

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

927 WRIT PETITION NO.10446 OF 2016

NITTINIKETAN SHIKSHAN SANSTHA JAM
THROUGH ITS SECRETARY
ANIL VITTHALRAO KOLHE

.. Petitioner

VERSUS

SHITARAM SHANKARRAO MORE AND OTHERS

.. Respondents

...

Advocate for Petitioner : Shri V.D. Gunale

Advocate for Respondent No.1 : Shri S.K. Savangikar

Advocate for Respondent Nos.2 & 3 : Shri A.B. Shinde

Respondent No.4 – Served.

Advocate for Respondent Nos.5 & 6 : Shri A.N. Sabnis

AGP for Respondent No.7 : Ms. P.V. Diggikar

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CORAM : P.R. BORA, J.

Dated: July 03, 2019

PER COURT :-

1. Respondent No.1 though is represented by learned counsel Shri Savangikar, when the present petition is taken up for hearing, it is submitted by the said learned counsel that, he has no instructions from respondent no.1.

2. Heard Shri Gunale the learned counsel appearing for the petitioner, Shri Shinde the learned counsel appearing for respondent nos.2 and 3, Shri Sabnis the learned counsel appearing for respondent nos.5 and 6 and Ms Diggikar learned AGP appearing for respondent no.7.

3. After having heard the learned counsel appearing for the parties and on perusal of the impugned order passed by the learned Divisional Commissioner, Aurangabad and the documents placed on record, it is revealed that, the learned Commissioner has discarded the claim of the petitioner over the suit property on the ground that, the petitioner- Society has not produced any evidence as about its title and ownership over the suit property.

4. Shri Gunale the learned counsel appearing for the petitioner brought to my notice the written-statement submitted by the petitioner before the learned Divisional Commissioner. The learned counsel invited my attention to the averments in the opening para of the written-statement, which reads thus:

“The suit property bearing CTS No.611 admeasuring 99.7 sq. meters is owned and possessed by the respondent No.6 trust. The said property is allotted to the said trust on 07.06.1952 under the provisions of Section 129 of Maharashtra Land Revenue Code, the Collector has issued sanad in the name of said trust. The said property is recorded bearing CTS No.611 by the City Survey authorities. The said property is registered as a trust property to the Schedule-I of the respondent No.6 trust. The respondent No.6 is therefore, the owner of the said trust property since 1952 which also clearly reveals from the entries recorded by the Special District Inspector of Land Record during its inspection. Hereto annexed and marked as “Exhibit-R-1” collectively are the copies of sanad issued by the Collector on 07.06.1952 under Section 129 of the Maharashtra Land Revenue Code in favour of the respondent No.6 trust, the PR Card issued by the Survey authority, the toch map of CT Survey No.611, extract of the inquiry register namuna No.B and order of

Special District Inspector of Land Record, Nanded dated 16.12.1972 and the copy of Schedule-A of respondent No.6 trust wherein the suit property is recorded in the name of said trust.”

5. The learned counsel pointed out that, all the documents referred in the aforesaid paragraph were filed along with the written statement and were collectively marked at **Exh.R-1**. The learned counsel submitted that, the documents which were furnished by the petitioner along with the written-statement filed before the Divisional Commissioner and which were collectively marked at **Exh.R-1**, are filed in the present proceedings. The learned counsel brought to my notice the said documents, which are at page nos.23 to 28 of the paper book. On perusal of all the documents as aforesaid, which contain copy of sanad, copy of PR Card and the copy of schedule - 'I' , which are the crucial documents to decide the title to the suit property. From the observations made in the impugned Judgment, it is evident that, though the concerned documents were placed on record by the petitioner either they were not brought to the notice of the learned Divisional Commissioner or if were brought to notice, the said fact seems to have been missed by the learned Commissioner while passing the impugned order.

6. In the circumstances, the appropriate course will be to set aside the impugned order and to remit the matter back to learned
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Divisional Commissioner, Aurangabad to decide the application afresh in light of the documents allegedly placed on record by the petitioner along with its written statement, collectively marked at **Exh.R-1**.

7. The impugned order dated 23.08.2016 passed by the learned Divisional Commissioner, Aurangabad is set aside and the matter is remitted to the learned Divisional Commissioner, Aurangabad to decide it afresh by giving due opportunity of hearing to the present petitioner and present respondent no.1. Order accordingly.

8. Though it is the contention of the petitioner that, such documents have been placed on record along with the written-statement filed before the learned Divisional Commissioner, the petitioner - Society is directed to place on record one more set of the said documents to facilitate the decision of the application concerned by the learned Divisional Commissioner.

9. The Writ Petition stands allowed in the aforesaid terms.

(PR. BORA, J.)