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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5051 OF 2018

- 1). Mr. Ramesh Shantilal Modi)
Age – 58 years, Occupation)
– Business, R/at 1144, Sathe Colony,)
Flat No.5, Shukrwar Peth,)
Pune – 411 002)
)
 - 2). Mr.Bharat Shantilal Modi)
Age – 50 years, Occupation)
– Business, R/at 1144, Sathe Colony,)
Flat No.5, Shukrwar Peth,)
Pune – 411 002)
)
- ...Petitioners

....Versus....

- 1). State of Maharashtra , through)
Hon'ble Minister, Department of)
Revenue, Mantralaya, Mumbai -32.)
)
 - 2). Additional Commissioner,)
Pune Division, having office at)
Council Hall, Opposite Poona Club,)
Pune – 411 001.)
)
 - 3). Deputy Collector, Pune)
)
 - 4). Sub-Divisional Officer,)
Maval – Mulshi, Pune.)
)
 - 5). Circle Officer, Talegaon, Pune)
)
 - 6). Siddharth Bhowmik)
Age – Adult, Occupation – Business)
R/at 5, Shree Chambers, 53/54,)
Shivajinagar, Pune - 411 006.)
)
- ...Respondents

Mr.G.S. Godbole i/b Mr.A.A. Vibhute for the Petitioners.

Mr.S.D. Rayrikar, A.G.P. for the State – Respondent Nos.1 to 5.

Mr.Amit Kumar Bhowmik with Mr.Aslam Khan for the Respondent No.6.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 5TH JUNE, 2018
PRONOUNCED ON : 15TH JUNE, 2018

JUDGMENT :-

1. Rule. Mr.Rayrikar, learned A.G.P. waives service for the respondent nos.1 to 5. Mr.Bhowmik waives service for the respondent no.6. By consent of parties, the writ petition is heard finally.

2. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 8th March, 2018 passed by the learned Revenue Minister, State of Maharashtra, dismissing the revision application filed by the petitioners and confirming the order passed by the learned Additional Commissioner, who had set aside the order dated 29th December, 2015 passed by the learned Deputy Collector declaring the mutation entry no.2560 in favour of the petitioners as legal and valid. Some of the relevant facts for the purpose of deciding this petition are as under :

3. Late Fanindranath Dhamidhar Bhowmik was the owner of the land bearing survey no.423 admeasuring 3-H 41-R situated at village Somatane, Taluka Maval, District Pune. The said Fanindranath Dhamidhar Bhowmik executed a will and bequeathed the suit property to his wife Smt.Usha Fanindranath Bhowmik, who is the grand mother of the respondent no.6. The said Fanindranath Dhamidhar Bhowmik expired on 23rd June, 1999 and was survived by his wife. It is the case of the petitioners that after the demise of

Fanindranath Dhamidhar Bhowmik, Smt.Usha Fanindranath Bhowmik became the exclusive lawful owner of the said property by virtue of the said Will. The name of the said Smt.Usha Fanindranath Bhowmik came to be recorded in the 7/12 extract in respect of the said land.

4. On 9th August, 2004, the said Smt.Usha Fanindranath Bhowmik executed a Development Agreement with the petitioners and one Mr.Raosaheb Baburao Tanpure and Beena Raosaheb Tanpure in respect of the said property on the terms and conditions set out therein. The said Smt.Usha Fanindranath Bhowmik also executed two power of attorneys both dated 4th August, 2004 in favour of the petitioners in respect of the said property. It is the case of the petitioners that the petitioners and other two persons i.e. Mr.Raosaheb Baburao Tanpure and Beena Raosaheb Tanpure paid the entire consideration of Rs.30,00,000/- to Smt.Usha Fanindranath Bhowmik under the said development agreement in respect of the said property. The said development agreement as well as two power attorneys were duly registered.

5. It is the case of the petitioners that under the said development agreement entered into between the petitioners and the two others and the said Smt.Usha Fanindranath Bhowmik, the petitioners were entitled to the execution of a proper deed of conveyance to get the title deeds transferred in respect of the said property.

6. On 15th January, 2009, the said Smt.Usha Fanindranath Bhowmik expired. The respondent no.6, who is the grand-son of Smt.Usha Fanindranath Bhowmik placed reliance on the alleged Will

dated 28th January, 2008 and alleged that under the said Will, the said Smt.Usha Fanindranath Bhowmik had bequeath the right, title and interest in the said property in favour of the respondent no.6. On the basis of the said Will, the respondent no.6 got his name entered in the record of rights in respect of the said land.

