

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO.2133 OF 2011
WITH
CHAMBER SUMMONS NO.204 of 2015
IN
WRIT PETITION NO.2133 OF 2011**

Kunwar Harisingh Lalsingh Trust And Anr.Petitioners

vs

The State of Maharashtra And 4 Ors. ...Respondents

**WITH
WRIT PETITION NO.30 OF 2012**

Bhanumati Raghunath Wavekar And 4 Ors.Petitioners

vs

The State of Maharashtra And 4 Ors. ...Respondents

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Mr. Mahendra Ghelani, i/b. Law Charter for the Petitioners in WP/2133/2011 and for Respondent No.6 in WP/30/2012.

Mr. Omar Khaiyam Shaikh, for the Petitioners in WP/30/2012 and for Respondent No.5 in WP/2133/2011.

Ms. Uma Palsuledesai, AGP, for Respondent Nos. 1 to 3 in WP/2133/2011.

Mr. Milind More, Addl. GP, for Respondent No. 1 to 4 in WP/30/2012.

Mr. Rohan Kelkar, a/w. Mr. Mukul Taly and Ms. Mallika Taly, i/b. S. Mahomedbhai & Co., for Respondent No.4 in WP/2133/2011 and for Respondent No.5 in WP/30/2012.

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CORAM : S.C. GUPTE, J.

DATED: 1 APRIL 2019

P.C.:

. This writ petition challenges an order passed by the Hon'ble Minister of Revenue, Government of Maharashtra, on 5 June 2011 in a revision application under Section 257 of the Maharashtra Land Revenue Code, 1966 ("Code").

2. One Maneckji Hormusji Gazdar was seized and possessed of, and entitled to, large pieces or parcels of land bearing Nos.370, 371, 411, 412 and 413, etc. situated at Santacruz Danda, Mumbai Suburban District. Sometime in 1937, Maneckji prepared a private scheme in respect of these lands dividing the same into several plots and sub-plots. The scheme came to be known as 'Gazdar Scheme'. It was sanctioned by Salsette Development Officer of then Government of Bombay. Two plots designated by Nos. 'N' and 'M', respectively, admeasuring 13986 sq. yards, and 2744 sq. yards, of the said scheme, were sold by Maneckji, respectively, to trustees of 'Santacruz Agripada Sahakari Mandal' ("SAS Mandal"), predecessor-in-title of Respondent No.4 herein, and one Kanaiyalal N. Jani and Nanalal Ramji, predecessor-in-title of the Petitioners. The conveyances of Plot Nos. 'N' and 'M', respectively, in favour of the predecessors-in-title of Respondent No.4 and the Petitioners herein took place in the years 1946 and 1947. Jani and Ramji, in turn, by a duly registered sale deed, sold and transferred Plot No. M to one Harisingh Lalsingh. In 1949, Harisingh died leaving a will creating a public trust *inter alia* in respect of his property. Executors of his will filed a testamentary petition for probate, which was granted by this Court. After obtaining probate, the executors filed a suit in the City Civil Court at Bombay for framing a scheme in respect of the trust formed in the will. Sometime in 1958, the City Civil Court decreed the suit, framing a

scheme and appointing trustees thereunder. The property, being Plot No. M, thus, came to be vested in the trustees of Harisingh Lalsingh Trust (the Petitioners herein). The trustees filed an application in the City Civil Court, Bombay and obtained necessary sanction of the Court for sale of Plot No. M to raise funds for construction of a hospital as per the last will and testament of deceased Harisingh. On or about 2 March 1975, the legal heirs of Maneckji executed a deed of rectification in favour of Jani and another correcting the description of the southern boundary of Plot No. M as bounded by 'Main Avenue Road' instead of 'South Avenue Road' and its Survey No. from 370 (Part) to 412 (Part) of Khar Danda. On or about 15 July 1975, Jani and another, in turn, executed a separate rectification deed in favour of the trustees of Harisingh Trust for the same corrections. Both deeds of rectification have been duly registered. It appears that, in the meantime, sometime in or about 1968, SAS Mandal made an application to the City Survey Officer of Bandra for entering its name in the survey records in respect of Plot No.M. The Mandal represented to the City Survey Officer that Plot No.M was also sold to them by their vendor Maneckji. No registered deed in respect of such sale or other documentary evidence was submitted in support of this application. The City Survey Officer, by his order dated 24 July 1969, ordered entry of the name of SAS Mandal in the records of Plot No.M. It is submitted that this entry was ordered without holding any enquiry and without issuing any notice to the Petitioners herein. On or about 3 October 1970, trustees of SAS Mandal purported to execute a deed of transfer in favour of Respondent No.4, transferring to the latter not only Plot No.N purchased by them under the sale deed of 1946 admeasuring 13986 sq. yards, but also additional area of 7398 sq. yards

