

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10471 OF 2011

Sudhir Vasant Karnataki ... Petitioner
Vs.
State of Maharashtra through Minister for Revenue,
Revenue Department and others ... Respondents

Mr. Sanjeev Kadam a/w. Mr. Parth P. Shah and Mr. S. Relekar i/b. Mr. Prashant Relekar for Petitioner.
Mr. A. P. Vanarase, AGP for Respondent Nos.1 to 5-State.

CORAM : UJJAL BHUYAN, J.
Reserved on : DECEMBER 12, 2019
Pronounced on : MARCH 2, 2020

ORDER :

Heard Mr. Kadam, learned counsel for the petitioner and Mr. Vanarase, learned AGP for respondent Nos.1 to 5 i.e., the State.

2. This petition has been filed under Articles 226 / 227 of the Constitution of India for quashing order dated 07.06.2011 passed by respondent No.1; quashing order dated 10.06.2009 passed by respondent No.2; quashing communication dated 01.07.2009 of respondent No.3; and seeking direction / order for confirming various orders passed by the Deputy Director of Land Records (Survey), Pune i.e., respondent No.3, including order dated 29.04.2008 as well as order dated 20.05.2008 passed by City Survey Officer No.2, Pune i.e., respondent No.5.

3. A brief recital of the facts is considered necessary.

4. Petitioner is the purchaser of the property in question from the erstwhile owners Mr. Balwant Ramchandra Natu and others. As per description of the property in question, it is situated at Shukrawar Peth within the limits of Pune Municipal Corporation bearing City Survey No.1332 admeasuring 1538 sq.mtrs. and City Survey No.1332A

admeasuring 367 sq.mtrs. (referred to hereinafter as the 'property in question').

4.1. Following purchase of the property in question, name of the petitioner has been entered in the Record of Rights relating to the said property.

5. Be it stated that District Collector, Pune by *Sanad* dated 22.02.1930 had allotted on perpetual, transferable, heritable and ownership basis, land admeasuring 15 *Gunthas* 3 *Annas* 8 *Paise* i.e., about 1538 sq.mtrs. from then Survey No.48 to Sardar Natu i.e., ancestor of the predecessors-in-title of the land in question from whom petitioner made the purchase. Thus, by virtue of the *Sanad* dated 22.02.1930, the said land admeasuring 1538 sq.mtrs. became the property of the grantee i.e., Sardar Natu.

5.1. Another portion of land admeasuring 367 sq.mtrs. was also under the possession of the said Sardar Natu.

5.2. The demarcation enclosed with the *Sanad* dated 22.02.1930 showed both the areas of land forming part of the said *Sanad*. Therefore, total area of land under ownership and possession of Sardar Natu was admeasuring 1905 sq.mtrs.

6. During city survey, the said plots of land were allotted City Survey Nos.689 and 690. It may also be mentioned that the two plots of land were previously included in Sadashiv Peth but after rearrangement of the city survey records and rearrangement of the *Peths*, the property in question came to be included in Shukrawar Peth.

6.1. During the process of rearrangement, the said properties in question were allotted City Survey Nos.1332 and 1332A. Though the actual area of the land covered by City Survey No.1332 was 1538 sq.mtrs. and that of City Survey No.1332A, 367 sq.mtrs., through

oversight of the respondents, the area of City Survey No.1332 was shown as 659.7 sq.mtrs.; while regarding the land admeasuring 367 sq.mtrs., the same along with the name of the owner were not entered in the Property Register Card.

6.2. For making the necessary corrections, legal representatives of Sardar Natu preferred a series of applications. In continuation, one Shri Sadashiv Ramchandra Natu, one of the legal representatives, preferred application dated 20.02.1996 in the office of Director of Land Records, Pune Region requesting correction of the areas of land covered by C.T.S.Nos.1332 and 1332A according to the *Sanad* and actual possession. This was followed by subsequent application dated 11.04.1996. Following deposit of fees, City Survey Officer-2 issued notice for demarcation. Further notices were issued by the said authority on 30.11.1996 but no steps were taken on both the occasions. In such circumstances, another legal heir Shri Balwant Ramchandra Natu also preferred applications on 20.10.2002, 11.11.2002 and 16.11.2002.