7. On 14th July, 2010, the petitioners exercised the powers under the power of attorneys dated 9th August, 2004 executed by Smt.Usha Fanindranath Bhowmik and executed a deed of conveyance in respect of the said land in favour of the petitioners. The said deed of conveyance was also registered with the Registrar of Assurances. The names of the petitioners were thereafter added in the revenue records vide mutation entry no.2560 on 24th September, 2010. It is the case of the petitioners that the learned Collector thereafter passed an order on 18th October, 2010 allowing the application of the petitioners for the use of the said land for non-agricultural purpose.

8. The respondent no.6 filed an appeal bearing No.Appeal/Pune/157/2010 before the learned Collector, Pune Division challenging the said order dated 18th October, 2010 passed by the learned Collector. By an order dated 31st January, 2012, the learned Deputy Commissioner dismissed the said appeal filed by the respondent no.6 and held that the record had clearly indicated that the said Smt.Usha Fanindranath Bhowmik had given her entire rights in the said land to the petitioners for consideration and that power of attorneys were valid and subsisting even after the death of the said Smt.Usha Fanindranath Bhowmik in accordance with section 202 of the Indian Contract Act, 1872.

9. The respondent no.6 thereafter objected to the mutation entry no.2560 in the name of the petitioners before the learned Circle Officer, Talegaon. Learned Circle Officer passed an order dated 12th January, 2011, allowing the objections filed by the respondent no.6 on the ground that the original owner i.e. Smt.Usha Fanindranath Bhowmik had died prior to the execution of the deed of conveyance and thus the said mutation entry no.2560 in the name of the petitioners could not be upheld.

10. Being aggrieved by the said order passed by the learned Circle Officer dated 12th January, 2011, the petitioners filed an appeal before the learned Sub-Divisional Officer, Maval-Mulshi, Pune under section 247 of the Maharashtra Land Revenue Code, 1966 on the ground that the learned Circle Officer had exceeded his jurisdiction by going into the validity of the sale deed which could be decided only by the Civil Court and on various grounds. Some time in the year 2010, the respondent no.6 filed a Special Civil Suit No.793 of 2010 before the learned Civil Judge, Senior Division, Pune, *inter-alia* challenging the sale deed dated 28th July, 2010 executed in favour of the petitioners. The said suit is pending.

11. It is the case of the petitioners that during the pendency of the said proceedings, the respondent no.6 has alleged to have executed a sale deed dated 20th February, 2014 by which the respondent no.6 has purported to have conveyed the said land to Mr.Ashok Raghunath Mane. The petitioners filed a civil suit (Special Civil Suit No.379 of 2014) before the learned Civil Judge, Senior Division, Pune, *inter-alia* challenging the said alleged sale deed dated 20th February, 2014 alleged to have been executed by the respondent no.6 in favour of Mr.Ashok Raghunath Mane. In the said suit, the

learned Civil Judge, Senior Division, Pune has granted interim relief in favour of the petitioners directing that no third party rights shall be created pending the hearing and final disposal of the said suit. The said suit is also pending. It is the case of the petitioners that the said interim relief granted by the learned Civil Judge, Senior Division, Pune is extended from time to time and is in force.

12. By an order dated 30th April, 2015, the learned Sub-Divisional Officer dismissed the said appeal filed by the petitioners. Being aggrieved by the said order passed by the Sub-Divisional Officer, the petitioners preferred RTS Appeal No.250 of 2015 under section 247 of the Maharashtra Land Revenue Code, 1966. Learned Deputy Collector allowed the said RTS Appeal filed by the petitioners by an order dated 29th December, 2015 and has set aside the order passed by the learned Sub-Divisional Officer and declared that the mutation entry no.2560 in favour of the petitioners was valid and legal.

13. The respondent no.6 filed a revision application against the order of the learned Additional Collector under section 257 of the Maharashtra Land Revenue Code, 1966 before the Additional Commissioner, Pune Division, Pune. The petitioners opposed the said revision application and pointed out that the deed of conveyance executed in favour of the petitioners was valid and subsisting. The development agreement as well as the power of attorneys were duly registered. The entire consideration was already paid by the petitioners to the grand mother of the respondent no.6 who was the exclusive owner of the said land.

14. By an order dated 3rd June, 2017, the learned Additional

Commissioner allowed the said revision application filed by the respondent no.6. The learned Additional Commissioner held that since the deed of conveyance had been executed by the petitioners after the death of the owner Mrs.Usha Bhowmik, the same could not have been executed on the basis of the power attorneys and thus the said transaction was illegal and mutation entry therefore could not be sustained.

