IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7179 OF 2017

Bhupendra Rajaram Gupta & Ors. .. Petitioners
Vs.
Sakhubai Shankar Ghatal & Ors. .. Respondents

Mr.Sachin Dhakephalkar for the petitioners.
Mr.P.S. Dani, Senior Advocate i/by Mr.Abhijeet B. Kadam for the respondent nos.1 to 4.

CORAM : R.D. DHANUKA, J.
DATE : 12th June 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 14th June 2017 passed by the learned Revenue Minister rejecting the revision filed by the petitioners.

2. It is the case of the petitioners that the land bearing Survey No.234, CTS No.33 Part was purchased by the petitioner no.2 and her husband from Manglya Ladkya Ghatal. Therefore, the predecessor of the respondent nos.1 to 4 had executed three Agreements for Sale in favour of the petitioner no.2 and her husband and handed over possession of the said lands under those Agreements. The deed of conveyance however has not been executed by the respondent no.4 in their favour. The consent decree was passed against the predecessor of the respondent nos.1 to 4 by this Court on 15th January 1970.

3. On 9th June 2005, Shankar Manglya Ghatal through his constituted attorney, Malji Badlya Warthe had filed application before the learned Sub-Divisional Officer for restoration of land Survey No.234, CTS No.33 against the petitioners under the provisions of the Maharashtra Land Revenue Code, 1966. The said application came to be allowed by the learned Sub-Divisional Officer by an order dated 4th September 2006. The petitioners filed an appeal against the said order before the learned Deputy Collector (Appeals) under Section 247 of the Maharashtra Land Revenue Code, 1966. The learned Deputy Collector (Appeals) allowed the said appeal filed by the petitioners by an order dated 3rd March 2010. The said order dated 3rd March 2010 came to be set aside by the learned Additional Commissioner, Konkan Division, Mumbai in the appeal filed by the respondent nos.1 to 4 by an order dated 13th November 2013. The learned Minister (Revenue) dismissed the revision application filed by the petitioners on 19th January 2017.

4. Mr.Dhakephalkar, learned counsel appearing for the petitioners invited my attention to some of the exhibits annexed to the petition and would submit that the learned Sub-Divisional Officer has passed an order against the dead person Shankar Manglya Ghatal who had expired during the pendency of the proceedings before the Sub-Divisional Officer. No legal heirs of Shankar Manglya Ghatal were brought on record before the Sub-Divisional Officer.

5. The next submission of the learned counsel for the petitioners is that the proceedings filed before the learned Additional Commissioner bearing Revision Application No.495 of 2010 was not only filed by three of the respondents to this petition but also by Babu

Manglya Ghatal who was not a party in the proceedings before the Sub-Divisional Officer. He submits that the impugned order passed by the learned Additional Commissioner is vitiated on that ground.

6. The next submission of the learned counsel for the petitioners is that the proceedings filed before the learned Sub-Divisional Officer did not mention under Sections 36 and 36 A of the Maharashtra Land Revenue Code, 1966 and thus the proceedings before the learned Sub-Divisional Officer was without jurisdiction. The learned counsel for the petitioners submits that the caste validity certificate was not produced before the Sub-Divisional officer and on that ground itself, the application filed before the Sub-Divisional Officer was not maintainable. The last submission of the learned counsel for the petitioners is that the authorities below have virtually set aside the consent decree passed by this Court in the impugned orders.

7. Mr.Dani, learned senior counsel appearing for the respondent nos.1 to 4, on the other hand, submits that admittedly the application filed before the learned Sub-Divisional Officer was filed by the constituted attorney of Shankar Manglya Ghatal who was alive on the date of filing of application. During the pendency of the said application, Shankar Manglya Ghatal expired. An application for bringing the legal heirs of Shankar Manglya Ghatal on record was filed before the Sub-Divisional Officer. He submits that the impugned order passed by the Sub-Divisional Officer was not passed in favour of the dead person.

8. Learned senior counsel for the respondent nos.1 to 4 invited my attention to the cause title of the appeal filed by the petitioners and

would submit that the petitioners themselves had impleaded the legal heirs of Shankar Manglya Ghatal in his place in the appeal memo filed before the learned Deputy Collector (Appeals) and thus it does not lie in the mouth of the petitioners to urge that the legal heirs of the said Shankar Manglya Ghatal were not brought on record.

9. It is submitted that in any event, the issue that the legal heirs were allegedly not brought on record in the proceedings before the Sub-Divisional Officer was not raised before any of the authorities subsequently i.e. before the Additional Commissioner nor before the learned Minister.

10. In so far as the submission of the learned counsel for the petitioners that Babu Manglya Ghatal who was impleaded as one of the applicant in the appeal before the learned Additional Commissioner, Konkan Division was not a party before the Sub-Divisional Officer is concerned, it is submitted that the said Babu Manglya Ghatal being a constituted attorney of the original owner was thus impleaded as a party. No objection, however, was raised before the learned Additional Commissioner, Konkan Division or before the learned Minister in respect of the alleged misjoiner of Babu Manglya Ghatal in the proceedings before those authorities.

