

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3543 OF 2019**

New Azad Co-op. Hsg. Soc. Ltd
Through
Secretary, Shri Prakash T. Sawant

...Petitioner.

V/s

The State of Maharashtra
Through
Prin. Secretary, Forest and
Revenue Department and Ors.

...Respondents.

Mr. Girish Godbole a/w Mr. Sumit S. Kothari for the Petitioner.
Mr. S.H. Kankal, AGP for Respondent Nos. 1 to 4.
Mr. Dhananjay Rananaware i/b Mr. Chetan Rathod for Respondent
No.5.

CORAM: NITIN W. SAMBRE, J.

DATE : 10th June, 2019

P.C.

1] The subject matter of this Petition is the mutation entries ordered to be effected by Respondent-authorities at the behest of Respondent No.5 in relation to suit property being land bearing CTS Nos. 471, 471/1-8, Survey No. 28 Hissa No.4B Konkni Pada Road, Kurar Village, Malad (East) Mumbai.

2] It is the case of the Petitioner that aforesaid property was owned by Moghiben and Tribhuvandas who sold vide an agreement dated 28/01/1981 development rights with structures standing thereon to a partnership firm by name Sahakar Development Corporation. Sahakar Development Corporation executed agreement of development on 27/03/1986 and supplementary agreement dated 02/08/1986 vide document registered at Serial No. 2901/86 in favour of the Petitioner.

3] As a consequence of above, Chief Promoter of the Petitioner-Co-Operative Housing Society developed the structure and as such, by virtue of aforesaid agreement, the members are in possession of the same.

4] Respondent No.5 claiming to be successor in interest to that of Moghiben, erstwhile owner, claimed to be holding Will dated 13/05/1991 based on which initiated Original Suit No.5133/1991 before City Civil Court, Hyderabad for declaration as sole successor to the property of deceased Moghiben and also injunction. The said suit came to be partly decreed on 03/03/1992.

5] Based on the aforesaid decree, it appears that Respondent No.5

approached the City Survey Officer and Talathi, Borivali, who effected a mutation entry no. 325 in favour of Respondent No.5 and the City Survey Officer vide impugned order dated 30/10/2014 rejected the claim of the Petitioner for mutating its name. The aforesaid order was subject matter of challenge in an appeal before the Superintendent of Land Records i.e. Respondent No.3, who, in turn, rejected the appeal preferred by the Petitioner on 27/04/2016.

6] The Petitioner, feeling aggrieved, preferred a second appeal under Maharashtra Land Revenue Code ("MLRC") before the Deputy Director of Land Records i.e. Respondent No.2 who partly allowed the appeal of the Petitioner and thereby directed the entry to be taken in revenue records as regards possession of the Petitioner. A review preferred by the Petitioner under Section 258 of MLRC came to be rejected by Respondent No.2 for want of jurisdiction. The aforesaid direction of entry being taken in the name of the Petitioner as possessor of the property claimed to be based on the agreement dated 27/03/1986 and 26/08/1986.

7] Since name of the Petitioner was not mutated in the revenue

record as a title holder of the property, the Petitioners and Respondent No.5 feeling aggrieved by the order of Respondent No.2 thereby incorporating name of the Petitioner as that of possessor, respectively preferred appeal and revision before the State Government against the order dated 18/09/2017 passed by Respondent No.2.

8] State Government vide impugned order dated 10/10/2018 allowed the revision preferred by Respondent No.5 thereby setting aside the order of Respondent No.2 dated 18/09/2017 i.e. maintaining the order of Superintendent of Land Records of mutating the name of Respondent No.5. As such, this Petition.

9] There is one more facet to the matter and i.e. the Petitioner initiated Special Civil Suit No.412 of 2010 before the City Civil Court, Dindoshi, Mumbai for specific performance, as it is claimed by the Petitioner that out of total consideration of Rs 7 lakhs, Rs 6,50,000/- was already paid whereas balance amount of Rs 50,000/- was willing to be paid by the Petitioner and as such sought specific performance.

10] One of the factual matrix which is not disputed by either of the

parties is the certified copy of Document No.2901 of 1986 i.e registered agreement of sale dated 27/03/1986 and 26/08/1986 were initially not produced. However, subsequently, the Petitioner has produced the certified copy of the same.

11] The Respondent No.5 has moved before the City Civil Court, Dindoshi, Mumbai in the aforesaid Suit No.412 of 2010 preferred by the Petitioner, by taking out Chamber Summons No.1052 of 2016 which was allowed by the City Civil Court, Mumbai. The aforesaid order was subject matter of challenge at the behest of the Petitioner in Writ Petition No.3490 of 2018 pending before this Court.

