IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

WRIT PETITION NO.7492 OF 2016

Vividha Karyakari Seva Sahakari
Society Ltd., through its Director
Sitaram s/o Shankarrao More,
Age 65 years, Occu. Agril.,
R/o Jamb (Bk.), Tq. Mukhed,
District Nanded ... **PETITIONER**

VERSUS

1. The Minister,
Revenue and Khar Land,
Maharashtra State, Mantralaya,
Mumbai – 400 032
(Copy to be served on
Govt. Pleader, high Court of
Judicature of Bombay,
Bench at Aurangabad)

2. Jai Malhar Sevabhavi Sanstha,
Jamb (Bk.), through its Secretary,
Sudhir s/o Baburao Yarpudwar,
Age major, Occu. Agril.,
R/o Jamb (Bk.), Tq. Mukhed,
District Nanded

3. Sanjay s/o Baburao Yarpurwar,
Age major, Occu. Service.
R/o Jamb (Bk.), Tq. Mukhed,
District Nanded ... **RESPONDENTS**

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Shri S.K. Sawangikar, Advocate for petitioner
Shri A.S. Shinde, A.G.P. for respondent No.1.
Shri P.P. Uttarwar, Advocate for respondents No.2 & 3

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CORAM: R.G. AVACHAT, J.

Date of reserving order : 3rd October 2019

Date of pronouncing order : 25th February, 2020

J U D G M E N T :

Rule. Rule made returnable forthwith and taken up for final hearing with the consent of learned counsel for the parties.

2. The challenge in this Writ Petition is to the order passed by the Hon'ble Minister, Revenue & Khar Land (respondent No.1) in Case No.Appeal-2014/PK-59/J-7-A. By the impugned order, the decision of the Additional Commissioner, Aurangabad in R.O.R. Revision No.49/2011, dated 31/12/2013 came to be set aside, restoring the Mutation Entry No.1113.

3. The petitioner is a Vividha Karyakari Seva Sahakari Society Ltd. The respondent No.2 is – Jai Malhar Sevabhavi Sanstha. Both, the petitioner and the respondent No.2 are the Co-operative Societies, based at village Jamb (Bk.), Taluka Mukhed, District Nanded. The respondent No.3 was the President of the petitioner Society at the relevant time. He was not elected President. The Assistant Registrar, vide order dated 22/5/2007, had appointed a three member committee as Administrative Board to administer the affairs of the petitioner Society. The

respondent No.3 was the President of the Board of Administrators (hereinafter referred to as 'the Board' for short).

4. The petitioner Society, under a registered gift deed dated 1/9/2008, gifted a plot admeasuring 145 ft. x 125 ft. forming part of the land Gut No.462 to the respondent No.2 Society. The effect of the said gift deed had been given in the revenue record vide Mutation Entry No.1113. The petitioner Society preferred appeal against certification of Mutation Entry No.1113 to the Sub-Divisional Officer. After having been unsuccessful in appeal, the matter was carried before the Additional Collector unsuccessfully. Then a revision was preferred against the decision of the Additional Collector, to the Additional Commissioner (Revenue) successfully. The respondent No.2, therefore, preferred appeal before the Hon'ble Minister, Revenue and Khar Land. The Minister was pleased to allow the appeal. The petitioner Society is, therefore, before this Court in the present Writ Petition.

5. Shri Sawangikar, learned counsel appearing for the petitioner Society would submit that, no notice of the proceeding before the Revenue Minister had ever been served to the petitioner Society. The execution of gift deed is nothing short of a fraud played by the respondent No.3 on the petitioner Society. The learned counsel took me through various documents on

record to ultimately urge for allowing the Writ Petition. With a view to avoid repetition of facts, the submissions made by learned counsel for the petitioner would be referred to while appreciating the controversy involved in this Writ Petition.