15. Being aggrieved by the said order dated 3rd June, 2017 passed by the learned Additional Commissioner, Pune Division, the petitioners filed a revision application before the Revenue Minister, State of Maharashtra under section 257 of the Maharashtra Land Revenue Code, 1966. The said revision application came to be rejected by the revenue minister by an order dated 8th March, 2018. The petitioners have impugned the order dated 8th March, 2018 passed by the learned Revenue Minister in this petition.

16. Mr.Godbole, learned counsel for the petitioners invited my attention to some of the annexures to the writ petition and also to various findings recorded by the authorities in various orders annexed to the writ petition. He submits that admittedly the said Mrs.Usha Bhowmik who was the then owner of the said land had executed a Development Agreement and also two power of attorneys which were duly registered. Under the said power of attorneys, the petitioners were granted exclusive powers to deal with the property and to execute the sale deed. He submits that the entire consideration was already paid to the said Mrs.Usha Bhowmik. The power of attorneys were executed on the same day on which the development agreement was executed. The power of attorneys were coupled with interest under section 202 of the Indian Contracts Act, 1872.

The petitioners thus were entitled to exercise powers under those two power of attorneys even after demise of the said Mrs.Usha Bhowmik. The said irrevocable powers were thus binding not only on the said Mrs.Usha Bhowmik during her lifetime but also binding on the legal heirs of the said Mrs.Usha Bhowmik.

17. It is submitted that the learned Revenue Minister as well as the learned Additional Commissioner could not have decided the validity of the registered power of attorneys or deed of conveyance in the impugned orders. The Revenue Minister did not have any power to adjudicate upon the title in respect of the property in question. The revenue record does not confer any title on any party and the same is for only fiscal purposes. The respondent nos.1, 2, 4 and 5 could not have conferred the title of the respondent no.6 in respect of the said land. Be that as it may, both the parties had filed separate suits in respect of the said land and the same are pending. The Civil Court had granted interim relief in favour of the petitioners in the said suit filed by the petitioners against the respondent no.6 from creating any third party right in respect of the said land.

18. In support of his submission, Mr.Godbole, learned counsel for the petitioners placed reliance on the following Supreme Court judgments : -

- i). **Narayan Laxman Patil vs. Gala Construction Company Private Limited & Ors., 2016 (14) SCC 388** (paragraphs 16 to 18) ;
- ii). **Mahila Bajrangi (dead) through L.Rs. & Ors. vs. Badribai w/o Jagannath & Anr., (2003) 2 SCC 464** (paragraph 6);

iii). **Shanti Budhiya Vesta Patel vs. Nirmala Jayprakash Tiwari & Ors., AIR 2010 SC 2132** (paragraph 39).

19. It is submitted by the learned counsel that both the authorities have totally overlooked the admitted fact that the power of attorneys as well as the development agreement were duly registered. The revenue minister was thus bound to give weightage to the registered documents and could not have passed any order thereby deciding the validity of the registered documents in the revenue proceedings.

20. Learned counsel for the petitioners placed reliance on sections 149 and 150 of the Maharashtra Land Revenue Code, 1966 and submits that the learned Assistant Commissioner has exceeded his powers beyond the powers permissible under sections 149 and 150 of the Maharashtra Land Revenue Code, 1966. The learned Revenue Minister has simplicitor dismissed the revision application filed by the petitioners by adopting the reasons rendered by the learned Assistant Commissioner and without application of mind.

21. Mr.Bhowmik, learned counsel for the respondent no.6, on the other hand, submits that the petitioners could not have exercised the alleged powers under the power of attorneys for executing the deed of conveyance in their own favour after demise of the said Mrs.Usha Bhowmik. The said Mrs.Usha Bhowmik has executed a Will in respect of the said property in favour of the respondent no.6 and accordingly the name of the respondent no.6 was rightly recorded in the record of the rights by the learned Circle Officer. The revenue minister was empowered to look into the serious allegation of fraud and fabrication made by the respondent no.6 while

dealing with the application filed by the petitioners for recording their names in the mutation entry. He submits that all title deeds in respect of the said land are in possession of the respondent no.6.

