IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 10494 OF 2015

1. Shevanta Subhash Fund,
Age : Major, Occup. Household,
R/o Bhavani Peth, Karmala,
Tq. Krmala, Dist. Solapur

2. Sarika Prakash Bhosale,
Age : Major, occup. Household,
R/o Sansar, Tq. Baramati,
Dist. Pune

3. Shital Ganesh Pawar,
Age : Major, occup. Household,
R/o Sangwi, Tq. Baramati,
Dist: Pune

4. Rekha Hanumant Shinde,
Age : Major, occup. Household,
R/o Sangwi, Tq. Baramati,
Dist. Pune

5. Sadhna Navnath Kadam,
Age : Major, occup. Household,
R/o Lambhate Wasti, Watluj,
Tq. Daud, Dist. Pune

6. Surekha Vinod Shete,
Age : Major, occup. Household,
R/o House No. 1466, Vanjagalli,
Ahmednagar .. Petitioners

versus

1. Sanjay s/o Shivaji Dapse,
Age : Major, occup. Business,
R/o House No. 1466, Vanjagalli,
Ahmednagar

2. District Superintendent of Land
Records, Ahmednagar

3. City Survey Officer, Ahmednagar .. Respondents

Mr Sharad V. Natu, Advocate for petitioners
Mr S. N. Morampalle, Assistant Government
Pleader for respondents no. 2 and 3

CORAM : SUNIL P. DESHMUKH, J.
DATE : 18th September, 2018

ORAL JUDGMENT:

1. Notice to respondent no. 1 who appears to be contesting party was issued on 21-10-2015 returnable on 02-12-2015. However, no appearance had been caused on behalf of respondent no. 1. On 14-06-2017 when the matter had been called out, no one had caused appearance on behalf of respondent no. 1 and in order to give him one more opportunity, the matter was adjourned to 21-06-2017. Thereafter on 09-02-2018, notice for final hearing was issued to respondent no. 1 returnable on 28-03-2018. The office note dated 04-06-2018 shows that notice so issued in February, 2018 had been refused to be accepted by respondent no. 1 and as such respondent no. 1 is treated to have been served. Despite this, no appearance has been caused by respondent no.1. Even after notice had been issued to respondent no.1 for final disposal, he is not present before the court.

2. Learned counsel Mr Natu contends that there is no dispute about the fact that the concerned land bearing C. T. S. No. 1505/1 belongs to Subhash Fund, the father of petitioners no. 1 to 5. Subhash Fund died somewhere in September, 2004.

Subsequently, petitioners no. 1 to 5 on whom the property devolved had sold the same under registered sale deed in favour of petitioner no. 6 in 2012. In order to put the record straight, it appears that since names of legal heirs of deceased Subhash Fund were not appearing in revenue record, a movement in that respect had been made and mutation entry no. 10820 had been sanctioned in 2013.

3. It is at this point of time, respondent no. 1 purported to intervene in the matter before revenue authorities, putting up a case that Subhash Fund had executed agreement for sale in his favour in respect of suit property in July, 2001. Petitioner no. 6 had responded to the the objection application by respondent no. 1. Order came to be passed on 29-08-2013 by respondent no. 2 - district superintendent of land records, permitting review of mutation entry no. 10820 of 2013.

4. Against order permitting review of aforesaid mutation entry pursuant to section 258 of the Maharashtra Land Revenue Code, 1966, present petitioners had been before respondent no. 3 - city survey officer, however, their request had been turned down by the city survey officer under order dated 09-09-2013 and mutation entry no. 10820 had been cancelled, considering that although said mutation entry had been recorded in

accordance with the rules yet, looking at the objection by respondent no. 1 and particulars given by him those are outside the domain of the powers of the office and in order to avoid complications, it is better to cancel said mutation entry.

5. In revision against aforesaid order before respondent no. 2- the district superintendent of land records, it has been considered that deceased Subhash Fund had entered into transaction with respect to the property in favour of respondent no. 1 and after death of Subhash Fund, names of his legal heirs - petitioners no. 1 to 5 herein were not recorded and the sale deed had been executed by them in favour of petitioner no. 6. In the circumstances, legal heirs of Subhash Fund had no right to deal with the property and since legality and validity of the sale deed executed by them is not within the domain of powers of said authorities and as such it would be appropriate for petitioners to take recourse to civil court and thus he has purportedly rejected the revisions.

6. Having regard to aforesaid, the situation emerges that the objection to recording mutation entry in favour of purchaser - petitioner no. 6 has been taken by respondent no.1 contending that in 2001 deceased Subhash Fund had entered into an agreement in respect of suit property. Subhash Fund died in

2004 and thereafter his legal heirs dealt with the property under registered sale deed in favour of petitioner no. 6. For want of their names appearing in revenue record, it appears to have been considered by the authorities that the sale deed executed by legal heirs of Subhash Fund is not proper and will not be valid Petitioner no. 6 stakes claim to the property purportedly under the transaction as referred to above. Revisional authority has further referred to that petitioner no. 6 would better have recourse to civil court having regard to the situation that the legal heirs' names had not been appearing in revenue record while transaction had been entered into since it has been considered by the revisional authority that it is outside its powers to render decision in respect of rights to the property.

7. Although it is being so considered by revisional authority, the authorities appear to have been in oblivion of that respondent no. 1 never purported to stake claim to the property till it was sold by legal heirs of Subhash Fund in favour of petitioner no. 6. It has been observed by the authorities that the procedure followed in incorporating mutation entry no. 10820 has been in accordance with factual position, the law and the rules. In the circumstances, for the reasons which are outside the purview of revenue authorities, the objection by respondent no. 1 to mutate name of petitioner no. 6 without

asserting claimed right under the agreement by said Subhash Fund before civil court would not be a proper consideration. In the circumstances, for the same reasons as have weighed with the authorities about civil rights to the property being outside their domain, the authorities ought to have declined to consider the objection by respondent no. 1. It appears that respondent no. 1, who having been served twice in writ petition has not caused appearance, by his conduct shows that he does not have any particular objection to the reliefs claimed in writ petition.

8. In the circumstances, writ petition is allowed. Rule is made absolute in terms of prayer clause (B).

9. Writ petition is disposed of.

SUNIL P. DESHMUKH
JUDGE

pnd/-