6.3. Finally, City Survey Officer No.2 issued notice on 18.12.2002 for inspection of the property in question but no such inspection took place. However, a hearing was scheduled by the said authority on 01.07.2003 following which, report was prepared by the said authority for submission to District Collector.

7. On 22.11.2004, Superintendent of Land Records, Pune Region prepared the proposed correction of record. In the meanwhile, legal heirs of Sardar Natu continued to make applications for correction of the area. Finally, Deputy Director of Land Records, Pune i.e., respondent No.3 passed order dated 29.04.2008 directing City Survey Officer No.2 to enter the correct area of City Survey No.1332 admeasuring 1538 sq.mtrs. as per the *Sanad*; and to conduct inquiry under Section 20(2) of the Maharashtra Land Revenue Code, 1966 (briefly “the Code” hereinafter) in respect of the property covered by City Survey

No.1332A.

8. It is stated that on 09.05.2008, actual demarcation of the property in question was conducted and it was found that the total area of the property in question was 1905 sq.mtrs.

8.1. Following the directions of respondent No.3, City Survey Officer No.2 i.e., respondent No.5 conducted site inspection, actual demarcation, and enquiry under Section 20(2) of the Code. By a reasoned order dated 20.05.2008, respondent No.5 confirmed that the area of C.T.S.No.1332 was 1538 sq.mtrs. and C.T.S.No.1332A was admeasuring 367 sq.mtrs.

8.2. Pursuant to the said order of respondent No.5, necessary corrections were made regarding the area of the land covered by C.T.S.Nos.1332 and 1332A and names of the applicants were entered in the Property Register Card.

9. Petitioner has stated that some time in the year 2008, he had purchased the property in question from the erstwhile owners by way of registered sale deeds.

9.1. Following purchase, petitioner sought for and obtained construction permission and also got plans of the proposed building to be constructed sanctioned from the Pune Municipal Corporation and thereafter started making the construction.

9.2. All of a sudden, petitioner received a notice from the office of respondent No.3 whereby he was informed that a meeting was being convened in his office for review of the order dated 29.04.2008. In the said notice, it was mentioned that respondent No.2 had issued directions to respondent No.3 to review the order dated 29.04.2008.

9.3. Upon enquiry, petitioner learnt that respondent No.2 had issued order dated 10.06.2009 for review of the said order.

9.4. It is stated that order dated 29.04.2008 passed by respondent No.3 had set at rest all confusions, ambiguities and errors as well as issued directions to carry out proper enquiry and for updation of records.

10. Upon receipt of notice from the office of respondent No.3 regarding hearing of the matter relating to review of order dated 29.04.2008, petitioner filed an appeal before respondent No.1 contending that respondent No.2 by a blanket order passed under Section 258 of the Code had no right and authority to order a review of order dated 29.04.2008 passed by another authority i.e., respondent No.3. Order passed by respondent No.3 on 29.04.2008 was valid and lawful, requiring no interference.

11. Respondent No.1 after hearing the matter dismissed the appeal filed by the petitioner on 07.06.2011 primarily on the ground that the order passed by respondent No.2 was under Section 256(3) of the Code and that power of correction of land record vested with the Collector under Section 106 of the Code. Power to conduct enquiry and to take decision under Section 20(2) of the Code was also with the Collector.

12. Aggrieved, petitioner has preferred the present writ petition seeking the reliefs as indicated above.

13. Shri Ajay Shamrao Kulkarni, In-charge Deputy Director of Land Records, Pune Region has filed an affidavit on behalf of the respondents. Stand taken in the affidavit is that original city survey of Pune city was conducted during 1916-17. During the survey, the property in question was measured and map was confirmed by the then Enquiry Officer; the two properties were provided City Survey Nos.689 and 690 respectively of Sadashiv Peth.

