

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 9777 OF 2019

1. Suresh Waman Patwardhan
Age 60 years, Occ. Advocate
2. Shubhangi Shrikant Tillu
Age 70 years Occ. Housewife
3. Archana Gopal Paranjpe
Age 66 Years Occ. Housewife
4. Madhuri Gopal Apte
Age 62 Years Occ. Housewife

All Residing at 16, Audumbar Prasad
Second Floor, Sidheshwar Aali,
Parnaka, Kalyan West.
Through Power of Attorney
Navid Hisamuddin Fakhi
Age : 48 Years, Occ : Business / Agri,
R/o. 40/3, Fakhi House, Gafoor Don
Chowk, Kalyan (W) Dist : Thane

...Petitioners

Versus

1. Deputy Superintendent of Land Records,
Kalyan. Office of Dy. Superintendent
of Land Records Zhuranrao Market,
3rd Floor, Kalyan West,
District Thane.
2. The State of Maharashtra
3. The Commissioner / Chief Officer,
Kalyan Dombivli Municipal Corporation,
Shankarrao Chowk, Kalyan, (West),
Dist : Thane

...Respondents

Mr. Ranjit Thorat Senior Advocate i/by Ms. Rukhmini Khairnar for the Petitioners.

Mr. P.P. Kakade, GP a/w. R.P. Kadam, AGP for Respondent Nos. 1 and 2 – State.

Mr. A.S. Rao for Respondent No. 3.

**CORAM : S. S. SHINDE &
N. B. SURYAWANSHI, JJ.**

DATE : 16th OCTOBER 2019

(ORAL JUDGMENT)

1. Rule. Rule made returnable forthwith. With the consent of the parties Writ Petition is disposed of finally at the stage of admission.

2. At the outset, learned Senior counsel appearing for the Petitioners makes an oral prayer so as to amend the Petition to incorporate one more prayer in the Petition. Leave granted. Amendment to be carried out forthwith.

3. This Petition takes an exception to the communication addressed by the Tahsildar, Kalyan dated 18th July 2018 to the Talathi, Sajja, Kalyan and the order dated 1st November 2018 passed by the Deputy Superintendent of Land Record, Kalyan (West), Dist. Thane

4. Learned Senior counsel appearing for the Petitioner and learned

counsel appearing for the third Respondent jointly submits that, the impugned communication addressed by the Tahsildar, Kalyan dated 18th July 2018 to the Talathi, Sajja, Kalyan and the order dated 1st November 2018 passed by the Deputy Superintendent of Land Record, Kalyan (West), Dist. Thane is without hearing the Petitioner and also third Respondent who are affected parties. It is submitted that, Additional Commissioner, Konkan Region, Mumbai in Appeal/Desk/LND/405/2017 in his judgment and order dated 25th November 2017 allowed the Appeal filed by the present petitioners. When the order is passed by the higher authority i.e. Additional Commissioner (Revenue) Konkan Region, Mumbai, the Deputy Superintendent of Land Record by the impugned order dated 1st November 2018 should not have taken contrary stand / view and ought to have followed the order passed by the Additional Commissioner (Revenue), Konkan Region, Mumbai. The sum and substance of the arguments is that the impugned communication addressed by the Tahsildar, Kalyan dated 18th July 2018 to the Talathi, Sajja, Kalyan and the order dated 1st November 2018 passed by the Deputy Superintendent of Land Record, Kalyan, drastically affected the rights of the Petitioners and also the third Respondent, and therefore, if at all the Deputy Superintendent of Land Record, Kalyan wanted to pass the impugned order the opportunity of hearing and put forth contention so also the filing of the documents ought to have been given to the Petitioners and the third

Respondent. Learned Senior counsel appearing for the Petitioners and counsel appearing for the third Respondent jointly submits that the Petition deserved to be allowed thereby setting aside the communication addressed by the Tahsildar, Kalyan dated 18th July 2018 to the Talathi, Sajja, Kalyan and the order, dated 1st November 2018 passed by the Deputy Superintendent of Land Record, Kalyan (West), District Thane.

5. It is also submitted that, the Petitioners and third Respondent may be given opportunity to approach before the first Respondent by way of filing representation and in case such representation is filed, the said authority may be directed to decide the said representation within stipulated period.

6. Learned Government Pleader appearing for the first and second Respondent submits that, the Court may pass the appropriate orders.

7. Heard the learned Senior counsel appearing for the Petitioners, learned Government Pleader appearing for the first and second Respondent and counsel appearing for the third Respondent. Upon perusal of the impugned order dated 1st November 2018 passed by the Deputy Superintendent of Land Record, Kalyan (West), District Thane it clearly appears that, neither the petitioners nor the third Respondent was given

opportunity of hearing and placing relevant documents on record, before passing the impugned order. As rightly submitted by the learned Senior counsel appearing for the Petitioners that, the order passed by the Deputy Superintendent of Land Record, Kalyan drastically affects the rights of the Petitioners so also third Respondent. Therefore, it was incumbent upon the first Respondent No. 1 to keep in view the order passed by the Additional Commissioner (Revenue), Konkan Region, Mumbai so also relevant record and to afford the opportunity of hearing to the Petitioners and third Respondent.

8. In that view of the matter the impugned communication addressed by the Tahsildar, Kalyan dated 18th July 2018 to the Talathi, Sajja, Kalyan and the order dated 01st November 2018 passed by the Deputy Superintendent of Land Record, Kalyan (West), District Thane is hereby quashed and set aside. The Petitioners and third Respondent are given liberty to file representation accompanied with the copies of the documents on which they wish to place reliance before the Deputy Superintendent of Land Record, Kalyan (West), District Thane within two weeks from today. In case such representation is filed within two weeks from today, the Deputy Superintendent of Land Record, Kalyan (West), District Thane shall decide the said representation after affording opportunity of hearing and placing on

record copies of the documents to all concern and affected parties, as expeditiously as possible however, within four weeks from fling of such representation.

9. Rule is partly made absolute. The Writ Petition is partly allowed and same stands disposed of accordingly.

10. Parties to act on an authenticated copy of this judgment.

(N. B. SURYAWANSHI, J.)

(S. S. SHINDE, J.)