

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7361 OF 2016

Sameer Shantilal Dedhia and others ... Petitioners
Vs.
State of Maharashtra and others ... Respondents

Mr. R. A. Thorat, Senior Advocate i/b. Mr. J. J. Thakkar for Petitioners.
Mr. S. H. Kankal, AGP for Respondents No.1 to 4-State.
Mr. Amol K. Tembe for Respondent No.6.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 5, 2018

P.C. :

Heard Mr. Thorat, learned Senior Counsel for the petitioners, Mr.Kankal, learned AGP for respondents No.1 to 4-State and Mr.Tembe, learned Counsel for the respondent No.6 at length.

2. On the oral application made by Mr. Thorat, leave to delete respondent No.5 from this Petition is granted. Amendment shall be carried out forthwith.

3. Rule. Learned Counsel for the respective respondents waive service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. This Petition takes exception to the- (i) order dated 24.08.2012 passed by the District Superintendent of Land Records, Mumbai Suburban District in Appeal S.R.404/2010/2012, (ii) order dated 25.02.2013 passed by Deputy Director of Land Records, Konkan Region, Mumbai in Appeal No.342 of 2012 and (iii) order dated 03.12.2015 passed by the Hon'ble Minister for Revenue in Revision

Application. By order dated 24.08.2012, the District Superintendent of Land Records has allowed the appeal preferred by the respondent No.6. That appeal was preferred by respondent No.6 against the orders dated 20.05.2003 and 17.07.2007 passed by the respondent No.4 - City Survey Officer. By these orders, City Survey Officer entered names of petitioners as 'lessees' in respect of land admeasuring 2237.86 sq. mtrs. bearing plot No.9 (part), C.T.S. No.129 (part) and C.T.S. Nos.129/1 to 129/18 together with the structures standing thereon situate at Village Kurla-II Division, Mumbai (for short 'suit property'). By order dated 14.10.2010, the City Survey Officer, Kurla rejected the application made by respondent No.6 for entering their name as sub-lessee in the record of rights to the extent of land admeasuring 764.79 sq.mtrs. out of the suit property.

5. It is the case of the petitioners that M/s. Pearl Products Private Limited Company (for short 'Pearl') was the owner of the suit property. The said company had executed a lease for a period of 98 years in favour of the respondent No.5 on 12.01.1982. By a Deed of Assignment dated 07.10.2002 registered with the Sub-Registrar of Assurances, Mumbai under Sr.No.5606/2002, leasehold rights for residuary unexpired period of 98 years was assigned to the petitioners. In the meantime, respondent No.5 had executed a sub-lease dated 09.03.1984 in respect of area ameasuring 764.79 sq.mtrs. in favour of the 6th respondent. In a Deed of Rectification date 23.04.2003 executed by 5th respondent, the correct description of the property was set out and recorded therein. Petitioners thereafter applied for mutating their names in the Property Register Card as lessees. By order dated 20.05.2003, respondent No.4 - City Survey Officer allowed that application and mutated names of the petitioners as lessees. By Confirmation Deed dated 06.04.2005 registered under Sr.No.6696/06 on 14.11.2006, Pearl recorded and confirmed that the Deed of Assignment dated 07.10.2002

in favour of the petitioners is valid, subsisting and binding upon them and that the lease period is extended to 999 years. Upon execution of Deed of Modification and Confirmation dated 06.04.2005 between Pearl and the petitioners, petitioners applied for further mutation entry for recording their leasehold rights for 999 years in respect of the suit property. By order dated 17.07.2007, City Survey Officer recorded names of the petitioners as lessees in the Property Register Card. It appears that petitioners have instituted Suit for recovery of possession against the 6th respondent, namely, T.E.Suit No.149 of 2014 in the Small Causes Court at Mumbai and the same is pending.

6. Respondent No.6 initially filed application on 06.06.2009 before the City Survey Officer for entering its name as a lessee in respect of C.T.S.No.129. Subsequently, on 28.09.2010, respondent No.6 made application to City Survey Officer, Kurla for mutating their name in respect of land admeasuring 764.79 sq.mtrs. out of the suit property as a sub-lessee. By order dated 14.10.2010, respondent No.4 - City Survey Officer rejected the application. Aggrieved by this decision as also orders dated 20.05.2003 and 17.07.2007 of City Survey Officer, respondent No.6 instituted appeal before the District Superintendent of Land Records, Mumbai Suburban District under Section 247 of the Maharashtra Land Revenue Code, 1966 (for short 'Code'). As indicated earlier, appeal was allowed on 24.08.2012 against which petitioners preferred Second Appeal before the Deputy Director of Land Records, which was dismissed on 25.02.2013 and the Revision preferred under Section 257 of the Code was dismissed by the Hon'ble Minister for Revenue on 03.12.2015. It is against these orders, petitioner has instituted the present Petition.