13.1. Names of the predecessors of the person from whom petitioner had purchased the properties were recorded in respect of City Survey

No.690. While the area of City Survey No.690 was recorded as 659.70 sq.mtrs., the area of City Survey No.689 was not mentioned.

13.2. The then Collector of Pune had issued *Sanad* for City Survey No.690 in favour of the predecessors of the person from whom petitioner had purchased the property and the area mentioned in the *Sanad* for City Survey No.690 was 15 *Gunthas* 3 *Annas* 8 *Paise*.

13.3. During rearrangement of the *Peths* in Pune City in the year 1935, the old city survey numbers were changed and new city survey numbers were given to the said properties being 1332A and 1332 respectively. The area mentioned in the Property Card of City Survey No.1332 was 659.60 sq.mtrs. but no area was mentioned in the Property Card of City Survey No.1332A. It is stated that the area of City Survey No.1332 was not in accordance with the *Sanad* issued by the District Collector, Pune.

13.4. Shri S. R. Natu, legal heir of the original grantee filed application before the Superintendent of Land Records, Pune on 20.02.1996 to correct the area of City Survey Nos.1332 and 1332A. Though a notice was issued in this connection, no final order was passed leading to filing of further applications on 28.03.2008. Deputy Director of Land Records, Pune Region called for report from Superintendent of Land Records, Pune with copy to City Survey Officer No.2, Pune. City Survey Officer No.2, Pune submitted report dated 24.04.2008 to the Superintendent of Land Records, Pune stating that area of City Survey No.1332 be corrected to 1538 sq.mtrs. instead of 659.7 sq.mtrs. in terms of the *Sanad* and regarding City Survey No.1332A, to conduct enquiry under Section 20(2) of the Code.

13.5. Considering the report submitted by the City Survey Officer No.2, Pune, Deputy Director of Land Records, Pune passed an order dated 29.04.2008 confirming the area of City Survey No.1332 as per the *Sanad* granted by the Collector, Pune i.e., 1538 sq.mtrs. As regards the

area covered by City Survey No.1332A, Deputy Director directed that City Survey Officer No.2, Pune should conduct an enquiry under Section 20(2) of the Code.

13.6. Following the order passed by the Deputy Director on 29.04.2008, City Survey Officer No.2, Pune corrected the area of City Survey No.1332 as 1538 sq.mtrs., and also conducted enquiry as to the land covered by City Survey No.1332A. It was found that the area of the land covered by the said survey was 367 sq.mtrs. and the title stood in the name of Shri. R. V. Natu.

13.7. Settlement Commissioner, Pune, *vide* his order dated 10.06.2009 passed under Section 256(3) of the Code stayed the order of the Deputy Director of Land Records, Pune dated 29.04.2008. Further, an order was passed on 11.06.2009 by the Settlement Commissioner to the effect that the Deputy Director of Land Records and Director of Land Records, Pune should review the order under Section 258 of the Code.

13.8. Following the same, the Deputy Director of Land Records issued notices to the concerned parties for enquiry. Upon receipt of notice, petitioner filed appeal before respondent No.1 against above orders dated 10.06.2009 and 11.06.2009 of the Settlement Commissioner. Respondent No.1 initially stayed the orders of the Settlement Commissioner on 09.09.2009 but subsequently, passed order dated 07.06.2011 rejecting the appeal of the petitioner and consequently vacating the order of stay.

13.9. It is contended that the stay granted by the Settlement Commissioner on the order of the Deputy Director dated 29.04.2008 continues to hold the field.

13.10. It is stated that Settlement Commissioner had stayed the order of the Deputy Director on the ground that the same was passed without

jurisdiction. The order passed by respondent No.1 dated 07.06.2011 has been justified on the ground that the State Government can quash or modify any order passed by the subordinate officers under Section 259 of the Code.

