

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 991 OF 2015

SURESHAPPA SADASHIVAPPA AADHALKAR
VERSUS
THE ADDITIONAL COMMISSIONER, AURANGABAD AND
ANOTHER

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Advocate for Petitioner : Shri Patil Hanmant V.
AGP for Respondent 1 : Shri Tambe S.K.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 17, 2018

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PER COURT :-

1. The petitioner, by this petition, has put forth prayer clause (B), which reads as under:-

“(B) By writ of certiorari or any other appropriate writ, order or directions in the like nature, the impugned order dated 14.1.2013 passed by the learned Additional Commissioner in Case No. Revision Petition No. 107/2006/H and the order dated 31.3.2006 passed by the learned Additional Collector, Hingoli in Case No. ROR/Appeal/ No. 39/A/2005 be quashed and set aside and the order dated 17.5.2005 passed by the learned Sub Divisional Officer, Hingoli in 2004/REV/A/173 in favour of the petitioner may kindly be confirmed.”

2. While issuing notice on 23.10.2015, this Court has not

granted any ad-interim relief to the petitioner.

3. Despite service of court notice on two occasions on the contesting respondent No.2, no appearance has been entered either in person or through an Advocate.

4. The petitioner contends that he is the tenant and Bataidar of land Gut No.144 to the extent of 4 hectares and 46 ares. One Sudhakar was the original land owner. It was by his consent that the petitioner began cultivation as a Bataidar and was taking crops for about three years. In April 2004, the landlord entered into an agreement to sell with the petitioner. It is contended that the consideration for the said portion of land was agreed to be Rs.2,50,000/- and the petitioner paid Rs.1,00,000/- while signing the agreement to sell.

5. It is further contended that on 1.6.2004, the landlord entered into a registered sale deed with respondent No.2 and purportedly handed over the possession of the land to him. The petitioner claims to have continued with the possession. Respondent No.2 applied for carrying out a mutation entry and for entering his name in the 7/12 extract. The petitioner preferred an application to the Talathi on 9.8.2004. A

panchanama was drawn and statements of two neighbouring agriculturists were recorded. However, by order dated 12.4.2004, the Tahsildar refused to enter the name of the petitioner in the cultivation column.

6. The petitioner preferred an appeal before the Sub Divisional Officer, which was allowed by order dated 17.5.2005 and the order of the Tahsildar was set aside. Respondent No.2 approached the Additional Collector. By order dated 31.3.2006, the Collector allowed the proceedings and set aside the order of the Sub Divisional Officer. The petitioner approached the Additional Commissioner, who dismissed his revision application by its impugned order dated 31.3.2006.

7. The contention of the petitioner is that the original landlord has played a fraud. On the one hand, he has placed the petitioner in possession and on the other hand, he has sold the land to respondent No.2. A Special Civil Suit No.23 of 2004 filed by respondent No.2 was withdrawn and as such, there are no proceedings pending before the Civil Court. It is informed that respondent No.2 has subsequently sold the land to Baburao Bhiwaji Khandare and Yash s/o Baburao u/g of his mother Sangita Baburao. These subsequent purchasers have instituted a

civil suit and the same is pending.

8. This Court has observed in Shrikant R. Sankanwar and others Vs. Krishna Balu Naukudkar [2003 (3) BCR 45 = 2003 (2) Mh.L.J. 276], that the revenue authorities have to rely upon the verdict of the Civil Court, if any, and in the absence of any civil proceedings, shall consider the best evidence available, when it comes to carrying out mutation entries. A registered sale deed is said to be one such strong piece of evidence. The authorities before whom this petitioner has suffered adverse orders, have concluded that, on the basis of an agreement to sell, this petitioner would not acquire any right to continue to cultivate the land. It is further held that this petitioner has failed to establish that he is in possession of the suit land or is cultivating the land.

9. Considering the concurrent findings and the disputed issue as to whether the petitioner still is in possession of the land and whether he is still cultivating the same, I do not find that the impugned orders of three authorities could be termed as being perverse or erroneous. Nevertheless, the judgment of the trial Court in the pending civil suit filed by Baburao and others would have a binding effect upon all revenue authorities.

10. This petition, being devoid of merits, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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