

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO.35069 OF 2016

**Jeevan Shantaram Gangan
Through Constituted Attorney
Mr. Sanjay Bhikaji Ghosalkar**

: Petitioner.

versus

**The State of Maharashtra
Through the Collector, Ratnagiri & ors.**

: Respondents.

**Mr. Nitin Gangal for the Petitioner.
Mr. S D Rayrikar, AGP, for the Respondent No.1.
Mr. S S Punde for the Respondent Nos.2 to 4.**

**CORAM : R. M. SAVANT, J.
DATE : 13th January 2017**

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 30/11/2016 passed by the Hon'ble Minister of State for Revenue, Government of Maharashtra by which order the appeal filed by the Respondent Nos.2 to 4 herein came to be allowed and resultantly the order dated 10/05/2016 passed by the Additional Commissioner, Konkan Division came to be set aside and the order dated 29/09/2015 passed by the Additional Collector, Ratnagiri came to be confirmed.

2 The proceedings in question have their genesis in the permission for Non-Agricultural user granted by the Additional Collector vide order dated 29/09/2015 in respect of the land bearing Gat No.28, Hissa No.21

admeasuring 7500 sq.mtrs, Hissa No.9 admeasuring 22200 sq.mtrs, and the land bearing Gat No.29 Hissa No.2 admeasuring 510 sq.mtrs and Hissa No.11 admeasuring 2970 sq.mtrs of village Patpanhale, Tal.Guhagar, Dist. Ratnagiri. The Petitioner lays a claim to title of the land admeasuring 10 Ares from land bearing Gat No.28 Hissa No.9 and land admeasuring 10 Ares from land bearing Gat No.29 Hissa No.11, hence total land admeasuring 20 Ares. The said land admeasuring 20 Ares is comprised in the larger area in respect of which NA permission has been granted by the Additional Collector by the order dated 29/09/2015. The registered document in favour of the Petitioner is dated 19/12/2002. However, significantly the Petitioner has not got his name mutated in the revenue record. The order dated 29/09/2015 passed by the Additional Collector, Ratnagiri came to be challenged by the Petitioner by filing an appeal before the Additional Commissioner, Konkan Division being Appeal No.,115 of 2016. The said appeal filed by the Petitioner came to be allowed by the Additional Commissioner and the order passed by the Additional Collector came to be set aside on the ground that the Additional Collector had erred in granting the permission in respect of the portion claimed by the Petitioner in terms of the registered document dated 19/12/2002.

3 The Respondent Nos.2 to 4 herein there after carried the matter by way of further Appeal before the State Government. As indicated above, the State Government i.e. the Hon'ble Minister of State for Revenue has by the

impugned order dated 30/11/2016 allowed the said Appeal and set aside the order dated 10/05/2016 passed by the Additional Commissioner. Whilst passing the order, the Additional Collector has commended upon the document of title of the Petitioner and has said that the said sale deed dated 19/12/2002 is illegal as being in violation of the Fragmentation and Consolidation Act. The Appellate Authority has also referred to the suits filed by the original owner against the Respondent Nos.2 to 4 herein as also the suit filed by the Respondent Nos.2 to 4 herein against the Petitioner and the original owner, and the orders passed therein. It seems that in the suit filed by the Respondent Nos.2 to 4 against the original owner an order of injunction is operating in favour of the Respondent Nos.2 to 4 restraining the Petitioner and original owner from entering into the property. In so far as the suit filed by the original owner i.e. the Respondent No.5 is concerned, the interim relief sought by the said original owner has been turned down by the concerned court and it seems that a finding is recorded that the Respondent Nos.2 to 4 are in possession. As indicated above it is the said order dated 30/11/2016 passed by the State Government which is taken exception to by way of the above Writ Petition.

4 The Petitioner seeks to assert his rights on the basis of the said sale deed dated 19/12/2002 to contend that he has no objection to the NA permission granted in favour of the Respondent Nos.2 to 4 of the land excluding the lands claimed by the Petitioner vide the said sale deed dated

19/12/2002. As indicated above though the Petitioner lays a claim on the basis of the said document, the name of the Petitioner does not appear in the revenue record. It appears that the Respondent Nos.2 to 4 are in possession of the property. In so far as the proceedings in question, which have culminated in the impugned order dated 30/11/2016 passed by the State Government i.e. the Hon'ble Minister of State for Revenue, are concerned, the said proceedings are concerned with the NA permission granted by the Additional Collector. Obviously the Appellate Authority cannot decide the issue of title of the parties inter-se. If the Petitioner lays a claim to title of the land admeasuring 10 Ares from land bearing Gat No.28 Hissa No.9 and land admeasuring 10 Ares from land bearing Gat No.29 Hissa No.11, the total land admeasuring 20 Ares, the Petitioner would have to adopt appropriate civil proceedings for asserting such rights.

5 In my view, therefore, no interference is called for with the impugned order dated 30/11/2016 passed by the State Government i.e. the Hon'ble Minister of State for Revenue. The above Writ Petition is accordingly disposed of. Needless to state that if any such civil proceedings are filed including the counter claim in the already existing suit filed by the Petitioner, the observations made by the Appellate Authority i.e. the Hon'ble Minister of State for Revenue in his order that the sale deed in favour of the Petitioner is illegal being violative of Fragmentation and Consolidation Act, the same would

not come in the way of the Petitioner from prosecuting the said proceedings. The said issue of title can only be gone into by the competent civil court. If any such proceedings are filed, needless to state that the same would be tried on their own merits and in accordance with law.

[R.M.SAVANT, J]