

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3903 OF 2018

Sandu Vishwanath Jagdale and others .. **Petitioners**

Versus

The State of Maharashtra and others.. **Respondents**

Miss Pradnya S. Talekar i/b. Talekar and Associates for the Petitioners.

Shri P. G. Borade, A.G.P. for Respondent Nos. 1, 2 and 5.

Respondent No. 3 served.

Shri S. V. Adwant, Advocate for Respondent No. 4.

Shri P. F. Patni, Advocate for Respondent No. 6.

**CORAM : S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.**

DATE : 20th July, 2018

PER COURT :

1. The petitioners assail the order dated 27.03.2018 passed by the Sub-Divisional Officer and Competent Authority, Maharashtra Samruddhi Mahamarg, Aurangabad.

2. Miss Talekar, learned counsel submits that respondent nos. 3 and 4 for the purpose of constructing highway purchased the writ land from respondent no. 6. The learned counsel submits that the petitioners have filed a substantive suit for

partition and separate possession bearing R.C.S. No. 33 of 2011 before the Civil Judge, Senior Division, Aurangabad against the father of respondent No. 6 and others. The same was in respect of agricultural lands Gat No. 2, Gat No. 130, Gat No. 7, Gat No. 178 to the extent of areas specified in the suit situated at Sawangi and Tuljapur, Taluka and District – Aurangabad. The present respondent nos. 3 and 4 purchased part of land bearing Gut No. 2. The said property is a subject matter of the suit. The rights of the petitioners are involved, as such, the petitioners had filed an objection before the Sub-Divisional Officer who claims himself to be the Competent Authority under the Maharashtra Samruddhi Mahamarg. The Sub-Divisional Officer without going into the factual matrix of the matter rejected the application. When the dispute of title is involved it is for the Civil Court to decide the dispute of title and the Sub-Divisional Officer cannot decide the same. The learned counsel submits that it was beyond the jurisdiction of the Sub-Divisional Officer to decide dispute regarding the title of the property.

3. We had asked Mr. Adwant and Mr. Patni, learned counsel for the respondents about the source of power of the Sub-Divisional Officer and the

Competent Authority under Maharashtra Samruddhi Mahamarg for deciding such an objection. It is conceded by them that as the property is purchased by respondent nos. 3 and 4 from respondent no. 6 by private negotiations under sale deed it would be open for the Sub-Divisional Officer and the Competent Authority under Maharashtra Samruddhi Mahamarg to dilate upon the rights of the parties or to entertain such an objection.

4. Even as per the affidavit filed by respondent nos. 3 and 4 the transaction between respondent nos. 3 and 4 and respondent no. 6 is a transaction of sale and purchase of immovable property under the provisions of the Transfer of Property Act, 1882. In view of that, if any dispute with regard to the title arises, it is only the Civil Court that has the jurisdiction to decide the issue of title.

5. Mr. Adwant, learned counsel for respondent no. 4 submits that pursuant to the sale transaction the consideration amount is paid to respondent no. 6.

6. The parties are *ad-idem* that the Sub-Divisional Officer and Competent Authority under Maharashtra Samruddhi Mahamarg did not possess the

authority and jurisdiction to deal with the disputes amongst the parties and entertain the objection filed by the petitioners, *inter alia*, the impugned order dated 27.03.2018 will have to be held as without jurisdiction having no efficacy.

7. The petitioners may agitate their rights in the pending suit for partition and separate possession, of course, by taking further steps as is permissible in law.

8. With these observations, the writ petition stands disposed of. No costs.

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]

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