

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.15 OF 2014

1. Jaker Chaus s/o Mohammad Chaus,
Age-48 years, Occu-Agriculture,
R/o. Hadgaon Tq. Hadgaon,
Dist.Nanded

2. Babu s/o Dhannu Chavhan,
Age-48 years, Occu-Doctor,
R/o Hingoli gate Bridge Nanded,
Tq. And Dist. Nanded

– PETITIONERS

VERSUS

1. The Panchayat, Hadgaon,
Through its Block Development Officer,
Tq. Hadgaon, Dist. Nanded,

2. Tahsildar, Hadgaon,
Tq.Hadgaon, Dist.Nanded.

– RESPONDENTS

Mr.G.N.Chincholkar, Advocate for the petitioners.
Smt.Y.M.Kshirsagar, Advocate for respondent No.1.
Mr.S.K.Tambe, AGP for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 04/01/2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners are aggrieved by the order dated 09/05/2011

passed by the Additional Collector, by which the appeal of the petitioners in relation to the judgment of the Tahsildar dated 30/04/2010 concerning mutation entry No.3395 dated 25/01/2010 in favour of respondent No.1, has been dismissed in default. The petitioners are also aggrieved by the order of the Deputy Commissioner dated 04/04/2013 by which the revision filed by the petitioners u/s 257 of the M.L.R. Code has been rejected.

3. The petitioners are aggrieved by the mutation entry No.3395 which was taken in favour of respondent No.1 / Panchayat Samiti. The appeal u/s 247 before the S.D.O. was instituted on 03/07/2010. Till 09/05/2011, which is a period of about 10 months, the petitioners did not appear before the Additional Collector and continued to remain absent. Consequentially, the said appeal was dismissed for non prosecution. The petitioners preferred a revision before the Deputy Commissioner. By the impugned order dated 04/04/2013, the said revision was dismissed.

4. Grievance of the petitioners is that the manner of recording the mutation entries is defective and the Tahsildar could not have made the entries in opposition to Section 149 of The M.L.R.Code, which prescribes a particular procedure to be followed. The dismissal of

the appeal by the Additional Collector for non prosecution, has led to an order being passed without hearing the petitioners. For the said reason, it is contended that the order of the Divisional Commissioner dated 04/04/2013 is defective and the same deserves to be quashed and set aside.

5. Learned Advocate for respondent No.1 / Panchayat Samiti, in whose favour the mutation entry has been taken on 25/01/2010, has strenuously supported the impugned orders.

6. With the assistance of the learned Advocates and the learned AGP, I have gone through the petition paper book and the additional documents which have been tendered by the petitioners across the bar.

7. It needs to be noted that these petitioners have filed a Spl.C.S.No.12/2010 seeking declaration of ownership and recovery of possession over the property which is subject matter of the mutation entry. The said suit is still pending before the concerned Civil Court.

8. This Court, in Shrikant R.Sankanwar and others Vs. Krishna Balu Naukudkar [2003(3) Bom.C.R.45] has concluded that mutation

entries do not decide the right, title or interest of any party over the property at issue. Mutation entries are only for taxation purposes and they do not declare the title over the property. It is further concluded that it is only the Civil Court, which can decide the right, title and interest of a person over the property and such a verdict of the Civil Court will have an overriding effect on the mutation entries and will bind the revenue authorities.

9. Learned Advocate for the petitioners prays that the matter be remitted to the Additional Collector who has dismissed the appeal for want of prosecution. I do not find that the said request needs to be entertained in the light of the order passed by the Deputy Commissioner in which it is noted that these petitioners had preferred RCA No.35/2007 after the Trial Court had dismissed their RCS No.570/2005 by judgment dated 09/03/2007. In the said suit No.570/2005, the plaintiffs had conceded that respondent No.1 / Panchayat Samiti was having its Office over 5 acres and 2 gunthas since 1960. It was further admitted that in the 7/12 extract, the name of the Panchayat Samiti was recorded in the "Other Rights" column.

10. The claim of the petitioners with regard to the property which

is subject matter of the mutation entry is based on the sale deed executed by Galib Bin Islam who sold 3 hectre and 20R in favour of the petitioners and Balaji Shinde. Subsequently, Balaji has executed a registered sale deed on 08/05/2004 by which he has sold his portion of the land to these petitioners. It cannot be ignored that these petitioners had preferred the civil suit for seeking injunction on the basis of their possession. However, considering the pleadings of the parties in the plaint and the written statement, the Trial Court framed an issue with regard to the title of these petitioners over the suit property. It was concluded that these petitioners cannot establish their title over the suit property and the suit was dismissed as the petitioners were not found to be in possession of the said property. RCA No.35/2007 has been dismissed by the First Appellate Court. Second appeal preferred by these petitioners has also been dismissed.

11. This petition, therefore, does not deserve to be considered on account of 2 factors. Firstly, that the injunction sought on the basis of the possession has been rejected right upto this Court. Secondly, considering the law laid down in Shrikant Sankanwar (supra), the claim over the property by these petitioners is subject matter of Spl.C.S.No.12/2010 wherein they have sought a declaration of

ownership and also recovery of possession.

12. Considering the above, this petition is dismissed. Rule is discharged.

13. At this juncture, learned Advocate for the petitioners prays that Spl.C.S.No.12/2010 be expedited as it is pending before the concerned Court at Nanded. The said request is accepted and the learned Trial Court is directed to decide Spl.C.S.No.12/2010 as expeditiously as possible and in any case on or before 31/12/2018. It is made clear that this Court has not expressed any opinion about the effect of the decision in the proceedings concerning RCS No.570/2005 and the subsequent first and second appeals which have been dismissed, on S.C.S.No.12/2010.

(RAVINDRA V. GHUGE, J.)