12] While questioning the order impugned passed by Respondent No.1 – State Government, the submissions of Mr. Godbole are, even if there is a decree in Original Suit No.5133 of 1991 passed by City Civil Court, Hyderabad, the fact remains that the court needs to appreciate that the suit property in which Petitioner is carrying interest was never the subject matter of the Will executed by Moghiben in favour of Respondent No.5 on 13/5/1991. According to him, the respective rights of the parties will be adjudicated in Civil Suit No.412 of 2010 in

which Respondent No.5 is already impleaded. On instructions from the Petitioner, an affidavit is tendered by Mr. Godbole thereby undertaking that Writ Petition No.3490 of 2018 will be withdrawn and the claim in the said suit can be contested by Respondent No.5 on its own merits.

13] According to Mr. Godbole, the Court should consider longstanding possession since 1986 of the Petitioner and its members, particularly when in 1989, development plan was sanctioned and revised development plan was sanctioned in 1996. As such, according to Mr. Godbole, the order impugned is not sustainable.

14] While countering the aforesaid submissions, Mr Rananaware, learned Counsel for Respondent No.5 would urge that the orders passed by the revenue authorities in favour of Respondent No.5 are based on the Judgment and Decree in Original Suit No. 5133/91 decreed on 03/03/1992 by the City Civil Court, Hyderabad. According to him, once there is an adjudication by the competent civil court, same is binding on the parties.

15] The learned AGP supported the orders impugned passed by the

State Government.

16] Considered rival submissions.

17] It is not in dispute that the agreement of sale / development agreement dated 27/3/1986 and 26/08/1986 were duly registered at Serial No.2901 of 1986 and the certified copy of the same was produced by the Petitioner before the State Government i.e. Respondent No.1 when the appeal of the Petitioner was dismissed and the Revision of Respondent No.5 was allowed by the impugned order.

18] In the aforesaid factual backdrop, considering the registered document, the sanction granted by the planning authority to the building plan and the revised plan in 1989 and 1996 prima facie establishes that the Petitioner is in possession of the suit property.

19] Apart from above, the fact remains that the pendency of Civil Suit No.412 of 2010 at the behest of the Petitioner for specific performance before the City Civil Court Dindoshi, Mumbai is a matter of record.

20] In the aforesaid backdrop, if we consider the contents of the Will executed by deceased Moghiben on 13/5/1991, the fact remains that the property which is subject matter of the Petition, is not covered in the said Will by Moghiben, perhaps in the backdrop of agreement dated 20/01/1981 with Sahakar Development Corporation and agreement dated 27/03/1986 and 26/08/1986, in favour of the Petitioner.

21] This Court is also required to take note of the fact that merely because there existed ex parte adjudication in favour of Respondent No.5 declaring him as successor of deceased Moghiben that by itself will not make him entitled to claim that he is the sole owner of the property in question, particularly when there exist registered development agreement in favour of the Petitioner of 1986. Of course such revenue entries are always subject to outcome of the appropriate civil proceedings.

22] State Government while passing the order impugned appears to be oblivious to the fact that the certified copy of the aforesaid agreements was produced by the Petitioner and its suit for specific performance is pending adjudication before the City Civil Court,

Dindoshi, Mumbai in which Respondent No.5 has already marked his presence.

23] In the aforesaid backdrop, in my opinion, the order impugned passed by Respondent No.1 is contrary to the material available on record establishing settled possession of the Petitioner over the suit property for last more than thirty years. Apart from above, the fact remains that the parties to the Petition i.e. Petitioner and Respondent No.5 can get their respective rights adjudicated in the said Suit No.412 of 2010. However, that by itself will not preclude the Petitioner from claiming that its name should be added as possessor of the property as was rightly so ordered by Respondent No.2 in the order dated 18/09/2017. State Government has lost sight of all the aforesaid material evidence in favour of the Petitioner while dealing with the claim of the Petitioner and Respondent No.5.

24] In the aforesaid background, order impugned dated 10/10/2018 passed by Respondent No.1 is contrary to the evidence available on record which speaks of settled possession of the Petitioner over the suit property that too by virtue of registered development agreement.

25] As a consequence of above, the Petition succeeds. The order impugned passed by the State Government in Appeal No.2618/5629/5604/PK/50/J-3 preferred by Respondent No.5 is hereby quashed and set aside. The said appeal preferred by Respondent No.5 is dismissed and the order of Respondent No.2 passed on 18/09/2017 stood restored.

26] The aforesaid revenue entry in favour of the Petitioner as that of possessor of the suit property shall be subject to final outcome of the civil proceedings which are initiated by the Petitioner. The Petitioner has already undertaken before this Court through the above referred affidavit dated 10/06/2019 that it shall withdraw Writ Petition No.3490/2018. The said affidavit is accepted as an undertaking to this Court. The said Writ Petition as such is formally disposed of as withdrawn.

27] Petition as such stands allowed in the above terms.

(NITIN W. SAMBRE, J.)