14. Detailed submissions have been made by learned counsel for the parties which are more or less on pleaded lines. Therefore, detailed reference to the same is considered not necessary. However, the submissions so made have been duly considered.

15. In his order dated 29.04.2008, Deputy Director of Land Records mentioned that as per report of the Superintendent of Land Records, the area of land as per the original *Sanad* in the Property Card of C.S.No.1332 of Shukrawar Peth was 1538 sq.mtrs., but regarding the land covered by C.S.No.1332A, the area was not mentioned in the Property Card. However, in the measurement carried out in the year 2003, the actual total area was mentioned as 1905 sq.mtrs. The Deputy Director also referred to the request of City Survey Officer No.2 for re-enquiry in respect of the property covered by C.S.No.1332A under Section 20(2) of the Code. In the circumstances, Deputy Director ordered for regularizing the area of 1538 sq.mtrs. as per the original *Sanad* in respect of the property covered by C.S.No.1332 and to make re-enquiry under Section 20(2) of the Code in respect of the property covered by C.S.No.1332A and thereafter to regularize the same by entering the ownership rights, etc. in the land records.

16. City Survey Officer No.2, Pune carried out the re-enquiry in terms of order dated 29.04.2008 on 09.05.2008. On re-enquiry, it was found that land admeasuring 367 sq.mtrs. was the area of the land covered by C.S.No.1332A. In his order dated 20.05.2008, he stated that in terms of the order of the Deputy Director dated 29.04.2008, area of 1538 sq.mtrs. was entered in the Property Card of C.S.No.1332. Total area of the two C.S.Nos.1332 and 1332A was found to be 1905 sq.mtrs. After deducting

the area of 1538 sq.mtrs. which was in respect of C.S.No.1332, the area of C.S.No.1332A was found to be 367 sq.mtrs.

17. An order was passed on 10.06.2009 by the Settlement Commissioner and Director of Land Records. It was stated that City Survey Officer No.2 had no jurisdiction to rectify the area in question. Therefore, order of the Deputy Director dated 29.04.2008 and order of the City Survey Officer No.2 dated 20.05.2008 were stayed.

18. It appears that the Settlement Commissioner had directed the Deputy Director on 11.06.2009 for revision of the said order under Section 258 of the Code following which he issued notices on 01.07.2009 to the legal heirs of Sardar Natu and the petitioner.

19. Against such decision, petitioner moved respondent No.1 by filing revision application. Petitioner was informed by the Additional Secretary to the Government of Maharashtra, Revenue and Forest Department on 09.09.2009 that his revision application was admitted and an order of *status-quo* was passed by the Hon'ble Minister (Revenue) till hearing of the matter. Subsequently, respondent No.1 passed order dated 07.06.2011 dismissing the revision application of the petitioner and vacating the *status-quo* order.

20. Settlement Commissioner in his order dated 10.06.2009 took the view that the order passed by the City Survey Officer No.2 was without jurisdiction. The action undertaken was of appellate nature and within the jurisdiction of civil court. Therefore, he stayed the order of the Deputy Director dated 29.04.2008 and that of the City Survey Officer No.2 dated 20.05.2008, following which notices were issued to the respective parties for revision of the said orders. In the revision proceedings at the instance of the petitioner, respondent No.1 agreed with the contention of the Settlement Commissioner that the right to rectify any area in the land records is vested with the Collector under

Section 106 of the Code. In the present case, Collector had not passed the rectification order. Therefore, the Settlement Commissioner was justified in passing the order dated 10.06.2009. Consequently, revision application of the petitioner was dismissed.

21. Having noted the factual matrix as above, relevant legal provisions may now be adverted to.

22. Section 14 of the Code deals with powers and duty of survey officers, circle officers, etc. Sub-section (1) thereof says that subject to the orders of the State Government, the survey officers are vested with the cognizance of all matters connected with survey, settlement and record of rights and shall exercise all such powers and perform all such duties as may be provided by the Code or any law for the time being in force.

