

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2599 OF 2009**

Borla Uttam Co-operative Housing Society Ltd. & Anr. ..Petitioners

Vs.

State of Maharashtra & Ors.

..Respondents

Mr.Ranjit Thorat, Senior Advocate, with Simeen Shaikh, Mr.Priyanka Gharge, Ms.Angela Singha i/b. M/s.S.K. Srivastav & Co. for Petitioners.
Mr.Amit Shastri, AGP for Respondent Nos.1 to 3.

CORAM : G.S. KULKARNI, J.

DATE : 25th JANUARY, 2019

JUDGMENT:

This petition under Article 226 of the Constitution of India challenges the order dated 12 June 2009 passed by the Additional Commissioner, Konkan Division, Mumbai (respondent No.2) on an appeal as filed by the respondent No.4-Chembur Uttam Co-operative Housing Society Ltd. under Section 247 of Maharashtra Land Revenue Code, 1966 against an order dated 13 June 2005 passed by the District Collector, Mumbai Suburban District (for short, “the Collector”).

2. By the said order dated 13 June 2005 passed by the Collector, an application as made by the petitioner-society for incorporating the area in respect of the plot of land belonging to the petitioner-society bearing CTS No.52 in the property card, was allowed. In so allowing, the Collector observed that in regard to CTS No.1515, there was a

discrepancy which was found on the actual measurement and the recording as made in the property card. It was observed that CTS No.1515 was unnecessarily shown on the map and in fact, the said plot was not in existence. On internal page 4 of the order passed by the Collector, detailed reasons are set out as to why the Collector was of the opinion that CTS No.1515 cannot be a realistic plot on the map. Also a detailed statement of the various CTS numbers with their measurements on the basis of survey has been indicated on internal page 5 of the said order. The Collector accordingly directed that in the plan prepared after measurement, the plan with the boundaries as indicated in green be confirmed and that this would be a direction under Section 106 and 135 of Maharashtra Land Revenue Code.

3. The respondent No.4 Chembur Uttam Co-operative Housing Society Ltd. being aggrieved by the said order dated 13 June 2005 passed by the Collector approached the appellate authority namely the Additional Commissioner, Konkan Division making the following prayers:-

- “a) The impugned Order No. C/KARYA/2C/KALAM-135/SR-243 of the Hon. District Collector, Mumbai Suburban District dated 13/6/2005 be set aside,
- b) Original land area and original boundary lines of the Plot No.1516 of the Appellants, as per the original (old) Property Card and original (old) Survey Plans, be restored to the Appellants;
- c) The records and proceedings before the Respondent be called for.”

4. The appellate authority heard the parties on respondent No.4's appeal, and by the impugned order allowed the said appeal in terms of the following order:-

- “1. Appeal is granted.
2. Partial changes are being effected in district collector, Mumbai Suburban District Order no. C/Karya- 2C/Kalam 135/SR-243 dated 13.6.05.
3. The property bearing CTS No. 1515 at village Chembur, Taluka Kurla, should be granted to any one of the Appellants and the Opponent No.2 whoever is prepared to give more price. Before that a proposal to that effect be forwarded to the Government and auction be conducted only after receipt of the Government orders.
4. The decision may be informed to the concerned.”

5. The petitioners being aggrieved by the order has filed the present petition.

6. When this petition was taken up for hearing on the earlier occasion, Mr.Santosh Shah, Treasurer of respondent No.4 society, appeared and orally submitted that the respondent No.4 society is not interested to contest this petition. In pursuance thereto this Court by an order dated 18 January 2019, directed the respondent No.4 to place the said contention on record on an affidavit. Accordingly, today Mr.Santosh Shah has appeared and tendered an affidavit dated 23 January 2019 on behalf of the respondent No.4 society, stating that the society is not interested in the present petition and therefore, does not want to contest and proceed in this litigation.

7. On the above background, Mr.Thorat, learned Senior Counsel for the petitioners, has made submissions on the writ petition.

8. Mr.Thorat, learned Senior Counsel for the petitioners, has two fold grievances against the impugned order as passed by the Additional Commissioner. It is submitted that by the impugned order, the Additional Commissioner could not have reached to a conclusion that the property CTS No.1515 should be granted to any one of the parties, either the petitioners or the respondent No.4 society, whoever was prepared to offer more price and further that the proposal to that effect be forwarded to the Government and auction be conducted only on receipt of the Government orders. It is submitted that to come to this conclusion, the findings which are recorded by the Collector in the order dated 13 June 2005 were required to be displaced namely the findings in regard to CTS No.1515 that the said land was actually not in existence, and the finding that it was mistake on the part of the authorities to indicate CTS No.1515 on the map when the same was not in existence, as ascertained from the survey as undertaken. It is further submitted that paragraph 2 of the order also does not indicate as to what the learned Commissioner actually meant in regard to the order dated 13 June 2005 passed by the Collector and as to what should be understood from the operative direction no.2 of the Additional Collector

in partially allowing the appeal. In short, the contention of Mr.Thorat, learned Senior Counsel for the petitioners is that the impugned order is erroneous in as much as the direction as contained in paragraph 2 is vague and uncertain. It is contended that apart from this the said direction is without any foundation and without any reasons as set out in the impugned order.

9. I have perused the order dated 13 June 2005 passed by the collector as also the impugned order dated 12 June 2009 passed by the respondent No.2. I have also perused the documents placed on record. At the outset, it needs to be observed that there is no contest on any of the issues as urged on behalf of the petitioner from respondent No.4. On a plain reading of the impugned order passed by the Additional Commissioner and more particularly operative part of the order, it is quite clear that the contentions as urged by Mr.Thorat are required to be accepted. Paragraph 2 of the operative order, in my opinion, does not make any meaning as to what is the actual direction of the Commissioner. As regards the direction contained in paragraph 3 in regard to CTS No.1515, a perusal of the impugned order indicates that the detailed reasons as given by the Collector in regard to CTS No.1515, in regard to its erroneous inclusion on the map, are not dealt by the learned Additional Commissioner so as to hold that the findings of the

Collector were erroneous and not acceptable. If this is the plain consequence which are reflected from the impugned order, then certainly the impugned order cannot be sustained. The challenge of the petitioner to the impugned order therefore needs to succeed on the above basic premise. The petition is accordingly allowed by the following order:-

ORDER

- i. The impugned order dated 12 June 2009 passed by the Additional Commissioner, Konkan Division, is quashed and set aside.
- ii. The appeal as filed by respondent No.4 is restored to the file of Additional Collector to be heard and decided on merits.
- iii. All contentions of the parties on the said appeal are expressly kept open.
- iv. As the issue as raised in the petition is quite old and there ought to be a certainty in regard to the correct CTS numbers being reflected on the property card of the petitioner, it is imperative that the Additional Commissioner decides the appeal as expeditiously as possible and in any event within three months from today.
- v. Rule is made absolute in the above terms. No costs.
- vi. Parties to act on an authenticated copy of this order.

[G.S. KULKARNI, J.]