

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.4349 OF 2018

Bhaskarrao Amburao Ghuge (since dead) through his legal heirs

1) Mangesh s/o Bhaskarrao Ghuge and others.

Vs.

The Additional Commissioner, Amravati Division, Amravati and others.

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri R. N. Ghuge, Advocate for petitioner nos.2, 3 and 4.
 Ms. Geeta Tiwari, AGP for respondent nos. 1, 2 and 4.
 Shri C. N. Wankhede, Advocate for respondent no.3 absent.
 Respondent No.5 deleted.
 None for respondent no.6 though served.

CORAM : AVINASH G. GHAROTE, J.

DATE : FEBRUARY 24, 2020.

1. Heard Shri Ghuge, learned counsel for the petitioners and Ms. Geeta Tiwari, learned Assistant Government Pleader for the respondent nos.1, 2 and 4. Shri Wankhede, learned counsel for the respondent no.3 absent. Respondent no.5 stands deleted as per order dated 26.04.2019. None appears for respondent no.6 though served.

2. The present petition challenges the order dated 21.06.2018 passed by the Additional Commission, Amravati Division in Review Case No.182/RTS-59/Sukanda/2010-11, confirming the order dated 29.07.2010 passed by the Additional Commissioner in Revision No.121 / RTS – 59 / Sukanda/2010-11, whereby the cancellation of mutation entry

No.388 in favour of the father of the petitioner, was confirmed.

3. It is an admitted position on record, that the father of the petitioner was the owner of land Survey No.24 admeasuring 2.52 HR situated at Mouza Sukanda. The respondent no.3 Kisan Mungsi Wakode, was allotted land bearing Survey No.117 admeasuring 2.73 HR on account of he being an Ex-service man vide an order dated 20.08.1973 under the Tenancy Act, which was non-transferable as per the terms of the allotment.

4. The father of the petitioner, as well as the respondent, interse executed an exchange deed on 15.08.1999, exchanging the above lands. It is noteworthy to state that the said exchange deed is not registered as per the requirement of Section 17 of the Registration Act, but is a document created interse between the parties. It is submitted that based upon this unregistered exchange deed and without getting the land of Survey No.117, converted to Class-I, or obtaining prior permission of the Collector, the application for recording the mutation on account of the above said exchange, was accepted by the then Talathi, by a mutation entry No.388 dated 15.08.1999, since which date, the parties were in possession of the lands, as mentioned in the exchange deed.

5. The respondent no.3 on 11.03.2004, moved an

application for cancellation of the entry by filing Revenue Appeal No.RTS-59/Sukanda/62/2002-03, which came to be accepted by an order dated 30.04.2004 passed by the Sub-Divisional Officer, Washim, by accepting the contention that since the land was allotted by the Government, without the consent of the Government, the entry could not have been recorded, apart from which there was no registered document in favour of the father of the petitioner.

6. This order dated 30.04.2004 was challenged by the father of the petitioner, in an appeal under Section 247 of the Maharashtra Land Revenue Code, 1966 before the Additional Collector, Washim which came to be rejected by an order dated 29.08.2007, a revision against which under Section 257 of the Maharashtra Land Revenue Code before Additional Commission, Amravati, met with the same fate by the order dated 19.07.2010, a review against which was also rejected by the impugned order dated 21.06.2018.

7. Learned counsel Mr. Ghuge for the petitioner by placing reliance upon **Marazban Jehangirji Patel vs. State of Maharashtra and others 2004 (4) Mh.L.J. 682**, **Narayan Laxman Patil vs. Gala Construction Company Private Limited and others (2016) 14 SCC 388** and **Ramesh Shantilal Modi and others vs. State of Maharashtra and others 2018 (6) Mh.L.J. 173**, contends that the nature of an enquiry in respect of recording of mutation, is summary and does not entail in

deciding the rights of the parties. He further submits, that the mutation entries merely being for the fiscal purposes of revenue, do not decide the rights of the parties, and therefore, it was not permissible for the Authorities below to have upset the mutation entry No.388 dated 15.08.1999. He therefore contends that the entry recorded in the name of the father of the petitioner in respect of the land of Survey No. 117, could not have been over turned by the Revenue Authorities as they did not have any power to do so.

