

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11114 OF 2016

1. Nagu S/o Dagdu Dhangare,
Age : 90 years, Occu. Agriculture,
R/o : Phulambri, Tq. Phulambri,
District Aurangabad.
2. Bhaskar S/o Dadarao Wankhede,
Age : 43 years, Occu. Business,
R/o : As above. ... Petitioners

Versus

1. The State of Maharashtra,
Through the Department of
Rural Development, Mantralaya,
Mumbai.
2. The Deputy Director,
Land Records, Aurangabad.
3. The District Superintendent of Land Records,
Aurangabad.
4. The City Survey Officer,
City Survey Office Phulambri,
& Deputy Superintendent of Land Records,
Phulambri, District Aurangabad.
5. Shewantabai Kisan Sankapale,
Age : 80 years, Occu. Household,
R/o. Jining Zopadpatti, Behind
Phulambri Police Station,
Phulambri, Tq. Phulambri,
District Aurangabad.
6. Sangita Anil Ausare,
Age : 25 years, Occu. Household,
R/o : Wazar, Tq. & Dist. Jalna.

7. Suresh S/o Eknath Parashar,
Age : 60 years, Occu. Advocate,
R/o : Near Vithal Rukhmai Mandir,
Bazarpeth Phulambri, Taluka Phulambri,
District Aurangabad. ... Respondents
(Orig. Respondents)

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Mr. K. F. Shingare, Advocate for the Petitioners.
Mr. K. B. Jadhavar, AGP for Respondent Nos. 1 to 4.
Mr. S. S. Kazi, Advocate for Respondent Nos. 5 and 6.

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CORAM : V. K. JADHAV, J.
DATED : 20th November, 2019

ORDER :-

1. Heard finally by consent at admission stage.
2. By way of this Writ Petition, the petitioners have challenged the judgment and order dated 05.04.2016 passed by respondent no.1 i.e. Principal Secretary, Revenue and Forest Department, Mantralaya, Mumbai in Appeal No. 54 of 2015.
3. Brief facts giving rise to this Writ Petition are as follows:
 - a. Petitioner no.1 and respondent no.7 herein, purchased property nos. 49 to 52 and C.T.S. Nos. 544 to 549 for valuable consideration under registered sale deed from its original owners

i.e. three sons of Shambhu Sankpal, namely, Kisan @ Krishna, Dagdu and Uttam and two sons of Ramaji Sankpal, namely, Shankar and Ratan. Petitioner No.1 preferred Regular Civil Suit No. 563 of 1989 against Shankar and others in respect of the above said properties. However a compromise took place between the parties on 15.12.1990 and petitioner's possession over the suit properties was admitted by respondent no. 6 herein i.e. daughter of said Kisan Sankpal. It was also agreed that respondent no.6 would not obstruct the possession of petitioner over the suit properties. In the said suit, respondent no.7 also filed an affidavit on 16.06.1989 in respect of joint purchase of the suit property along with petitioner no.1.

b. Said Kisan Sankpal was the husband of respondent no.5 and father of respondent no.6 herein. He died on 31.08.1977. On the basis of his death certificate, Respondent nos. 5 and 6 got recorded their names in the City Survey record and Mutation Entry No. 855 came to be sanctioned by the City Survey Officer on 28.04.1999. Present petitioner no.1 and respondent no.7 preferred Appeal No. 1912 of 2011 before respondent no.3-District Superintendent of Land Records, Aurangabad challenging the said Mutation Entry No.

855 pertaining to City Survey No. 544 alongwith a separate application for condonation of delay occurred in filing the said appeal. Respondent no.3 allowed the application for condonation of delay and by judgment and order dated 01.03.2012, considering the registered sale deed no. 1100 dated 28.05.1975 and the compromise deed in Regular Civil Suit No. 563 of 1989, allowed Appeal No. 1912 of 2011 and set aside Mutation Entry No. 855 dated 28.04.1999 in respect of C.T.S. No. 544.

c. Being aggrieved, respondent nos. 5 and 6 preferred Appeal No. 1440 of 2014 before respondent no.2 – Deputy Director, Land Records, Aurangabad. After hearing both the parties, respondent no.2, by giving weightage to the registered sale deed and the compromise in the civil suit, dismissed the appeal and confirmed the judgment and order dated 01.03.2012 passed by respondent no.3 in Appeal No. 1912 of 2011.