22. It is submitted that no consideration was admittedly recorded in the power of attorneys relied upon by the petitioners for executing the deed of conveyance in their own favour on behalf of the original owner Mrs.Usha Bhowmik. The authorities were thus justified in rejecting the power of attorneys under which the petitioners had purported to have exercised the powers executed in their own favour. The petitioners had deliberately and dishonestly executed the deed of conveyance dated 20th July, 2010 conveying the said land in their own favour. Since the power of attorneys executed by the said Mrs.Usha Bhowmik were not coupled with interest as sought to be canvassed by the learned counsel for the petitioners under section 202 of the Indian Contracts Act, 1872, no such powers could be exercised after the demise of the said Mrs.Usha Bhowmik. He submits that the authorities were empowered to look into the serious allegation of fraud and fabrication made by the respondent no.6 against the petitioners. Merely because the development agreement and power of attorneys were registered, since those documents were fraudulently obtained by the petitioners, the same were liable to be ignored by the revenue authorities. Learned counsel after conclusion of his arguments, tenders written submissions.

REASONS AND CONCLUSIONS :-

23. A perusal of the record indicates that the respondent no.6 has not disputed that the development agreement as well as the two

power of attorneys were executed by the said Mrs.Usha Bhowmik in favour of the petitioners and two others. The power of attorneys were executed by the said Mrs.Usha Bhowmik in favour of the petitioners. It is also not in dispute that all these documents were duly registered. During the lifetime of Mrs.Usha Bhowmik, she was never terminated the said development agreement or the power of attorneys nor any suit was filed by her for cancellation of those documents.

24. In so far as the respondent no.6 is concerned, he claims to have asserted his rights based on the alleged Will alleged to have been executed by Mrs.Usha Bhowmik after execution of the development agreement and the power of attorneys in favour of the petitioners. Be that as it may, it is an admitted position that the suit filed by the respondent no.6 for cancellation of deed of conveyance and for other reliefs against the petitioners is still pending before the Civil Court. No interim relief has been granted in favour of the respondent no.6 and against the petitioners in that suit. On the other hand, in the civil suit filed by the petitioners against the respondent no.6 before the Civil Court for a declaration that the sale deed executed by the respondent no.6 in favour of the third party in respect of the said land was bad and illegal and also seeking a declaration that deed of conveyance in favour of the petitioners was valid and subsisting. In the said suit filed by the petitioners, the civil Court has granted interim relief in favour of the petitioners and against the respondent no.6 in respect of the said land.

25. A perusal of the order passed by the learned Additional Commissioner clearly indicates that the revision application filed by the respondent no.6 could be allowed on the ground that there is no

consideration mentioned in the power of attorneys. The learned Additional Commissioner accordingly made an observation and has erroneously drawn conclusion that the petitioners could not have exercised any such so called powers under those two power of attorneys after demise of the said Mrs.Usha Bhowmik. Merely on the basis of these observation made by the learned Additional Commissioner, mutation entry in favour of the petitioners came to be set aside. In so far as the order passed by the learned Revenue Minister is concerned, the learned Revenue Minister has simplicitor adopted the reasons rendered by the learned Additional Commissioner and rejected the revision application filed by the petitioners.

26. Under section 149 of the Maharashtra Land Revenue Code, 1966, a procedure is prescribed for reporting the acquisition rights of any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise in any part of the estate of Maharashtra which shall be reported orally or in writing about his acquisition of such right to the Talathi within three months from the date of such acquisition. Under section 150 of the Maharashtra Land Revenue Code, 1966 read with Rules provides a procedure to be followed by Talathi for recording revenue entries in the register of mutations.

27. This Court in the case of **Shrikant R. Sankanwar & Ors. vs. Krishna Balu Naukudkar** (supra) has held that objections which are to be entertained and to be dealt with under section 150 of the Maharashtra Land Revenue Code by the revenue officers are in relation to the entries proposed to be made pursuant to the acquisition of rights by parties and not in relation to to the right itself

of the parties in or to immovable properties. The enquiry pursuant to such reports of acquisition of rights to the revenue officers has to be restricted to the matters pertaining to the mutation of the entries. Such enquiry cannot travel beyond the power given to the authorities under the said provision of law. Such power being restricted to ascertain the veracity of proposed entry, based on document produced by the parties cannot adjudicate upon the rights acquired by the parties to such properties in respect of which the mutation of entry is requested for. Such power to adjudicate right of parties to immovable properties vests in Courts and duly empowered authorities and not with the revenue officers acting under sections 149 and 150 of the Maharashtra Land Revenue Code and Rules.

