IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5614 OF 2015

1]	**Sanjay Manya Ludrik** **Age 48, Occ : Agr.**	**]** **]** **]**
2]	**Simon Manya Ludrik** **Age 40, Occ : Agri.**	**]** **]** **]**
3]	**Smt. Exabel Joseph Pereira** **Age 38 yrs. Occ. Household**	**]** **]** **]**
4]	**Smt.Koshav Manvel Fargos**	**]** **]**
	Nos.1 to 3 residing at **Bolini, No.4 residing at** **Umralle, Pada, Karnala** **Tal. Vasai, Dist. Thane**	**]** **]** **]** **]..... Petitioners.**

Versus

1]	**Hon'ble Addl. Commissioner** **Konkan Division**	**]** **]** **]**
2]	**Hon'ble Collector, Dist. Thane**	**]** **]**
3]	**Hon'ble Sub Divisional Officer** **Bhiwandi.**	**]** **]** **]**
4]	**Shri Naresh Sundarlal Jain** **Adult, Occ. Business**	**]** **]** **]**
5]	**Shri Mukesh Shivdas Sonar** **Adult, Occ. Business**	**]** **]** **]**
6]	**Shri Devendra Rajnikant Ladhani** **Adult, Occ. Business**	**]** **]** **]**
	Nos.4 to 6 Residing at **Akanksha Complex, Nalasopara (E)** **Tal. Vasai, Dist. Thane.**	**]** **]** **]**

		]
7]	**State of Maharashtra**	]
	Through its Principal Secretary	]
	Mantralay, Bombay	]..... **Respondents.**

WITH
WRIT PETITION NO.5616 OF 2015

1]	**Sanjay Manya Ludrik**	]
	Age 48, Occ : Agr.	]
		]
2]	**Simon Manya Ludrik**	]
	Age 40, Occ : Agri.	]
		]
3]	**Smt. Exabel Joseph Pereira**	]
	Age 38 yrs. Occ. Household	]
		]
4]	**Smt.Koshav Manvel Fargos**	]
		]
	Nos.1 to 3 residing at	]
	Bolini, No.4 residing at	]
	Umralle, Pada, Karnala	]
	Tal. Vasai, Dist. Thane	]..... **Petitioners.**

Versus

1]	**Hon'ble Addl. Commissioner**	]
	Konkan Division	]
		]
2]	**Hon'ble Collector, Dist. Thane**	]
		]
3]	**Hon'ble Sub Divisional Officer**	]
	Bhiwandi.	]
		]
4]	**Shri Naresh Sundarlal Jain**	]
	Adult, Occ. Business	]
		]
5]	**Shri Mukesh Shivdas Sonar**	]
	Adult, Occ. Business	]
		]
6]	**Shri Devendra Rajnikant Ladhani**	]
	Adult, Occ. Business	]
		]
	Nos.4 to 6 Residing at	]

	Akanksha Complex, Nalasopara (E)	**]**
	Tal. Vasai, Dist. Thane.	**]**
		]
7]	**State of Maharashtra**	**]**
	Through its Principal Secretary	**]**
	Mantralaya, Bombay	**]**
		]
8]	**Gangaram Rajlingam**	**]**
	R/at Ambaji Road, Vasai Station Road,	**]**
	Vasai, Dist. Thane.	**]..... Respondents.**

Mr. P K Dhakephalkar Senior Advocate a/w Mr. A P Mhatre for the Petitioners.
Mr. S L Babar AGP for the Respondent Nos.1 to 3 and 7.
Mr. Prashant Chavan i/by Navdeep Vora Associates for the Respondent Nos.4 to 6 and 8

CORAM : R. M. SAVANT, J.
DATE : 18th January 2017

ORAL JUDGMENT

1 Rule in both the above Petitions, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The above Petitions take exception to the orders both dated 27/05/2015 passed by the Secretary and Officer on Special Duty (Appeals), Revenue and Forest Department, Government of Maharashtra ("Secy. & OSD" for short), by which orders the revision applications filed by the Petitioners herein came to be dismissed and resultantly the order dated 25/04/2012 passed by the Additional Commissioner, Konkan Division, came to be confirmed.

3 Since the Writ Petitions involve common facts and raise an identical challenge though concerning different plots of land i.e. in Writ Petition No.5614/2015 the land in issue is Survey No.193 and in Writ Petition No.5616/2015 the land in issue is Survey No.194 they are heard together however the facts in Writ Petition No.5614 of 2015 would be referred to for the sake of convenience.

