land bearing Survey No.202 was made by the Petitioner

No.8 and necessary survey fee was deposited. The letter records that the survey was fixed on 26<sup>th</sup> and 27<sup>th</sup> April, 2006. However, the Respondent No.5 - Hindustan Antibiotics Ltd. raised a strong objection for carrying out the survey. In fact, it is stated that the said Company served a notice under Section 80 of the Civil Procedure Code, 1908. It is further stated that the Petitioner No.8 did not remain present at the site by 11.00 am on 26<sup>th</sup> April, 2006 and he reached there at 5.00 pm. It is stated that therefore, the survey could not be carried out. This letter clearly shows that survey fee was deposited by the Petitioner No.8. There is another letter annexed to the Petition (Exhibit – K) which is dated 9<sup>th</sup> March, 2006. The said letter is addressed by the Tahsildar, Haveli to the City Survey Officer, Pimpri Chinchwad. It records that the Petitioner No.8 and others have made an application for mutating their names against an area of 41 Ares out of the land bearing Survey No.202 situated at village Pimpri Waghere, Taluka Haveli. It records that the total area of Survey No.202 was 13 Hectares and 27 Ares. After considering the area of the acquired land and the area sold by the co-owners, an area of 41 Ares is still vesting in the Petitioners. It records that before considering the application made by the Petitioners, it is necessary to get the land bearing survey No.202 surveyed. Therefore, the Tahsildar informed the City Survey Officer to take necessary survey fee from the Petitioner No.8 and after carrying out survey, submit a report whether an area of 41

Ares is still available. Exhibit – L shows that on 18<sup>th</sup> March, 2006 survey fee of Rs.66,000/- was deposited by the Petitioner No.8 in the treasury. On conjoint reading of the letters dated 9<sup>th</sup> March, 2006 (Exhibit – K) and 2<sup>nd</sup> May, 2006 (Exhibit – H), it is apparent that on the basis of an application made by the Petitioners for mutating their names against an area of 41 Ares, the Tahsildar, Haveli directed the City Survey Officer, Pimpri Chinchwad to carry out survey. The survey fee of Rs.66,000/- was deposited by the Petitioner No.8. However, survey could not be carried out on 26<sup>th</sup>/27<sup>th</sup> April, 2006.

7           The petitioner is relying upon other letters which are annexed to the Petition, the copies of which were obtained under the Right to Information Act, 2005. There is a letter dated 13<sup>th</sup> March, 2006 addressed by the Petitioners to the City Survey Officer requesting him to carry out survey. On page 89, a notice dated 12<sup>th</sup> April, 2006 issued by the City Survey Officer to the Petitioner No.8 fixing the survey on 26<sup>th</sup> and 27<sup>th</sup> April, 2006 is annexed. The letter dated 16<sup>th</sup> March, 2013 addressed to the Petitioner No.8 by the Information Officer cum Resident Naib Tahasildar, Haveli shows that the record is not available.

8           Thus, it appears that the City Survey Officer, Pimpri Chinchwad has not carried out survey though survey was directed by

the Tahsildar, Haveli and the Petitioners had deposited necessary survey fee.

9            Hence, we dispose of the Petition by passing the following order :-

ORDER

- (i) We direct the constituted attorney of the Petitioners or the representative of the Petitioners to remain present in the office of the Tahsildar, Taluka Haveli, District Pune on 1<sup>st</sup> June, 2017. The Petitioners will produce necessary documents in their custody concerning the land bearing Survey No.202 in the office of the Tahsildar;
- (ii) The Tahsildar, Haveli shall issue necessary instructions to the City Survey Officer, Pimpri Chinchwad to carry out survey in terms of the letter dated 9<sup>th</sup> March, 2006 addressed to him, a copy of which is annexed as Exhibit – K to the Petition. As the Petitioners have deposited a sum of Rs.66,000/- towards survey fees, there will not be any question of any further payment by the Petitioners.
- (iii) Thereafter, the City Survey Officer, Pimpri Chinchwad shall carry out survey after notice to all concerned parties

including the Respondent Nos.5 to 7;

- (iv) Survey report shall be submitted by the City Survey Officer, Pimpri Chinchwad to Tahsildar, Taluka Haveli, District Pune on or before 13<sup>th</sup> September, 2017;
- (v) After receiving the report of survey, the Tahsildar of Taluka Haveli, District Pune shall consider the prayer of the Petitioners for mutating their names against an area of 41 Ares out of the land bearing Survey No.202. Needless to add that no decision on the said prayer shall be taken by the Tahsildar without notice to the Respondent Nos.5 to 7 and all concerned parties;
- (vi) Necessary order shall be passed by the Tahsildar on the prayer made by the Petitioners for mutating their names in the revenue record within a period of three months from the date on which the survey report is received by him;
- (vii) Even if survey is carried out at the instance of the Petitioners, no right or equity will be created in their favour. Hence, the Respondent Nos.5 to 7 shall co-operate with the City Survey Officer for carrying out the work of survey;

- (viii) We clarify that we have made no adjudication on the contentions raised by the Petitioners as regards claim by them in relation to an area of 41 Ares and all contentions in that behalf are kept open;
- (ix) The Petition is disposed of on above terms.

(A.K. MENON, J)

(A.S. OKA, J)