28. The Supreme Court in the case of **Shanti Budhiya Vesta Patel vs. Nirmala Jayprakash Tiwari** (supra) has held that a registered document under section 74 of the Evidence Act, 1872 has a lot of sanctity attached to it and this sanctity cannot be allowed to be lost without following the proper procedure. In my view, the revenue authority is not empowered to directly or indirectly set aside the registered documents. The development agreement as well as the two power of attorneys which were duly registered had not been set aside by the competent Court till date. The respective suits filed by the parties in respect of the suit land are still pending.

29. In my view, the observations made and the conclusion drawn by the revenue authorities that the two power of attorneys in favour of the petitioners were without consideration or the same did not disclose any acknowledgement of any consideration and thus were not the power of attorneys coupled with interest is *ex-facie* beyond the jurisdiction of the revenue authorities vested in sections

149 and 150 of the Maharashtra Land Revenue Code, 1966. The right, title and interest of the petitioners, if any, under the suit land claimed under the development agreement as well as the two power of attorneys based on which the conveyance deed was executed by the petitioners in their own favour could not have been adjudicated upon by the revenue authority while considering the application under section 149 of the Maharashtra Land Revenue Code, 1966 read with Rules. The observation made and the conclusion drawn by the revenue authority setting aside the mutation entries which were in favour of the petitioners is contrary to the well settled principles of law laid down by the Supreme Court in the aforesaid judgments and also contrary to sections 149 and 150 of the Maharashtra Land Revenue Code, 1966.

30. The Supreme Court in the case of **Narayan Laxman Patil vs. Gala Construction Company Private Limited & Ors.** (supra) has categorically held that a duty has to be performed by the revenue authority under sections 149 and 150 of the Maharashtra Land Revenue Code in a particular manner and only in that manner alone and it was necessary for the Tehsildar to ensure that the requirements of the Code were satisfied by the applicant. The applicant has to be a holder, occupant, owner, mortgagee or tenant.

31. The respondent no.6 has not disputed the possession of the petitioners nor the respondent no.1 has till date terminated the said development agreement as well as the execution of deed of conveyance. The respondent no.6 has also not applied for cancellation of two power of attorneys which according to the petitioners were coupled with interest under section 202 of the Indian Contracts Act, 1872 by filing a suit. The authorities whose orders

are impugned in this petition, in my view, have violated the principles of law laid down by the Supreme Court in the case of **Narayan Laxman Patil vs. Gala Construction Company Private Limited & Ors.** (supra).

32. In my view, the validity of the development agreement and the two power of attorneys as well as the conveyance deed which were all registered cannot be gone into by the revenue authority in the proceedings under section 149 read with section 150 of the Maharashtra Land Revenue Code, 1966. The revenue authority has no power to adjudicate upon the title in respect of the property in respect of which an application for reporting the rights under section 149 of the Maharashtra Land Revenue Code, 1966 is made by the applicant.

33. This Court in an unreported judgment in the case of **Akhtar Hasan Rizvi vs. Harish R. Bhattad & Ors.**, delivered on 24th April 2018 in Writ Petition No.10914 of 2017 has held that the revenue authority cannot adjudicate upon the title in respect of the property for which an application for recording the names in the revenue record is made by one of the parties eligible to apply under section 149 of the Maharashtra Land Revenue Code, 1966. The principles of law laid down by this Court in the case of **Akhtar Hasan Rizvi vs. Harish R. Bhattad & Ors.** (supra) would squarely apply to the facts of this Court. I am respectfully bound by the said judgment. The aforesaid judgments of the Supreme Court and the judgment delivered by this Court would also squarely apply to the facts of this Court. In my view, the impugned orders passed by the learned Revenue Minister dated 8th March 2018 and the learned Additional Commissioner dated 3rd June 2017 thus deserve to be

set aside.

34. I therefore pass the following order :-

a). The impugned orders passed by the learned Revenue Minister dated 8th March, 2018 and the learned Additional Commissioner dated 3rd June, 2017 are quashed and set aside.

b). It is however made clear that this Court has not expressed any views on the issue as to whether the petitioners or the respondent no.6 have any right, title and interest of any nature whatsoever, in the property in question or not and the said issue can be adjudicated upon in the rival suits filed by both the parties.

c). Rule is made absolute in aforesaid terms.

d). There shall be no order as to costs.

(R.D. DHANUKA, J.)

35. At the request of the learned counsel for the respondent no.6, the operation of this order is stayed for a period of four weeks from today. If any Special Leave Petition is filed, the papers and proceedings thereof shall be served upon the petitioners' advocate in advance.

(R.D. DHANUKA, J.)