4 The Petitioners predecessors are one Manya Loru Ludirk and Parshya Ludrik who purchased the lands in question being Survey Nos.193 and 194 of village Nilemore, Tal. Vasai, Dist. Thane from the original owners one Ichalal Jagmohan Das and Jamna Das Mangal Das. The Petitioners are the heirs of the said Manya and Parshya. After the said purchase, Mutation Entries being Mutation EntryNos. 648 and 657 came to be made in favour of the predecessors of the Petitioners in respect of the said lands. After the purchase by the Petitioners, it seems that the said property was alleged to be purchased by one Thomas Antony Dis alias Dias in an auction which was held pursuant to the decree passed in Suit No.57 of 1941. It seems that two Mutation Entries being Nos.838 and 2444 were effected in the revenue record in favour of the said Thomas Antony Dis alias Dias. The Petitioners after acquiring knowledge of the said Mutation Entries came to know about the purchase of the said Thomas Antony Dis alias Dias. The Petitioners along with their mother Smt. Ushibai Ludrik filed a suit being Regular Civil Suit No.318 of 1986 for a

declaration of title and for injunction. The Defendants therein amongst whom was the said Thomas Antony Dis alias Dias were served, however, they chose to remain absent in the said suit. The Trial Court by the judgment and order dated 22/11/1994 dismissed the said suit. The Petitioners aggrieved by the said dismissal preferred an Appeal being No.54 of 1996 in the District Court at Palghar. The said Appeal came to be allowed by the learned 2nd Additional District Judge, Palghar and resultantly the suit in turn came to be decreed thereby granting declaration in favour of the Petitioners and also granting injunction against the Defendants therein. The Petitioners thereafter have filed execution proceedings being Regular Darkhast No.33 of 2008 which proceedings are pending till date. In the said execution proceedings the Respondent Nos.5 and 6 preferred an application for intervention and also sought rejection of the execution proceedings. The said application was rejected by the Executing Court. However, the Executing Court framed an issue about the possession of the suit property to be decided by the Executing Court. Aggrieved by the order passed by the Executing Court, the Petitioners filed a Writ Petition in this Court being Writ Petition No.9675 of 2012. A learned Single Judge of this Court by order dated 17/12/2014 set aside the order passed by the Executing Court by observing that the Executing Court could not have framed the said issue and thereby go beyond the decree. It seems that pending the execution proceedings the Petitioners herein had preferred an application before the Sub Divisional Officer, Bhiwandi for their names being entered in the revenue record in respect of Survey Nos.193 and 194. The Sub Divisional Officer acted upon the said letter and directed the Tahsildar Vasai to enter the names of the Petitioners in the revenue record. It seems that the Tahsildar in turn issued directions to the concerned Talathi on 26/04/2005. The said request of the Petitioners was considered by the Circle Officer and since the objections were raised by one Nelson Rebello, the Circle Officer rejected the application filed by the Petitioner for their names being mutated in the revenue record. This order of the Circle Officer has triggered of the further proceedings culminating in the impugned order passed by the Secy. & OSD. The Petitioners thereafter filed an Appeal before the Sub Divisional Officer. The Sub Divisional Officer was pleased to dismiss the said Appeal by order dated 15/03/2010. The Petitioners carried the matter further to the Deputy Collector by way of a 2nd Appeal. The Deputy Collector having regard to the facts on record and more especially the fact that there was a decree in favour of the Petitioners passed in the said suit filed by them which was dated 11/11/2008, has partly allowed the said Appeal by his order dated 04/03/2011. The Deputy Collector issued directions to the Tahsildar to take necessary steps for entering the names of the Petitioners in the revenue record.

5 The Respondent Nos.4, 5 and 6 aggrieved by the order passed by the Deputy Collector as also the Respondent No.8 filed a revision before the Additional Commissioner, Konkan Division. The Additional Commissioner

allowed the said revision by order dated 25/04/2012 and resultantly set aside the order dated 04/03/2011 passed by the Deputy Collector. The gist of the reasoning of the Additional Commissioner was that since the execution of the decree is yet to be crystallized and on such crystallization the decree could be registered and the names of the Petitioners would then be entered in the revenue record. The Petitioners aggrieved by the said order dated 25/04/2012 challenged the same by further revision before the State Government. The said revision was heard by the Secy. & OSD who was delegated the said powers. The Secy. & OSD dismissed the 2nd revision by confirming the observation made by the Additional Commissioner namely that the execution of the decree is yet to crystallize and it is only after the crystallization of the execution the decree can be registered and on registration the entry could be made in the names of the Petitioners. As indicated above it is the said order dated 27/05/2015 which is taken exception to by way of the above Writ Petition.