d. Respondent nos. 5 and 6 preferred further appeal bearing Appeal No. 54 of 2015 before respondent no.1-State of Maharashtra, Department of Rural Development, Mantralaya, Mumbai challenging the judgment and order dated 14.07.2014

passed by respondent no.2. Petitioner no.2 herein had also purchased portion of the suit property to the extent of 731.68 square feet each out of C.T.S. No. 544 under registered sale deed nos. 1210 dated 28.05.2012 and 2105 dated 18.10.2012. Thus, he was also made party respondent in Appeal No. 54 of 2015. The petitioners filed their reply in the said appeal on 21.10.2015. It is the contention of the petitioners that petitioner no.1 and respondent no.7 herein are the purchasers of the property through registered sale deed no. 1100 dated 28.05.1975 and there was also a compromise in Regular Civil Suit No. 563 of 1989. However, respondent no.1, by judgment and order dated 05.04.2016, allowed Appeal No. 54 of 2015 by observing that there is no signature of respondent no.5 on the compromise. It has been further observed by respondent no. 1 that though the sale deed came to be registered way back in the year 1975, the application for mutation on the basis of the said sale deed was submitted in the year 2002. Respondent no.1 further observed that the sale deed was executed by one Krushna Sambhu Sankapal and there is no documentary evidence to show that Kisan and Krushna was one and the same person. Hence this Writ Petition.

4. Learned counsel for the petitioners submits that the suit property and the other properties were sold by the husband of respondent no.5 and others through registered sale deed no. 1100 dated 28.05.1975. Learned counsel further submits that respondent nos. 5 and 6 contended that the husband of respondent no.5 and father of respondent no.6 was known as Kisan and not Krushna. Learned counsel submits that as per school extract, the husband of respondent no.5 by name Krushna Sambhu had taken education in Zilla Parishad Primary School, Phulambri. He was admitted in school on 15.12.1949 and left the school on 11.06.1957. Learned counsel has also annexed a copy of the school extract at Exhibit "K" page no. 130 of the petition. Learned counsel submits that the revenue authorities are bound to take mutation entries on the basis of the registered instrument and the compromise in the civil suit. Respondent no.1 did not consider the fact that in the compromise, respondent no.5 admitted the possession of petitioner over the suit property.

5. Learned counsel further submits that respondent no.5 was insisting for demolition of the structure over CTS No. 544 and the notice for demolition of the said house/structure was issued by the

Nagar Panchayat, Phulambri. Petitioner no.2 herein filed R.C.S. No. 786 of 2017 for declaration and injunction, thereby challenging the notice issued by Nagar Panchayat. The learned Civil Judge, Senior Division, Aurangabad initially granted status-quo on 11.10.2017 and continued the same from time to time. The Revenue authorities have no jurisdiction to decide the legality and validity of the compromise in the civil suit and similarly the legality and validity of the registered sale deed. Respondent no.1, while passing the impugned order, exceeded its jurisdiction. The legality and validity of the compromise and the sale deed is required to be decided by the competent civil court.

6. Learned counsel for the petitioners, in order to substantiate his contentions, placed reliance on the following judgments:

1. ***Sheikh Mohamed Fatemohamed Vs. Raisuddin Azimuddin Katil and Others***, reported in 2001 (1) Mh.L.J. 850.
2. ***Ganeshrao Kisanrao Deshmukh vs. Devisingh Venkatsingh***, reported in 1972 Mh.L.J. 661
3. ***Shrikant R. Sankanwar and Others vs. Krishna Balu Naukudkar***, reported in 2003 (2) Mh.L.J. 276.

7. Learned counsel for respondent nos. 5 and 6 submits that the respondent no.5 has neither signed the said compromise nor given any power to the Advocate Mr. Mohan Nimbalkar whose signature appears on the compromise. From the signature of Mr. Mohan Nimbalkar, it cannot be presumed that respondent no. 5 had given consent for the said compromise. Thus, by virtue of said compromise, no rights were created and the petitioners cannot rely on the so called compromise. Learned counsel submits that the petitioners obtained construction permission of the Sarpanch of village Phulambri by misleading the authorities. The Sarpanch has no authority to issue construction permission and that authority is vested in the Gram Sevak. The said construction permission came to be issued without following the due procedure of law. Learned counsel submits that The Collector, vide letter dated 07.09.2017, directed the Chief Officer, Nagar Panchayat Phulambri to take action in accordance with law in respect of the construction over C.T.S. No. 544. The Chief Officer, Nagar Panchayat Phulambri therefore issued notice to petitioner no.2 and sought explanation as to why the construction permission dated 09.10.2012 should not be cancelled.

8. Learned counsel for respondent nos. 5 and 6 further submits that the impugned order came to be passed after hearing the petitioners. The petitioners were represented through an Advocate before the Principal Secretary who has observed in the impugned order that learned Advocate for all the parties were heard. Thus, the contention raised by the petitioners that the impugned order came to be passed without issuing notice to them is totally false. Learned counsel submits that the P.R. Card in respect of property bearing C.T.S. No. 544 stands in the name of respondent nos. 5 and 6 and the respondents are also regularly paying property tax as per rules. The respondents have never executed any compromise. The Writ Petition thus needs to be dismissed.

