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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12589 OF 2015

Chittaranjan C. Sharma, since deceased
through His L.Rs. - Premkumar C. Sharma & Ors. ...Petitioners
V/s.
Bochasan A. Purushottam @
Shri Sawmi Narayan Sanstha & Ors. ...Respondents

Ms.Gauri Godse for the Petitioners.

Mr.G.S. Godbole with Mr.Satyen Vora and Mr.Atul Kshatriya i/b Markand Gandhi & Co. for the Respondent No.1.

CORAM : R.D. DHANUKA, J.
DATE : 24TH JULY , 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 27th August, 2014 passed by the learned Revenue Minister, Mantralaya, Mumbai dismissing the revision application filed by the petitioners as well as the judgment and order dated 26th April, 2012 passed by the learned Commissioner, Konkan Division, Mumbai dismissing the appeal filed by the petitioners and the orders dated 11th July, 2005 and 21st July, 2005 passed by the learned Collector in Application dated 9th October, 2002. Some of the relevant facts for the purpose of deciding this petition are as under :

2. It is the case of the petitioners that by a registered Gift Deed dated 9th May, 1964, the father of the deceased petitioners i.e. Chandrabhan Sharma had gifted 5 acres and 16 gunthas land out of survey no.40 of village Tirandaj, Taluka Kurla, District Mumbai to the respondent no.1. The name of the respondent no.1 was recorded in respect of the said gifted property on 21st September, 1992 vide mutation entry no.51. On 29th June, 1977, MMRDA proposed to acquire 24-63-40 hectare of land out of survey no.11 (bearing CTS no.22) of village Powai. It is the case of the petitioner that MMRDA however acquired only 16-82-20 hectare of land out of survey no.11 bearing CTS no.22 of village Powai and the balance land remained with the said deceased Chandrabhan Sharma. The petitioners claim to have purchased the balance property from her father Chandrabhan Sharma.

3. It is the case of the petitioners that MMRDA addressed an application dated 26th October, 2004 to the Superintendent of Land Records, Mumbai Suburban District with a copy to the City Survey Officer, Mulund to take necessary steps and prayed for correction of the name of the deceased Chandrabhan Sharma in place of the respondent no.1 as Bhadepattedar in respect of CTS no.22 of village Powai.

4. The City Survey officer passed an order on 5th May, 2005

directing that the name of the deceased Chandrabhan Sharma be entered in place of the respondent no.1 and Mr.P.C. Sharma in CTS no.22 of village Powai. It is the case of the petitioners that the said order passed by the City Survey officer was not challenged by the respondent no.1.

5. On 9th October, 2002, the respondent no.1 filed an application before the learned Collector, *inter-alia* praying for sub-division of the property bearing CTS no.22 (part) of village Powai, Taluka Kurla and also for entering its name in respect of the said property. It is the case of the petitioners that they are the predecessors of Mr.Chittaranjan C. Sharma and contested the said application filed by the respondent no.1 and also filed a reply to the said application. On 11th July, 2005, learned Collector allowed the said application filed by the respondent n.1 and directed the City Survey Officer, Mulund to enter the name of the respondent no.1 in respect of 4340.1 sq. mtrs. in CTS no.105/A of Mouje Tirandaz and 17,499.9 sq. mtrs. instead of 23,426.3 sq. mtrs. out of survey no.22 of Mouje Powai and directed that separate property register cards be issued.

6. By an order dated 21st July, 2005, learned District Collector amended the order dated 11th July, 2005 and was pleased to set aside the earlier order dated 5th May, 2005 to the extent of 17499.9 sq. mtrs.

out of survey no.22 of village Powai.

7. The petitioners filed an appeal against the orders dated 11th July, 2005 and 21st July, 2005 before the learned Commissioner, Konkan Division, Mumbai on various grounds. The respondent no.1 filed reply to the said appeal filed by the petitioners. By an order dated 26th April, 2012, the learned Commissioner, Konkan Division, Mumbai dismissed the said appeal filed by the petitioners and confirmed the orders passed by the learned Collector dated 11th July, 2005 and 21st July, 2005.