6 The principal contention urged on behalf of the Petitioners by the learned Senior Counsel Shri P K Dhakephalkar is that once there is a decree in favour of the Petitioners, the authorities could not have rejected the application for entering the names of the Petitioners in the revenue record. It was the submission of the learned Senior Counsel for the Petitioners that the subsequent transaction entered into in respect of the lands in question would have no bearing on the Petitioners' rights to get their names mutated in the

revenue record in terms of Section 149 of the Maharashtra Land Revenue Code. It was the submission of the learned Senior Counsel that both the Additional Commissioner as well as the Secy. & OSD have misdirected themselves by holding that only after the decree is registered, that the entry in the revenue record could be made in favour of the Petitioners.

7 Per contra, the learned counsel Shri Prashant Chavan appearing for the contesting Respondents i.e. Respondent Nos.4 to 6 and 8 would support the impugned order. The learned counsel would reiterate the case of the said Respondents that the entries in the revenue record could not be made in favour of the Petitioners as the execution application filed by them is awaiting adjudication. The learned counsel would contend that there is an issue of possession in respect of the lands in question. The learned counsel would further contend that a liberty has been granted by this Court to obstruct the decree on such grounds as are available and permissible in law which the Respondents are doing in the said execution proceedings, and therefore, the names of the parties could not be entered pending the execution proceedings.

8 Having heard the learned counsel for the parties, I have considered the rival contentions. As indicated above, the dispute is as regards the entitlement of the Petitioners to get their names mutated in the revenue record in respect of Survey Nos.193 and 194. There can be no dispute about

the fact that the Petitioners have a decree of declaration of title and injunction in their favour. The said decree is un-assailed and has therefore become final and binding in so far as the declaration of title of the Petitioner qua the lands in question are concerned. The Respondent Nos.4 to 6 and 8 have undisputedly purchased the lands in question after the purchase by the Petitioners. Though on the basis of the document of the predecessors of the said Respondents, the entries were made in the revenue record, the fact remains that the Petitioners have a decree of declaration of title and injunction qua the lands in question. The aspect of entry in the revenue record is concerned, the same is governed by Section 149 of the Maharashtra Land Revenue Code 1966 (for short "the MLR Code"). The said Section reads thus :-

> "149 **Acquisition of rights to be reported.**
>
> Any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner mortgagee, landlord, government lease or tenant of the land situated in any part of the State or assignee of the rent or revenue thereof, shall report orally or in writing his acquisition of such right to the Talathi within three months from the date of such acquisition, and the said Talathi shall at once give a written acknowledgement of the receipt of such report to the person making it.
> Provided........................."

9 A reading of Section 149 of the MLR Code discloses that the same is widely worded and takes within its sweep various types of transactions mentioned therein and even "otherwise" of which cognizance is required to be

taken by the revenue authorities. Hence if a person has a decree in his favour, the cognizance of the same is required to be taken by the revenue authorities. In the instant case as can be seen the Deputy Collector had proceeded on the correct premise of the Petitioners acquiring title and therefore their names were required to be entered in the revenue record, and on the said basis found fault with the order passed by the Sub Divisional Officer by which order the Sub Divisional Officer had sought to put various conditions which the Petitioners were required to fulfill before their names could be entered in the revenue record. However, thereafter the Additional Commissioner as well as the State Government through its Secy. & OSD have misdirected themselves and have proceeded on an erroneous premise that the decree was required to be registered after the execution proceedings crystallize or come to an end. In my view, the said approach was totally erroneous and against the mandate of the provisions of the MLR Code where the cognizance is required to be taken by the revenue officer of a document on the basis of which a right is created in a party. The revenue authorities who have passed orders against the Petitioners seem to be swayed by the aspect of possession of the property in question. In so far as the Mutation Entries are concerned they were based on title the aspect of possession is totally irrelevant. The only fact which is important is the document on the basis of which a party claims title to the property. In the instant case the Petitioners are claiming title to the said lands bearing Survey Nos.193 and 194 on the basis of the decree which is in their favour passed by a Competent Court which decree, as indicated above, has become final and binding. In so far as the Respondent Nos.4 to 6 and 8 are concerned, they may oppose the execution of the said decree on such grounds as are available to them and permissible under law which undoubtedly would be considered by the Executing Court. However, the same cannot further delay the mutation of the names of the Petitioners in the revenue record qua the Survey Nos.193 and 194. In that view of the matter, the Petitioners would have to succeed. The impugned order dated 27/05/2015 passed the Secy. & OSD and order dated 25/04/2012 passed by the Additional Commissioner (Appeal), Konkan Division are quashed and set aside and the order dated 04/03/2011 passed by the Deputy Collector is confirmed. The above Writ Petitions are allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petitions. Needless to state that the obstruction of the Respondent Nos.4 to 6 and 8 to the execution of the decree would be considered on their own merits and in accordance with law. The contentions of the parties are kept open in that regard.

[R.M.SAVANT, J]