9. Learned AGP submits that names of legal heirs of Kisan Shambhu were recorded after his death in the ownership column of the property bearing C.T.S. No. 544 of village Phulambri on 28.04.1999 by Mutation Entry No. 855 dated 28.04.1999. Hence the sale deed bearing no. 1100 dated 28.05.1975 which was executed earlier by deceased Kisan Shambhu in favour of petitioner no.1 was not mutated in the P. R. Card of C.T.S. No. 544. The petitioner filed an appeal against Mutation Entry No. 855 dated

28.04.1999 and respondent no.3-District Superintendent of Land Records allowed the said appeal by order dated 01.03.2012 setting aside the said mutation entry. On appeal preferred by respondent nos. 5 and 6 against the said order dated 01.03.2012, respondent no.2-Deputy Director, Land Records confirmed the same and dismissed the said appeal bearing Appeal No. 1440 of 2014 by order dated 14.07.2014. The revision/appeal preferred by respondent nos. 5 and 6 before the Principal Secretary and Special Executive Officer, Revenue and forest Department, Mantralaya, Mumbai (respondent no.1 herein) against the order dated 14.07.2014 was allowed vide order dated 05.04.2016 after making minute scrutiny of the available documentary evidence on record. Respondent no. 1 thus, set aside the orders passed by respondent nos. 2 and 3 vide order dated 05.04.2016. The conclusion drawn by respondent no.1 is correct and proper. The same was implemented on 16.04.2016 and names of respondent nos. 5 and 6 are recorded in the P.R. Card of C.T.S. No. 544. The petitioners could not establish their rights over the property in question. The compromise deed produced by them in support of their claim was not signed by respondent no.5. There is no substance in the Writ Petition.

10. This matter revolves around C.T.S. No. 544. On perusal of the annexures to this Writ Petition, which are part of record before the authorities below, it appears that by registered sale deed dated 28.05.1975, the original owners (1) Dagdu, (2) Uttam and (3) Krushna, sons of Shambhu Sankapal, residents of Phulambri, Taluka Phulambri, District Aurangabad and (4) Shankar and (5) Ratan, sons of Ramaji Sankapal sold the property situated within the limits of the Gram Panchayat, Phulambri bearing property nos. 49 to 52 and *Chalta* Nos. 544, 545, 546, 547, 548 and 549 for a valuable consideration of Rs.8,000/-. It has been specifically recited in the said sale deed that the constructed house having 20 *khans* alongwith the open space measuring south-north 20.72 meters (68 feet) in length and east-west 17.37 meters (57 feet) in width with the boundaries as detailed, has been sold to petitioner no.1 and respondent no.7 herein. It is also part of record that in the year 1989, petitioner no.1 had instituted the suit for a decree of perpetual injunction bearing Regular Civil Suit No. 563 of 1989 before the 5th Civil Judge, Junior Division, Aurangabad against one Shankar Ramji Sankapal (one of the vendors of the aforesaid sale deed) and Shewantabai (respondent no.5 herein). The said

Shewantabai is the wife of Kisan @ Krushna (one of the vendors of the said sale deed) and the said suit ended in a compromise. The compromise came to be submitted before the Court in the pending suit vide Exhibit 35 and by order dated 15.12.1990, the suit came to be disposed off in terms of the compromise. On perusal of the terms of the compromise, it appears that both the defendants in that suit i.e. Shankar and Shewantabai have admitted the ownership and possession of petitioner no.1 over the property Nos. 49 to 52 bearing C.T.S. Nos. 544 to 549 (*Chalta* No. 544 to 549) measuring 68 feet south-north and 28.5 feet East-west. On perusal of the P.R. Card of C.T.S. No. 544, it appears that by order dated 28.04.1999, names of Shewantabai kisan Sankapal and one Sangita Sunil Ausare (respondent nos. 5 and 6 herein) came to be mutated in respect of C.T.S. No. 544 by Mutation Entry No. 855 and the names of petitioner no.1 and respondent no.7 herein came to be deleted. It is also not disputed that in terms of the said sale deed of the year 1975 as referred above, mutation in respect of the other properties as mentioned in the said sale deed came to be effected after execution of the said sale deed. However, so far as C.T.S. No. 544 is concerned, by Mutation Entry No. 855, names of respondent nos. 5 and 6 came to be mutated in respect of C.T.S. No.544 and

the names of petitioner no.1 and respondent no.7 came to be deleted.

