IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

929. WRIT PETITION NO. 7342 OF 2019

Tarabai Ganpat Gahire
through G.P.A. Niraj Suresh Gahire ...Petitioner

Versus

Prabhakar Hari Kahar (Parsaiyya) and others … Respondents

Mr. R.R. Karpe, Advocate for petitioner
Mr. S.P. Tiwari, Asstt. Govt. Pleader for respondents No. 7 to 10

CORAM : RAVINDRA V. GHUGE, J.

DATE : 19th June, 2019

PER COURT:

1. The learned Counsel for the petitioners submits that the the petitioners were the beneficiaries of mutation entry No. 1414 recorded on 27th February, 2009. By the order of the Sub-Divisional Officer in Revision Application No. 7 of 2009 preferred by the respondents, the mutation entry was directed to be cancelled.

2. The petitioners approached the Additional Collector in R.T.S. Appeal No. 14 of 2010, which was rejected by the order dated 16th September, 2010 on the ground that the delay of 13 months had been caused in preferring the said appeal. The

petitioner preferred R.T.S. Revision No. 1 of 2012 before the Additional Divisional Commissioner, Nashik, seeking condonation of delay and by the order dated 20th May, 2013 the said revision was allowed and the order of the Tahsildar was also set aside.

3. The respondents approached this Court by filing Writ Petition No. 2277 of 2014. The matter was remitted to the Commissioner for deciding the condonation of delay application, afresh, by the order of this Court dated 10th April, 2014. The Additional Commissioner, Nashik, by the order dated 28th February, 2017 rejected Revision Application No. 1 of 2012 and refused to condone the delay. The petitioners approached the Hon'ble Minister in the Second Revision and by the order dated 6th February, 2019, the said revision has been rejected.

4. It is fairly stated that mutation entry No. 1414 has now been cancelled.

5. The learned Counsel for the petitioners submits that Reg. civil suit No. 315 of 2010 (new R.C.S. No. 68 of 2015) filed by the petitioners seeking perpetual injunction on the basis of title through the will deed executed by the brother of the petitioner in her favour, is at the stage of recording of evidence. Issues have been cast and one of the issues is as regards establishing the title of the petitioners through the will deed.

6. Considering the above, I find that the law laid down by this Court in ***Shrikant R. Sankanwar and others Vs. Krishna Balu Naukudkar, 2003(2) Mh.L.J. 276,*** would apply to the facts put-forth in this petition. It has been held by this Court in paragraphs No. 13, 14 & 15 as under:

> **“** *13. It is well settled law that the entries in the revenue records are basically for revenue purposes and do not by themselves constitute title to the property in favour of any person. Such entries can, undoubtedly, be corroborative piece of evidence to establish the certain rights of the parties in relation to property but they themselves cannot create any title in favour of any person in relation to any immovable property.* **”**
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> *14. It is also to be noted that while exercising the powers under the said Code and the rules made thereunder the Authorities under the Code, cannot assume jurisdiction under different statutes to investigate into the rights of the parties in relation to properties which are referred to in the applications for mutation of the entries. I am fortified in this view by the decision of the learned Single Judge of the Gujarat High Court in the matter of Evergreen Apartment Co-operative Housing Society Ltd. v. Special Secretary (Appeals) Revenue Department, Gujarat State, wherein while dealing with the scope of powers of the Revenue Authorities in the matter of the application for mutation of entries under Bombay Land Revenue Code has observed that:*
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>> *"So far as the proceedings under Rule 108 of the Rules, popularly known as RTS proceedings, are concerned, it is well settled that the entries made in the revenue records have primarily a fiscal value and they do not create any title. Such mutations have to follow either the documents of title or the orders passed by competent authorities under special enactments. Independently the Revenue Authorities, as mentioned in Rule 108 of the Rules, cannot pass orders of cancelling the entries on an assumption that the transaction recorded in the entry are against the provisions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by followings the procedure prescribed therein and by giving an opportunity of hearing to the concerned*

parties likely to be affected by any order that may be passed."

15. In the case in hand it is not in dispute that the petitioners had produced a registered sale deed dated 15-7-1998 while requesting for entry in their favour in mutation register. The Talathi based on the said document had allowed the application filed by the petitioners and had carried out necessary mutation in the register. The Sub-Divisional Officer while dealing with the appeal against the decision on mutation of entry, assuming illegally, the jurisdiction of the authorities under the Tenancy Act sought to deal with the controversy pertaining to the tenancy claim and right under the provisions of The Bombay Agricultural Tenancy Act, 1948, sought to set aside the said decision of Tahsildar allowing the application for mutation of entry, and thereby clearly transgressed the jurisdiction of the revenue authorities available under the provisions of the said Code and the said rules in relation to disputes pertaining to the mutation of entries. Additional Divisional Commissioner by confirming the said order of the said Divisional Officer reiterated the same illegality. Apparently both the authorities have acted illegally and beyond the powers vested in them in relation to the proceedings pertaining to mutation of entries under the said Code and the said rules, and therefore the orders passed by them cannot be sustained and are liable to be quashed and set aside. At the same time it is also to be noted that in case there is any application by the respondents for mutation of entries in their favour based on any valid and lawfully registered document or any decision pronounced by any court or judicial or quasi-judicial authority competent to pronounce such decision, certainly the Authorities acting under sections 149 and 150 of the said Code cannot ignore such application nor can refuse to carry out the mutation in accordance with the declaration of right in favour of the party by virtue of such decision of the Court or the competent Authority. In case of any conflict between such entries, the parties have to settle the dispute by taking resort to the regular remedy available under appropriate statutes but the revenue authorities acting under Sections 149 and 150 of the Code cannot assume jurisdiction to decide about the rights of the parties in relation to properties, while acting under those provisions for the purpose of mutations. Albeit, the revenue authorities can certainly decide in such cases, the issue of actual possession. However, such decision would be final, subject to the decision of the civil court in that regard."

7. In view of the above, I find that this petition can be disposed off considering the law laid down in ***Shrikant Sankanwar***, (supra), since the mutation entries presently carried out or even the cancellation of the mutation entry No. 1414 would be subject to the result of the civil suit. As such, this petition is disposed off.

8. The parties shall note that the mutation entries, which may have presently being carried out as well as cancellation of the mutation entry No. 1414, shall be subject to the result of the civil litigations and the observations of the Trial Court with regard to the legality of the will deed.

9. I deem it appropriate to direct the Trial Court to decide Reg. civil suit No. 68 of 2015 (old R.C.S. No. 315/2010) as expeditiously as possible and preferably, on or before 29th February, 2020.

(RAVINDRA V. GHUGE)
JUDGE

Madkar