6. Shri P.P. Uttarwar, learned counsel for respondents No.2 and 3 would, on the other hand, submit that the gift deed is a registered document executed by the respondent No.3 with prior sanction of the authorities concerned. The revenue authorities have no option but to give effect to the gift deed in the revenue record of the land comprised in the gift. The learned counsel made submissions consistent with the affidavit-in-reply filed by the respondent No.3. It was submitted by the learned counsel that there is delay of over two years in preferring the present Writ Petition. The notice of the proceedings before the Revenue Minister has been served on the Administrative President of the petitioner Society. The respondent No.3 has been acquitted of the charge of committing forgery and misappropriation of the property of the petitioner Society. According to learned counsel, revenue entries are made for fiscal purpose. The revenue authorities have no right to decide title to immovable property or/ and set aside registered document. A civil suit is pending between the petitioner and the respondent Society. Unless and until the gift deed is set aside by the competent Court, the effect thereof has to be reflected in the

revenue record. The learned counsel supported the impugned order, and ultimately prayed for dismissal of the Writ Petition.

7. At the outset itself, it is observed that the facts and circumstances of the case lead me to allow the Writ Petition in toto. Even I do not propose to remand the matter back to the respondent No.1 for deciding it after giving the petitioner Society an opportunity of hearing.

Both – the petitioner and the respondent No.2 are the Co-operative Societies, based at village Jamb (Bk.), Taluka Mukhed, District Nanded. The petitioner Society owns agricultural land Gut No.462. It admeasured 52 R. At the relevant time, there was no elected body to administer the affairs of the petitioner Society. The Assistant Registrar, Co-operative Societies (hereinafter referred to as the ARCS for short), Taluka Mukhed, vide his order dated 22/5/2007, appointed a three member body to administer the affairs of the petitioner Society. The respondent No.3 was appointed as a member of the said committee. The duration of the said administrative body was for a period of six months. By subsequent order dated 23/11/2007, the ARCS extended the duration of the said body for next three months. As such, the Board, headed by the respondent No.3 was authorized to administer the affairs of the petitioner Society from 22/5/2007 to 21/2/2008. On 10/8/2008, a resolution was passed in the annual general meeting to gift away a plot admeasuring 145 ft. x 125 ft. forming part of land Gut No.462 to the respondent No.2 Society. The Tahsildar, by his order dated 10/8/2008, gave No Objection Certificate for sale of the plot. Here itself, it has to be made clear that the Tahsildar did not grant permission to gift away the plot. True, the ARCS, vide his order dated 22/8/2008, authorised the respondent No.3 to go ahead with the resolution to donate the said plot to the respondent No.2.

8. The startling fact is that the real brother of respondent No.3 was the Secretary of respondent No.2 at the relevant time. The gift deed has been executed by the respondent No.3 in favour of his real brother, who is a party to the gift deed in his capacity as a Secretary of respondent No.2. The gift deed has been executed post the tenure of the Board was over. True, there is a communication on record issued by ARCS on 18/2/2010, informing that the tenure of the Board shall be deemed to have been extended until a new body comes into existence to administer the affairs of the petitioner Society. If this is so, there was in fact no necessity to grant three months extension to the Board vide order dated 23/11/2007. Be that as it may. Assuming that the Board headed by respondent No.3 was at the helm of affairs of the petitioner Society, the Board was expected to function in the interest of the petitioner Society and

not contrary. What was the reason behind executing a gift deed is not known. The plot comprised in the gift deed is a roadside plot, stated to have market value of Lakhs of rupees. As per the ready reckoner, the price might have been somewhat less.

9. It is reiterated that, the Tahsildar had issued No Objection Certificate for sale of the plot and not for gifting it away. No sooner the Tahsildar and ARCS were apprised of the facts of the case, both of them have withdrawn their orders granting No Objection Certificate and permission to go ahead with the resolution dated 10/8/2008 respectively. The facts are more startling. The Secretary of the petitioner Society namely Gutte Waman Apparao has filed an affidavit dated 1/10/2008, stating therein that the annual general meeting had in fact not been held on 10/8/2008, wherein a resolution is shown to have been passed so as to donate the plot to the respondent No.2 Society. He has stated on affidavit that the resolution does not bear his signature. He was in fact on leave from the period 7th to 12th August 2008. Then there is a document on record, issued by Village Development Officer, dated 13/10/2008, stating therein that the Village Panchayat has not issued any No Objection Certificate for sale of the plot by the petitioner Society to respondent No.2.