23. Section 20 deals with title of State in all lands, public roads, etc., which are not property of others. As per sub-section (1), all public roads, etc. and all lands wherever situated, which are not the property of persons legally capable of holding property and except in so far any rights of such persons may be established, are declared to be property of the State Government with all appurtenant rights in or over the same. It shall be lawful for the Collector, subject to orders of the Commissioner, to dispose of such property in such manner as may be prescribed by the State Government, subject always to the rights of way and all other rights of the public or of individuals legally subsisting.

23.1. Thus, on a reading of sub-section (1), it is seen that all public roads, etc. and all lands which are otherwise not the property of persons legally capable of holding property are property of the State Government and the Collector is invested with the authority to dispose of such property in such manner as may be prescribed by the State Government subject to orders of the Commissioner.

24. As per sub-section (2), where any property or any right in or over any property is claimed by or on behalf of the Government or by any person as against the Government, it shall be lawful for the Collector or a Survey Officer, after formal enquiry of which due notice has been given, to pass an order deciding the claim.

24.1. Thus, what sub-section (2) postulates is that where any property or any right in any property is claimed by the Government or by any person against the Government, the Collector or the Survey Officer may pass an order deciding the claim after formal enquiry.

25. Thus, there is a subtle distinction in exercise of power under sub-section (1) and sub-section (2) of Section 20. While power to dispose of property of the State Government is vested with the Collector under sub-section (1), the power to decide any claim *vis-a-vis* such property or right in such property is vested with the Collector or a Survey Officer. Therefore, while a Survey Officer cannot dispose of property of the State Government under sub-section (1), it can however decide the claim as to any property or any right in or over such property after formal enquiry under sub-section (2).

25.1. Sub-section (3) makes the position further clear by stating that an order passed by the Collector or Survey Officer under sub-section (1) or sub-section (2) shall be subject to one appeal and revision in accordance with the provisions of the Code.

26. Insofar the present case is concerned, the Deputy Director directed the City Survey Officer No.2 to carry out rectification of the area of the property covered by City Survey No.1332 in terms of the original *Sanad* and at the same time to determine the area of the property covered by City Survey No.1332-A after holding enquiry under Section 20(2) of the Code. Following such order of the Deputy Director, City Survey Officer accordingly carried out the rectification in respect of the

property covered by City Survey No.1332 which was in terms of the original *Sanad* and after enquiry, determined the area of the property covered by City Survey No.1332A at 367 sq.mtrs. This power of deciding such a claim is certainly available with the City Survey Officer No.2 which he rightly exercised under Section 20(2) of the Code. To that extent direction of the Deputy Director was really not necessary. Therefore, the Settlement Commissioner as well as respondent No.1 were not justified in taking the view that City Survey Officer No.2 lacked jurisdiction to carry out the enquiry and to verify the area of the properties covered by the two city survey numbers.

27. Reference to Section 106 of the Code by the Settlement Commissioner as well as by respondent No.1 appears to be misplaced. Section 106 forms part of Chapter VI of the Code which deals with assessment and settlement of land revenue of agricultural land. Specifically Section 106 provides that the Collector may at any time, during the term of settlement, after giving notice to the holder correct any error in the area or assessment of the holding due to mistake of survey or arithmetical miscalculation. Therefore, what emerges is that the power under Section 106 is available to the Collector in the case of assessment and settlement of land revenue of agricultural land. Secondly, the said power to correct errors is available to the Collector only during the term of settlement and not otherwise.

28. In the light of the above, Court is of the view that there was no error or infirmity in the exercise of power by the City Survey Officer No.2. Interference with such exercise of power by the Settlement Commissioner as affirmed by respondent No.1 is uncalled for and is unwarranted. Consequently, the orders dated 07.06.2011 of respondent No.1 and 10.06.2009 of respondent No.2 are hereby set aside and quashed thereby restoring the order dated 20.05.2008 passed by the City Survey Officer No.2, Pune.

29. Writ petition is accordingly allowed. However, there shall be no order as to costs.

(UJJAL BHUYAN, J.)