of Plot No. M as part of the land conveyed. The City Survey Officer, by his order dated 24 July 1972, ordered entry of the name of Respondent No.4 in the relevant revenue records in respect of Plot No.M. Once again, it is claimed that this order was passed without any enquiry and without any notice to the Petitioners. A few days thereafter, Respondent No.5 herein (since deceased and now represented by Respondent Nos. 5a to 5e), who, according to the Petitioners, was a trespasser on the south east corner of Plot No.M, applied to Additional Collector, Mumbai Suburban District for transfer of Plot No.M in his name. The application was on the basis that he was in possession thereof through his father for a number of years. Upon transfer of that application to him, the District Inspector of Land Records (DILR)-cum-City Survey Officer, by his order dated 18 May 1973, ordered deletion of the name of Respondent No.4 and insertion of the name of Respondent No.5 as the holder of Plot No.M. Pursuant to an appeal filed by Respondent No.4, Sub-Divisional Officer set aside that order and remanded the case to DILR-cum-City Survey Officer for a fresh enquiry and order. At that stage, the Petitioners herein made an application for joining themselves as parties to the enquiry proceedings. The DILR-cum-City Survey Officer granted that prayer. Some time later, in or about 1980, the Petitioners filed a suit in the City Civil Court at Bombay, being S.C. Suit No.7189 of 1980, against Respondent No.5, his family members and others, seeking *inter alia* a declaration of their title to the suit property, namely, Plot No.M, as owners thereof. During the pendency of this suit, by his order dated 27 September 1990, the DILR-cum-City Survey Officer dismissed the application and directed entering of the names of the Petitioners as owners of Plot No.M (C.T.S. No.G/399-A). Respondent No.5, thereupon,

preferred an appeal against the order of DILR-cum-City Survey Officer. The Superintendent of Land Records allowed that appeal and set aside the order dated 27 September 1990 passed by DILR-cum-City Survey Officer. Being aggrieved, the Petitioners preferred an appeal to the Deputy Director of Land Records ('DDLR'), who, by his order dated 9 January 2003, allowed their appeal and quashed the order of Superintendent of Land Records and reinstated the order passed by DILR-cum-City Survey Officer. It was this order, which was sought to be revised by both Respondent No.4 and Respondent No.5 herein, by separate revision applications filed under Section 257 of the Code before the Hon'ble Minister. During the pendency of these revision applications, by its order dated 29 July 2004, the City Civil Court at Bombay decreed the Petitioners' suit and declared their title to Plot No.M. In the backdrop of these facts, the Hon'ble Minister was called upon to consider the correctness and propriety of the order passed by the Deputy Director of Land Records. By his impugned order dated 1 June 2011, the Hon'ble Minister allowed the revision application of Respondent No.4, and rejected the revision of Respondent No.5. Being aggrieved, the Petitioners (trustees of Harisingh Trust) have filed the present writ petition.

3. The record of the case clearly indicates that it was the trustees of Harisingh Trust, who had acquired title to the suit property, namely, Plot No.M, through a conveyance executed by Maneckji in favour of their predecessors-in-title, Jani and another, followed by a conveyance executed by Jani and another in favour of Harisingh Lalsingh, who, as noticed, formed the subject trust in respect of the