8. The petitioners thereafter impugned the said order dated 26th April, 2012 passed by the learned Commissioner, Konkan Division,Mumbai by filing a revision application before the learned Revenue Minister, Mantralaya, Mumbai. By an order dated 27th August, 2014, learned Revenue Minister, Mantralaya, Mumbai dismissed the said revision application filed by the petitioners.

9. It is the case of the petitioners that the learned Revenue Minister, Mantralaya, Mumbai who was appointed as the learned Revenue Minister in place of the erstwhile Revenue Minister decided to review the order dated 27th August, 2014 passed by the erstwhile learned Revenue Minister and accordingly issued a notice to the petitioners fixing the date of hearing. It is the case of the petitioners that the learned Revenue Minister closed the matter for orders. The

said proceedings however, were subsequently dropped. Being aggrieved by the said order dated 27th August, 2014 passed by the learned Revenue Minster, the petitioners filed this writ petition.

10. Ms.Godse, learned counsel appearing for the petitioners invited my attention to various annexures to the writ petition and submits that the grandfather of the petitioners had gifted 5 acres and 16 gunthas land out of survey no.40 of village Tirandaj to the respondent no.1 by a registered Gift Deed dated 19th May, 1964. When the said Gift Deed was executed by the grandfather of the petitioners, the said property was already given the city survey number. The City Survey Officer by an order dated 5th May, 2005 directed that the name of the deceased Chandrabhan Sharma be entered in place of the respondent no.1 and Mr.P.C. Sharma in CTS no.22 of village Powai, which order was not impugned by the respondent no.1 and had attained finality.

11. It is submitted by the learned counsel that it was for the respondent no.1 to prove that the description of the gifted property was bearing old survey number and not new survey number. The respondent no.1 had failed to discharge the burden that the description of the gifted property was of the old survey number and not the new survey number. She submits that Mouje Tirandaj was Kothi village and the land of the Kothi was unsurveyed and was given

Kothi numbers. The lands of the said villages were surveyed when Salsette Estates (Land Revenue Exemption Abolition) Act, 1951 came in force. The land in question was thus having new survey number and not the old survey number. Much prior to 1960, there was already a change in the revenue record and it was observed that the survey no.40 described in the Gift Deed was existing changed survey number and not the old survey number sought to be contended by the respondent no.1.

12. It is submitted by the learned counsel that the division of the area if any from survey no.37 of village Tirandaj could not confer any title on the respondent no.1 with respect to the area of Powai. There was no documentary title in favour of the respondent no.1 with respect to survey no.37 of village Tirandaj. She submits that the name of the respondent no.1 was not recorded in CTS no.22 of village Powai in view of the fact that after acquiring substantial part from survey no.11 with CTS no.22 of the village Powai, the balance land remained with the original holder of the said land i.e. C.B. Sharma. The respondent no.1 was only entitled to the suit land i.e. the land from village Tirandaj and had no connection with the land from village Powai.

13. It is submitted that the findings rendered by all the authorities are totally perverse and thus deserves to be set aside by

this Court in this writ petition.

14. Mr.Godbole, learned counsel appearing for the respondent no.1 on the other hand submits that when the Gift Deed was executed by the predecessor in title of the petitioners, the property was not surveyed at that point of time. The survey took place much later. The name of the respondent no.1 was thereafter recorded in respect of the land bearing CTS no.22 of village Powai. He submits that the respondent no.1 had thus rightly applied for sub-division of the property on 9th October, 2002 before the learned Collector. He invited my attention to various findings of fact rendered by the learned Collector in the impugned order dated 11th July, 2005 and the order dated 21st July, 2005. He submits that the learned Collector considered all the arguments made by the parties and the documents produced by them in great detail and has rendered various findings of fact in favour of the respondent no.1 and against the petitioners and rightly allowed the said application dated 9th October, 2002 filed by the respondent no.1. The said order was subsequently corrected by the learned Collector on 25th July, 2005.

15. It is submitted by the learned counsel for the respondent no.1 that the said Chandrabhan Sharma had donated to the respondent no.1 – Trust 5 acres and 16 gunthas i.e. 26136 sq. yards of land bearing Kothi no.40 and new survey no.37 in village Tirandaj

in Powai estate. The respondent no.1 were put in possession of the said property under a letter of possession dated 19th May, 1964 issued by the said Chandrabhan Sharma.