11. It is interesting that respondent nos. 5 and 6 contend that respondent no.5 Shewantabai has not signed the compromise nor she had given any power to the Advocate to sign the compromise on her behalf. It is necessary to mention here that Shewantabai had filed MARJI No. 61 of 2014 before the District Judge, Aurangabad for condonation of delay of 22 years 11 months and 20 days in filing the appeal against the said compromise decree. However, by order dated 16.08.2017 below Exhibit 1 in MARJI No. 61 of 2014, the Adhoc District Judge-3, Aurangabad dismissed the said application for want of steps. Learned Adhoc District Judge-3, Aurangabad has observed that the applicant Shewantabai is not interested to proceed with the petition. Consequently, it is incumbent upon the authorities concerned to effect the mutations in terms of the sale deed so also the compromise effected between the parties. The City Survey authorities cannot go behind the compromise decree, which has attained finality, to criticize it on the ground that the same is not legally effected between the parties.

12. It is also pertinent that respondent nos. 5 and 6 have contended that the husband of respondent no.5 and father of respondent no.6 was known as Kisan and not as Krushna. However, I do not find any substance in the said contention. Even in the said compromise dated 15.12.1990, the terms of which came to be verified by the court on the same day, name of the husband of respondent no.5 Shewantabai is mentioned as Krushna.

13. It also appears that respondent nos. 5 and 6 also instituted the suit bearing Regular Civil Suit No. 100 of 2016 for cancellation of sale deed nos. 1210 of 2012 and 2105 of 2012 on the basis of which petitioner no.2 has acquired title in respect of the suit property and also for the relief of recovery of possession of the land C.T.S. No. 544. However, no relief has been sought in respect of the sale deed of the year 1975 on the basis of which the petitioner no.1 and respondent no.7 herein had acquired the title in respect of the suit property.

14. I have gone through the order passed by the District Superintendent of Land records, Aurangabad dated 01.03.2012.

The District Superintendent of Land Records has rightly set aside the mutation in respect of C.T.S. No. 544 dated 28.04.1999 and further directed to record the entry in terms of the sale deed (sale deed of the year 1975) and the compromise (the compromise effected in Regular Civil Suit No. 563 of 1989) as discussed in the foregoing paragraphs. The Deputy Director of Land Records, by order dated 14.07.2014 dismissed the appeal preferred by respondent nos. 5 and 6 herein and confirmed the order passed by the District Superintendent of Land Records as mentioned above. However, the Principal Secretary, Revenue and Forest Department, has allowed the appeal by setting aside the well reasoned orders of the District Superintendent of Land Records and the Deputy Director of Land Records. The Principal Secretary, Revenue and forest Department has also held that the compromise effected between the parties is not legally effected and further, the vendor's name is shown as Krushna in the sale deed of the year 1975 and the husband of respondent no.5 Shewantabai as Kisan.

15. Learned counsel has placed reliance on the case of ***Shaikh Mohamed Fatemohamed*** (supra), wherein the Full Bench of this Court by relying upon the view expressed by the Division Bench in

the case of ***Ganeshrao Kisanrao Deshmukh*** (supra), held that when a function of making a quasi-judicial decision like one under section 2-A is before the Court, looking to the scheme of the Statute, it cannot be delegated to another person or authority, in absence of the statutory provisions authorising such delegation. The Full Bench has also dealt with the Rules of Business of Government, particularly Rule 15. It is held that the appeal arising out of a quasi-judicial power cannot be termed as the business of Government. In view of the ratio laid down as above, the impugned order passed by the Principal Secretary, Revenue and Forest Department, is bad in law.

16. In view of the discussion above and considering the entire aspect of the case, I do not think that the impugned order is sustainable in the eyes of law. The District Superintendent of Land Records, Aurangabad has rightly passed the order dated 01.03.2012 in C.S./Appeal/S.R.1912/2011 confirmed by the Deputy Director of Land Records, Aurangabad by order dated 14.07.2014 in C.S.Appeal/S.R.1440/2014. Hence I proceed to pass the following order:

ORDER

- I. The Writ Petition is hereby allowed.
- II. The impugned order dated 05.04.2016 passed by the Principal Secretary, Revenue and Forest Department, Mantralaya, Mumbai, in Appeal No. 54 of 2015 is hereby quashed and set aside.
- III. The order dated 01.03.2012 passed by the District Superintendent of Land Records, Aurangabad in C.S./Appeal/S.R.1912/2011 and the order dated 14.07.2014 passed by the Deputy Director of Land Records, Aurangabad in C.S./Appeal/S.R.1440/2014 stand confirmed.
- IV. The Writ Petition is accordingly disposed off.

(V. K. JADHAV, J.)