property through a testamentary instrument. The description of Plot No.M in the conveyance originally referred to as Survey No.370 (Part) was corrected as Survey No.412 (Part) first by a deed of rectification duly registered by the legal heirs of Maneckji in favour of Jani and another and later by Jani and another in favour of the trustees of Harisingh Trust. So also, corrections were duly carried out by registered deeds of rectification first in favour of Jani and another, and later in favour of the trustees of Harisingh Trust, concerning the southern boundary of Plot No.M. On the other hand, there is nothing on record to indicate that any part of the land, forming part of Plot No.M, was conveyed by Maneckji to the predecessor-in-title of Respondent No.4, namely, the trustees of SAS Mandal. Indeed, learned Counsel for Respondent No.4 is unable to point out any document, on the basis of which ownership rights could be claimed by SAS Mandal in respect of Plot No.M. The conveyance by Maneckji in favour of trustees of the Mandal was clearly in respect of Plot No.N admeasuring 13986 sq. yards, which is admittedly separate from Plot No.M. Thus, in the first place, DILR-cum-City Survey Officer, Bandra, who passed the first order of alteration of survey records in respect of Plot No.M in favour of SAS Mandal had no justification for such alteration whatsoever. The further change in the record by entering the name of Respondent No.4 for Plot No.M was simply mechanically carried out as a result of the transfer by SAS Mandal in favour of Respondent No.4. If its vendor, namely, SAS Mandal, had no title to the suit property and the entry in the revenue record in its favour in respect of Plot No.M had no business to be there, likewise there can be no justification for the entry in favour of Respondent No.4. Learned Counsel for Respondent No.4 submits that the conveyance between SAS Mandal

and Respondent No.4 refers to lands in possession of SAS Mandal as actually consisting of Survey Nos. 370 and 412 of Danda totally admeasuring 21384 sq. yards. That is neither here nor there. The real point is whether SAS Mandal had acquired title to the land represented by Survey No.412(Part), which was originally designated as Plot No.M, from Maneckji. There is absolutely nothing to suggest that. Not only was there no document of title backing the entry of the predecessor-in-title of Respondent No.4 (namely, SAS Mandal) and not only was there a duly registered conveyance in respect of Plot No.M in favour of the predecessor-in-title of the trustees of Harisingh Trust, which, together with the deeds of rectification referred to above, made out a clear title in their favour, there was also a decree passed by the City Civil Court at Bombay declaring their title. In the face of these facts, it was impermissible for the Hon'ble Minister to have allowed the revision of Respondent No.4 and restored the original order entering the name of Respondent No.4 in the record of rights in respect of Plot No.M.

4. The observations of the Hon'ble Minister that Harisingh Trust had not taken any concrete steps for getting its name entered in the record of rights in respect of Plot No.M as per the sale deed, or that Harisingh Trust had become party to the revenue application for the first time in 1973, or that it got its sale deed rectified in 1974 and 1975, i.e. after a period of two years of coming on record the revenue proceedings, or that the deed was rectified during the pendency of the revenue proceedings and after both Respondent Nos. 4 and 5 raised their objections to the name of the trust, are completely irrelevant. There is no way that the Minister could have observed that considering these

facts, the arguments of Respondent No.4 are correct. These facts have nothing to do with either the title of Respondent No.4 or a clog on the title of the trustees.

5. In the premises, the impugned order of the Hon'ble Minister suffers from a grave error of law and cannot be sustained. The petition is, accordingly, allowed by making Rule absolute and setting aside the impugned order of the Hon'ble Minister passed under Section 257 of the Code to the extent it relates to the revision application of Respondent No.4. The original orders revised are restored. No order as to costs.

6. The companion petition, namely, Writ Petition No.30 of 2012 is filed by legal heirs of Raghunath Laxman Wavekar, who is referred to as Respondent No.5 in the order set out above in Writ Petition No.2133 of 2011. In the order above, this Court has come to a clear conclusion that the record of the case clearly indicated that trustees of Harisingh Trust, who are Petitioners in that petition, had acquired title to the suit property, namely, Plot No.M, through conveyances by the original owner in favour of Jani and another, and the latter in favour of their predecessor, Harisingh Lalsingh, read with the registered deeds of rectification; accordingly, the original orders passed by DILR-cum-City Survey Officer and the DDLR in revenue appeals directing entry of the Petitioners' names as owners of Plot No.M, which corresponds to Survey No.412(Part), were in order. The decision of DILR-cum-City Survey Officer was challenged by the predecessor of the Petitioners herein (Respondent No.5 in the companion petition). The appeal of the trustees from that order was allowed by the Superintendent of Land

Records. DDLR reversed that order and restored the order of DILR-cum-City Survey Officer. The revision from that order has been accordingly rightly rejected by the Hon'ble Minister in revision under Section 257 of the Code, as noted above. There is, thus, no merit in Writ Petition No.30 of 2012. Rule is, accordingly, discharged and the petition is dismissed. No order as to costs.

(S.C. GUPTE, J.)