16. It is submitted that some time in the year 1966-67, boundaries of village Tirandaj and village Powai were realigned due to which the property was divided in two parts. The property in village Tirandaj having Kothi no.40 was given new survey no.37 (part) and CTS no.105 admeasuring about 1.16 acres. 4 acres of land at village Powai was given new survey no.22 (part). He submits that all the authorities have rightly considered the plan annexed to the Gift Deed till date.

17. It is submitted by the learned counsel that the City Survey Officer had conducted the survey pursuant to the directions given by the learned Collector on 14th October, 2003 and had submitted a survey plan showing the property in possession of the respondent no.1 and also shown the location as to which part fell in Tirandaj village and which portion fell in Powai village. From the map prepared by the City Survey Officer, it is clear that out of 4.56 gunthas of area, 16 gunthas fall in village Tirandaj bearing CTS no.105 and remaining 4 acres fell in village Powai bearing CTS no.22. The planning authority had issued DP remarks by showing the exact location of the property of the respondent no.1 and thereafter the property was

realigned.

18. Insofar as the property acquired by MMRDA is concerned, it is submitted by the learned counsel that though the property of the respondent no.1 was not acquired by MMRDA, by mistake the said property of the respondent no.1 was shown as acquired by MMRDA and in the revenue records as per procedure, the name of the respondent no.1 was shown as lessee in respect of CTS no.22 (part) in Powai village. MMRDA however, when the respondent no.1 approached, issued a letter dated 31st October, 2002 and reconfirmed by a letter dated 6th July, 2004 that the property of the respondent no.1 was not acquired by them. The respondent no.1 accordingly approached the learned Collector to rectify the records and to show that the respondent no.1 is the owner in respect of CTS no.105 of village Tirandaj and CTS no.22 in village Powai.

19. Learned counsel appearing for the respondent no.1 submits that the petitioners had already filed a suit before the City Civil Court at Bombay as is apparent from the pleadings filed by the petitioners. The papers and proceedings of the said civil suit were however not served upon the respondent no.1. He submits that the respondent no.1 has now come to know that the said suit filed by the petitioners has been dismissed by the City Civil Court at the stage of presentation itself. It is submitted that the learned Collector has set

aside the order of the City Survey Officer and thus no reliance thereon could be placed by the petitioners. The findings of the City Survey Officer thus were of no assistance to the petitioners.

20. Ms.Godse, learned counsel for the petitioners in rejoinder submits that the order dated 5th May, 2005 passed by the said city survey officer is admittedly not impugned by the respondent no.1 and thus the collector as well as the other authorities could not have ignored the said order passed by the city survey officer. It is submitted that the onus was on the respondent nos. 1 to 3 to prove that on the date of the execution of the said gift deed by the predecessor of the title of the petitioners, the city survey number was already given to the land which was subject matter of the said gift deed in favour of the respondent no.1, which onus the respondent no.1 failed to discharge.

21. It is submitted that the respondent no.1 cannot rely upon the proceedings filed by the petitioners before the Bombay City Civil Court at this stage.

REASONS AND CONCLUSIONS :

22. It is not in dispute that the predecessor of the petitioners i.e. Mr.Chittaranjan Chandrabhan Sharma had gifted 5 Acre 16 Gunthas land to the respondent no.1 by a registered gift deed dated 19th May, 1964. Sometime in the year 1966-67 the boundaries of the

village Tirandaj and Powai was realigned. According to the respondent no.1, the plot admeasuring 1.16 acres of village Tirandaj bearing plot no.40 was given new survey no. 37(part) and city survey no. 105 and land admeasuring 4 acres of village Powai was given new survey no.22 (part). The respondent no.1 placed reliance on the map annexed to the gift deed before the authorities and also copy of the possession letter issued by the predecessor in the title of the petitioners in the respondent no.1.