7. Mr. Thorat submitted that respondent No.6 is inducted in respect of area admeasuring 764.79 sq.mtrs. in the suit property in pursuance of

sub-lease dated 09.03.1984. The sub-lease was registered only on 24.03.2009. In the meantime, respondent No.5 had assigned its leasehold rights in favour of the petitioners by registered instrument dated 07.10.2002. A registered Deed of Rectification was executed on 23.04.2003 between respondent No.5 and the petitioner and the correct description of the suit property was set out and recorded therein. On 06.04.2005, Deed of Modification and Confirmation was executed between Pearl and the petitioners and the lease period was extended for 999 years. He submitted that basically, respondent No.6 could not have challenged the orders dated 20.05.2003 and 17.07.2007 passed by the respondent No.4 - City Survey Officer mutating names of the petitioners as lessees in respect of the suit property. At the highest, respondent No.6 could have challenged the communication dated 14.10.2010 rejecting their application for mutating their name as sub-lessee in respect of area admeasuring 764.79 sq.mtrs. He, therefore, submitted that impugned orders deserve to be set aside.

8. On the other hand, Mr. Tembe submitted that though the application was made initially on 06.06.2009 by the 6th respondent to City Survey Officer for mutating name of respondent No.5 as a lessee, by subsequent application dated 28.09.2010, application was made to the City Survey Officer for mutating name of respondent No.5 as a sub-lessee in respect of land admeasuring 764.79 sq.mtrs. He, therefore, submitted that order dated 24.08.2012 passed by the District Superintendent of Land Records, Mumbai Suburban District may be modified and the appeal preferred by the 6th respondent may be partly allowed by setting aside order dated 14.10.2010 passed by the City Survey Officer so as to ensure that name of the 6th respondent is mutated as sub-lessee in respect of 764.79 sq.mtrs. In other words, it may be clarified that the orders dated 20.05.2003 and 17.07.2007 passed by the

City Survey Officer are restored and appeal of 6th respondent challenging these orders is dismissed.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, it is not in dispute that the petitioners are lessees in respect of the suit property and the 6th respondent is a sub-lessee in respect of land admeasuring 764.79 sq.mtrs out of the suit property. By orders dated 20.05.2003 and 17.07.2007, City Survey Officer mutated names of the petitioners as lessees. Respondent No.6 filed application for mutating their name as sub-lessee in respect of area admeasuring 764.79 sq.mtrs. in the suit property. In my opinion, respondent No.6 should have challenged only the order dated 14.10.2010 passed by the City Survey Officer rejecting their application dated 28.09.2010. Respondent No.6 could not have filed appeal challenging the orders dated 20.05.2003 and 17.07.2007 passed by the City Survey Officer. In view thereof, the order dated 24.08.2012 passed by the District Superintendent of Land Records, Mumbai Suburban District deserves to be modified in the following terms:

- a. Appeal preferred by the 6th respondent stands partly allowed;
- b. Appeal against the orders dated 20.05.2003 and 17.07.2007 passed by the respondent No.4 - City Survey Officer stands dismissed;
- c. Appeal against the order dated 14.10.2010 of the City Survey Officer stands allowed and the name of the 6th respondent shall be mutated as a sub-lessee in respect of area admeasuring 764.79 sq.mtrs. in pursuance of lease deed dated 09.03.1984.

10. In view of the modification of the order dated 24.08.2012, the challenge to the order dated 25.02.2013 passed by the Deputy Director of Land Records and order dated 03.12.2015 passed by the Hon'ble Minister for Revenue does not survive. It is clarified that the Suit instituted by the petitioner in the Small Causes Court shall be decided on the basis of material on record and in accordance with law, uninfluenced by the observations made in the impugned orders and in this order. All contentions of the parties on merits are expressly kept open. Rule is made absolute in the aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

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