

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12223 OF 2018

Shri Tukaram Genu Khutal .. Petitioner
Vs.
The State of Maharashtra and ors. .. Respondents

Mr.Uday Nighot, for the Petitioner.
Mr.Pandit Kasar, for Respondent No.3.
Mr.Sachin Kankal, AGP for State.

CORAM : M.S.KARNIK, J.

DATE : 03rd DECEMBER, 2018

P.C. :

. In a Suit filed for perpetual injunction before the Civil Judge, Junior Division, Junnar, Dist. Pune, the trial Court was pleased to permanently restrain the Respondent No. 3 herein from causing any obstruction/interference to the Plaintiff's possession over the suit property described in the schedule. The mutation entry thus came to be recorded in the name of the Petitioner on the basis of decree dated 12/09/2008. After almost 9 years, the Respondent No.3 filed RTS Appeal before the Sub-Divisional Officer (for short 'SDO'), Manchar.

SDO was pleased to allow the Appeal and mutation entry in favour of the Petitioner was set aside.

2. The Petitioner therefore filed RTS Appeal No. 634 of 2018 to the Additional Collector, Pune. The Petitioner prayed for stay of the order passed by the SDO. By the impugned order dated 19/07/2018, the Additional Collector, Pune was pleased to reject the prayer for interim relief. Being aggrieved by this rejection, the Petitioner filed this Petition under Article 227 of the Constitution of India.

3. Learned Counsel for the Petitioner submits that mutation entry was made on the basis of the decree passed. He further points out that one of the issues raised in the Suit was whether the Plaintiff proved his title and possession over the suit property which is answered in the affirmative. He submits that the Respondents filed Appeal before SDO almost after 9 years. The application for condonation of delay was filed. He however submits that without deciding the application, the SDO

while deciding the main Appeal condoned the delay by observing that the question of delay will not arise if the mutation entry is void ab-initio. Learned Counsel submits that the decree restrains the Respondent No. 3 from interfering with Plaintiffs possession over the suit property. In this view of the matter, he submits that this was a fit case where the Additional Collector ought to have stayed that the order passed by SDO.

4. Learned Counsel for Respondent No.3 supports the order passed by SDO. He submits that SDO has come to the categorical finding that the mutation entry is ab-initio void. In his submission, by a reasoned order, the SDO has allowed the Appeal. In these circumstances, in his submission in an Appeal filed by the Petitioner against the order passed by SDO, the Additional Collector is justified in rejecting the application for stay.

5. Heard learned Counsel appearing for the parties. It is not in dispute that the mutation entry was made in favour of

the Petitioner pursuant to the decree passed by the trial Court. Almost after 9 years, Appeal is filed challenging the mutation entry. It is pointed out to me that Appeal is listed for hearing before the Additional Collector some time in December 2018. In this view of the matter, the following order will be meet the ends of the justice.

ORDER

- (a) The Additional Collector, Pune is directed to decide the Appeal No. 634 of 2018 itself as expeditiously as possible before it and in any event, within a period of 8 weeks from today.
- (b) The parties to appear before Additional Collector Pune on 10/12/2018 at 11.00. a.m.
- (c) Till the disposal of the Appeal, the parties to maintain status-quo.
- (d) It is made clear that I have not expressed any opinion on the merits of the controversy. The Additional Collector, Pune to decide the Appeal on its own merits without being influenced by any observations made by me hereinabove.

6. The Writ Petition is disposed of in the above terms.

(M.S.KARNIK, J.)