23. A perusal of the record indicates that the learned collector had issued a direction on 14th October, 2003 to the surveyor to conduct survey, who after carrying out the survey submitted a survey map showing the property in possession of the respondent no.1 and also showing the location of the portion falling in village Tirandaj and portion falling in village Powai.

24. The planning authority had realigned the DP road passing from the property of the respondent no.1. The portion of the property of the respondent no.1 in Powai village was the subject matter of the DP road. The planning authority issued DP remark showing the exact location of the property of the respondent no.1 and also showing the exact location of the DP road before aligning the property of the respondent no.1.

25. Insofar as the application made by the MMRDA relied upon

by the learned counsel for the petitioners is concerned, it appears that the MMRDA had inadvertently shown the property of the respondent no.1 as acquired and accordingly the name of the respondent no.1 was shown as lessee in the revenue records in respect of the CTS No.22(part) of Powai village. The MMRDA thereafter addressed a letter to the concerned authorities and corrected its mistake and confirmed that part of the property of the respondent no.1 in village Powai was not acquired. The respondent no.1 had accordingly filed an application before the revenue authority for cancelling the name of the respondent no.1 as lessee and for correcting the name in the revenue record based on the letter/application of the MMRDA.

26. A perusal of the record further indicates that when the city survey officer was hearing the application made by the MMRDA, the proceedings filed by the petitioners were already pending before the learned collector. It is the case of the respondent no.1 that the learned collector had set aside the order of the city survey officer refusing to grant stay in favour of the respondent no.1. In my view, the submission of the learned counsel for the petitioners that the respondent no.1 had not challenged the order passed by the city survey officer or that the said order attained finality is devoid of merit.

27. Be that as it may, the order of the collector who is senior in hierarchy would prevail and not the order of the city survey officer.

The petitioners have not disputed that the respondent no.1 had applied for sub-division of the plot which issue could be decided only by the collector and not by the city survey officer.

28. A perusal of the order passed by the learned collector further indicates that the learned collector had perused all the records and survey report and has recorded the findings that there was an inadvertent error in recording the change in the boundaries of the two villages i.e. Tirandaj and Powai which error sub-divided the property of the respondent no.1 into two villages of Tirandaj and Powai. The learned collector also rendered a finding of fact that there was an error occurred due to the ignorance of the office bearer of the respondent no.1 being a Trust which was corrected by the learned collector.

29. A perusal of the order passed by the learned Additional Commissioner rejecting the appeal bearing no.386 of 2005 filed by the predecessor of the petitioners clearly indicates that the learned Additional Commissioner also after considering all the submissions of both the parties and considering the record rendered various findings of fact in favour of the respondent no.1 and has dismissed the said appeal filed by the petitioners by an order dated 26th April, 2012.

30. The petitioners thereafter filed a revision application before the Revenue Minister. In the said order dated 27th August, 2014, the

learned Revenue Minister has considered the entire record produced by both parties and has rendered various findings of fact while holding that the order passed by the learned Additional Commissioner and the learned collector did not warrant any interference. Learned counsel for the petitioners could not point out any error in any of these orders rejecting the appeals as well as the revision application filed by the petitioners. None of the findings recorded by these authorities are perverse and thus cannot be interfered with by this Court under Article 227 of the Constitution of India.

31. Be that as it may, insofar as the issue of title is concerned, the order passed by the revenue authority does not conclusively prove the title in favour of the parties in whose favour such mutation entries are entered in the revenue record.

32. Insofar as the submission of the learned counsel for the petitioners that the respondent no.1 could not rely upon the suit filed by the petitioners before the Bombay City Civil Court or the order passed therein is concerned, a perusal of the record indicates that there is a reference to the said suit in the pleadings filed by the petitioners. It is not the case of the petitioners that the said suit was not in respect of the property which is the subject matter of these proceedings or that the said suit was not dismissed by the City Civil Court. It is however contended by the learned counsel for the

petitioners that the said suit was dismissed on the presentation of the plaint itself. In my view there is thus no merit in the submission of the learned counsel for the petitioners that the respondent no.1 cannot refer to those proceedings filed by the petitioners.

33. In my view, the petition is devoid of merit and is accordingly dismissed. There shall be no order as to costs.

(R.D. DHANUKA, J.)