

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.7447 OF 2020
IN
WRIT PETITION NO. 6809 OF 2020

1. Devaji Bhai Ladabhai Patel,
Age : Major, Occu. Business,
R/o Anmol Plot, Bansidhar Society,
Bhatta Vasana, Ahmedabad,
Gujarat

2. Poonam s/o Somprakash Grover,
Age : Major, occu. Business,
R/o B-102, Satellite Center,
Vastarpur, Ahmedabad,
Gujarat

APPLICANTS
(Orig. Respondents No.2 & 3)

VERSUS

1. Chandrakant Ratilal Mehata,
Age : Major, Occu. Business,
R/o Shirdi, Tq. Rahata,
District Ahmednagar

RESPONDENT
(Orig. Respondent No.1)

2. Sau. Neha Sunil Aggrawal,
Age : 55 years,
R/o Bombay
Name before Marriage
Murial Pall Rebello

3. Anil Chandrakant Mehata,
Age : 45 years, R/o Bombay

4. Swati Bharat Pandit,
Age : 49 years, R/o Bombay
Name before marriage
Sadra Paull Rebello

RESPONDENTS
(Orig. Petitioner Nos.1 to 3)

Miss Pradnya Talekar, Advocate for Talekar and Associates,
for the applicants
Mr. Sanket S. Kulkarni, Advocate for respondents No.2 to 4
(Original Petitioners)

CORAM : MANGESH S. PATIL, J.

DATE : 04.12.2020

ORDER :

Heard both the sides.

2. By this Civil Application, respondents No.2 and 3 in the Writ Petition are requesting for vacating the ad interim relief granted by the order dated 19.10.2020 staying further proceeding of Tenancy Appeal No.213 of 2018 preferred by the petitioners under Section 74 of the Bombay Tenancy and Agricultural Lands Act, 1948, impugning the order of the learned Tahsildar, Rahata dated 15.07.2013 whereby he directed deletion of their names from the revenue record of the agricultural lands.

3. Respondents No.2 and 3 submitted an application in the appeal and sought to intervene and requested for adding them as party respondents No.8 and 9. According to them, respondent No.1 had entered into a Memorandum of Understanding with them on 30.05.2008. Subsequently, he also entered into a Development Agreement with them and then later on executed a General Power of Attorney in their favour. Thus, according to them, they were the necessary parties.

4. The petitioners opposed the application but the learned Sub-Divisional Officer allowed the application of respondents No.2 and 3.

5. Being aggrieved and dissatisfied with the addition of respondents No.2 and 3 in the appeal, the petitioners challenged the order of the learned Sub-Divisional Officer in Revision before the Maharashtra Revenue Tribunal. By the impugned judgment and order, the Maharashtra Revenue Tribunal rejected the Revision.

6. Miss Talekar, learned Advocate for the applicants strenuously submits that since respondents No.2 and 3 are the Power of Attorneys duly appointed by respondent No.1, who has been defending the appeal before the Sub-Divisional Officer, they have a legitimate right to contest the appeal. She would point out that they have entered into a Memorandum of Understanding with respondent No.1 and have also undertaken to develop the property. Even in the recent past, respondent No.1 has sold different portions of the property in dispute under several registered sale-deeds to which respondents No. 2 and 3 are consenting parties. She would, therefore, submit that they have every right to participate in the ongoing appeal before the Sub-Divisional Officer alongwith respondent No.1. She, therefore, submits that the order granting stay to the hearing of the appeal by the Sub-Divisional Officer having been passed ex parte against applicants - respondents No.2 and 3, it may be vacated pending hearing and final

disposal of the Writ Petition.

7. Mr. Kulkarni, learned Advocate for respondents No.2 to 4 submits that though respondents No.2 and 3 are now propounding the Memorandum of Understanding and the Development Agreement, which, even according to them, were executed a decade back and when at no point of time they had ever made any attempt to participate in the ongoing proceeding before the revenue authorities or have independently proceeded against either the petitioners or respondent No.1, they cannot be said to be either necessary or even proper parties to the appeal.

8. Learned Advocate Mr. Kulkarni would also submit that in fact, there seems to be a dispute *inter se* between respondent No.1 on one hand and respondents No. 2 and 3 on the other. He points out as to how asserting their right and claim under the Memorandum of Understanding, Development Agreement and the Power of Attorney, respondents No.2 and 3 had issued legal notices to respondent No.1. He, therefore, submits that the learned Sub-Divisional Officer and the learned Member of the Maharashtra Revenue Tribunal had prima facie failed to appreciate all these aspects and have conceded to the request of respondents No.2 and 3. Having considered these aspects, this Court has rightly granted stay to the proceeding of the appeal by the order dated 19.10.2020.

9. I have carefully gone through the papers. Accepting the stand of

respondents No.2 and 3 at its face value, it is evident that if at all they have any right or interest in the property in dispute, they are claiming such a right only through respondent No.1, obviously on the basis of the Memorandum of Understanding, Development Agreement and the Power of Attorney. If this is the state-of-affairs and when respondent No.1 is already defending the appeal, prima facie respondents No.2 and 3 cannot be said to be either the necessary or proper parties to the appeal.

10. Besides, though respondents No.2 and 3 are referring to the documents giving right to them in the property in dispute, which, according to them, were executed way back in the years 2008 and 2011, at no earlier point of time they had ever sought to participate in the enquiry either before the Tahsildar or even in the appeal, former of which was filed in the year 2010 and the latter in the year 2018.

11. As can be seen from the application filed by respondents No.2 and 3 in the appeal, seeking their inclusion, at no place have they come with a case that respondent No.1 through whom they are claiming the right in the property is either incapable of defending the appeal or has not been defending it with expected zeal or is acting in a manner which is prejudicial to their interest.

12. Considering the aforementioned facts and circumstances, when the Writ Petition is likely to take time for final disposal, the interim relief

granted by this Court on 19.10.2020 cannot be vacated.

13. The application is rejected.

[MANGESH S. PATIL]
JUDGE

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