11. In so far as the submission of the learned counsel for the petitioners that there was no mention of Section 36 and 36A of the Maharashtra Land Revenue Code, 1966 in the application before the Sub-Divisional Officer is concerned, it is submitted that merely because

the provisions are not cited in the application, the proceedings cannot be considered as not maintainable. It is submitted by the learned senior counsel that in any event, the petitioners themselves have invoked the provisions of the Maharashtra Land Revenue Code, 1966 in the subsequent proceedings and have rightly understood that the application made by the constituted attorney of Shankar Manglya Ghatal was under Sections 36 read with 36A of the Maharashtra Land Revenue Code, 1966. It is submitted that in any event, the learned Sub-Divisional Officer while passing the order on the said application has exercised the powers under Sections 36 and 36 A of the Maharashtra Land Revenue Code, 1966 and thus the proceedings cannot be considered as without jurisdiction merely on the ground that the provisions were not cited in the application filed by the constituted attorney of the original owner.

12. In so far as the submission of the learned counsel for the petitioners for setting aside the consent decree passed by this Court is concerned, learned senior counsel submits that the petitioners themselves have urged in the proceedings before the learned Minister (Revenue) that even the consent decree passed in their favour was fraudulently obtained. In any event, the consent decree has not been set aside by the authority in the impugned order.

13. Mr.Dhakephalkar, learned counsel for the petitioners in rejoinder submits that the respondent nos.1 to 4 were not brought on record at any stage before the Sub-Divisional Officer. No order was passed by the Sub-Divisional Officer for impleadment of the legal heirs of the original owner.

14. In so far as the submission of the learned counsel for the petitioners that the provision was not quoted in the application and thus the application was not maintainable is concerned, in my view, this submission is without merit. Merely because of the provisions were not cited in the application and thus the proceedings were without jurisdiction. The fact remains that the learned Sub-Divisional Officer has exercised the powers under Sections 36 and 36 A of the Maharashtra Land Revenue Code, 1966 while allowing the said application. Be that as it may, the petitioners themselves have invoked the provisions of the Maharashtra Land Revenue Code, 1966 in the subsequent proceedings filed before the authority which were applicable for impugning orders under Section 36 read with Section 36A of the Maharashtra Land Revenue Code, 1966.

15. In so far as the submission of the learned counsel for the petitioners that the impugned order passed by the Sub-Divisional Officer was passed in favour of the dead person is concerned, a perusal of the record clearly indicates that it is not in dispute that when the said application was filed by the constituted attorney of Shankar Manglya Ghatal before the Sub-Divisional Officer, the said Shankar Manglya Ghatal was alive. Admittedly the said Shankar Manglya Ghatal had expired during the pendency of the said proceedings before the Sub-Divisional Officer. I am inclined to accept the submission made by Mr.Dani, learned senior counsel for the respondent nos.1 to 4 that the application for bringing the legal heirs of Shankar Manglya Ghatal was filed. This submission of the learned senior counsel is supported by an admitted fact that in the appeal filed by the petitioners themselves before

the Deputy Collector (Appeals), all the legal heirs of the said Shankar Manglya Ghatal were brought on record. I am thus not inclined to accept the submission of the learned counsel for the petitioners that the impugned order passed by the learned Sub-Divisional Officer was passed against a dead person.

16. In so far as the submission of the learned counsel for the petitioners that the respondent nos.1 to 4 had not annexed the caste validity certificate before the authority is concerned, a perusal of the order dated 13th November 2013 passed by the learned Additional Commissioner, Konkan Division, Mumbai indicates that the said authority has rendered a finding of fact that the certificate issued to Babu Manglya Ghatal passed by the Deputy Collector and Special Land Acquisition Officer-1, Mumbai and M.S. D. dated 11th May 2001 and subsequently was validated on 24th June 2005 by Certificate Scrutiny Committee, Konkan Division and was a sufficient proof to show that Ghatal family belong to the tribal community and were entitled to avail of the benefits rendered to them by Special legislations like the amendments to Section 36 of the Maharashtra Land Revenue Code, 1966. There is thus no merit in this submission of the learned counsel for the petitioners.

17. A perusal of the orders passed by the learned Sub-Divisional Officer, learned Additional Commissioner and the learned Minister indicates that various findings of facts are rendered by those authorities against the petitioners and in favour of the respondents are based on the documents produced by both the parties and being not

perverse cannot be interferred with by this Court under Article 227 of the Constitution of India.

18. In my view, the order passed by the learned Deputy Collector (Appeals) has been rightly set aside by the learned Additional Commissioner and the learned Minister. The petition is devoid of merit and is accordingly dismissed. No order as to costs.

19. At the request of Mr.Dhakephalkar, learned counsel for the petitioners, ad-interim protection granted by this Court on 30th June 2017 to continue for a period of four weeks from today. If any special leave petition is filed, the papers and proceedings of the said special leave petition shall be served upon the contesting respondents in advance.

R.D. DHANUKA, J.