10. The record further indicates that, the respondent No.2

Society had filed a civil suit for perpetual injunction. The application for temporary injunction came to be rejected. The respondent No.2 Society was unsuccessful in the appeal. The Writ Petition preferred by it has also been dismissed. The respondent No.2 Society, therefore, unconditionally withdrew the suit. The petitioner Society filed civil suit for declaration and injunction. The plaint came to be returned for being presented before Co-operative Court. A dispute/ suit is thus pending before Co-operative Court, wherein validity of the gift deed is in question.

11. The facts referred hereinabove prima facie indicate that the gift deed has been executed for no valid reason. The act of executing the gift deed prima facie appears to be prejudicial to the interest of the petitioner society. In this factual backdrop, it would be desirable not to have effect of the gift deed recorded in the revenue record by virtue of a mutation entry. These observations have been made in the peculiar facts and circumstances of this case. I am very much conscious of the fact that effect of a registered document conveying immovable property is required to be reflected in revenue record. It is, however, reiterated that the facts of the present case are altogether different. The respondent No.3 appears to have executed the gift deed for extraneous consideration. His authority to execute the gift deed was seriously under clouds.

12. True, there is delay in filing the present Writ Petition for taking exception to the impugned order. The respondent No.1 has, in the order itself, directed to inform the parties the impugned decision. It has been specifically averred in the petition that the petitioner Society had not been informed of the impugned decision/ order. It is only when the office bearer of the petitioner Society had been to Mantralaya in connection with some other work, it came to its knowledge about the impugned decision. True, the respondent No.3 has been acquitted of the charge of forgery and criminal misappropriation. The same has, however, no bearing on the fate of the mutation entry. Along with the affidavit-in-reply, a document (Exhibit R-3) has been produced to indicate that notice of the proceedings before the Revenue Minister had been served on the petitioner Society. I have, therefore, carefully perused the Exhibit R-3 to find that it was a notice issued on 5/8/2014. It has been issued by the Desk Officer from Mantralaya, Mumbai. It bears the acknowledgment of receipt of the notice. The acknowledgment is dated 6/8/2014.

13. It is just difficult to appreciate the fact that the notice issued from Mumbai is served on the Administrative Chairman of the petitioner society at Mukhed, District Nanded the next day. The acknowledgment has been signed by Administrative Chairman of the petitioner Society. The facts of the present case

undoubtedly indicate that, execution of the gift deed was an act prejudicial to the interest of the petitioner Society. Non-appearance of the petitioner Society before the Revenue Minister pursuant to the notice dated 5/8/2014 itself is an act no short of prejudicial to the interest of the petitioner. The notice records that the matter was heard on 5/8/2014. None had appeared on behalf of the petitioner on 5th. There is nothing to indicate that the petitioner Society had been served with the notice of the proceedings before the Revenue Minister, before the matter was taken up for hearing on 5/8/2014. By the notice Exhibit R-3, the petitioner Society was informed to file written arguments on or before 11/8/2014 lest the matter would be decided in its absence.

14. As stated above, I am not inclined to remand the matter back to the respondent No.1. The facts that have been brought to the notice of this Court prima facie indicate that the gift deed has been executed for no justifiable reasons. It is, therefore, desirable that, unless and until the validity of the gift deed is upheld by Civil Court, the name of the respondent No.2 Society shall not appear in the revenue record of the gifted plot.

15. The observations made hereinabove are prima facie in nature. The Court seized of the matter, wherein validity of the gift deed is in question, shall not be influenced by the observations made hereinabove.

16. For the reasons stated hereinabove, the Writ Petition succeeds. The same is, therefore, allowed in terms of prayer clause (B). The order dated 26/8/2014, passed by the Hon'ble Minister for Revenue and Khar Land, Maharashtra State, Mantralaya, Mumbai-32 in Case No.Appeal-2014/PK-59/J-7-A is quashed and set aside. Rule made absolute accordingly.

(R.G. AVACHAT, J.)

fmp/-