8. Learned Assistant Government Pleader Ms. Geeta Tiwari, for the respondent Nos.1, 2 and 4, opposes the same and by placing reliance upon the language of Section 148 of the Maharashtra Land Revenue Code, contends that any entry in the mutation register or for that matter in the record of rights, has to be strictly in consonance with the provisions of Sections 148, 149 and 150 of the Maharashtra Land Revenue Code as an entry made in the record, confers certain rights and entitlements in favour of the person whose name is so entered. She therefore submits, that in light of the fact that the land was allotted to the respondent no.3 under provisions of the Maharashtra Land Revenue Code, and was non alienable, without the prior permission of the Revenue, and in light of the fact that the exchange deed, was an unregistered document the same could not have been acted upon by the Talathi, while effecting the mutation entry No.388 dated 15.08.1999 and therefore orders impugned have been

correctly passed.

9. I have bestowed my anxious consideration to the argument advanced by the respective counsel as well as to the provisions of the Maharashtra Land Revenue Code and the judgments cited at bar by the learned counsel for the petitioner.

10. It is an admitted position, that the land of Survey No.117 was granted to the respondent no.3, who was an Ex-service man, under the provisions of the Tenancy Act, as is reflected from the impugned order dated 21.06.2018. This position is not disputed by the learned counsel for the petitioner. The grant of the land under the Tenancy Act, is under occupancy Class-II and is unalienable, without the prior permission of the Collector or the concerned officer. In the instant case, it is an admitted position, that no such permission been obtained. So also, it is an admitted position that the document of exchange deed dated 15.08.1999, is an unregistered document. Under the Provision of Section 17(1) of the Indian Registration Act, 1908 (Registration Act, hereinafter) any document, which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of Rs.100/- and upward, to or in immovable property, is compulsory required to be registered. The effect of non registration, is provided for in Section 49 of

the Registration Act to be that such document, if unregistered shall not affect any immovable property comprised therein.

5 11. A deed of exchange, in respect of immovable property purporting to exchange title to lands, is definitely a document falling under the provisions of Section 17(1) of the Registration Act and thus requires compulsory registration, in
10 absence of which in light of the language of the proviso to Section 49 of the Registration Act, the same does not affect the immovable property which is its subject matter.

12. Section 2(12), (23) and (25) of the Code being material are quoted as under :

15 “Section 2. Definitions.

 (12) “to hold land” or “to be a land-holder or holder of land” means to be lawfully in possession of land, whether such possession is actual or not;

20 (23) “occupant” means a holder in actual possession of unalienated land, other than a tenant or Government lessee; provided that, where a holder in actual possession is a tenant, the land holder or the superior landlord, as the case may be, shall be deemed
25 to be the occupant;

 (25) “to occupy land” means to possess or to take

possession of land;”

Thus the lawful occupation/possession or holding of land, if it relates to a document, would necessarily mean that such a document should satisfy the requirements of law, such as the Registration Act, in this case to fall within the expression 'lawfully in possession', as occurring in sec.2(12) of the Code, reading any other meaning into it would render the expression not only redundant but would also permit illegal occupation to be recognised, which is impermissible in law.

13. Further Section 148, 149 and 150 of the Maharashtra Land Revenue Code, 1966 (hereinafter the 'Code') read as under :

“148. Record of Rights

A record of rights shall be maintained in every village and such record shall include the following particulars:-

(a) *the names of all persons (other than tenants) who are holders, occupants, owners or mortgagees of the land or assignees of the rent or revenue thereof;*

(b) *the names of all persons who are holding as Government lessees or tenants including tenants within the meaning of the relevant tenancy law;*

(c) *the nature and extent of the respective interests of such persons and the conditions or liabilities, if any, attaching thereto;*

(d) the rent or revenue, if any, payable by or to any of such persons;

(e) such other particulars as the State Government may prescribe by rules made in this behalf, either generally or for purposes of any area specified therein.”

“149. Acquisition of rights to be reported

Any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, landlord, Government lessee or tenant of the land situated in any part of the State or assignee of the rent or revenue thereof, shall report orally or in writing his acquisition of such right to the Talathi within three months from the date of such acquisition, and the said Talathi shall at once give a written acknowledgement of the receipt of such report to the person making it:

Provided that, where the person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall make the report to the Talathi:

Provided further that, any person acquiring a right with the permission of the Collector or by virtue of a registered document shall be exempted from the obligation to report to the Talathi:

Provided also that, where a person claims to have acquired a right with the permission of the Collector where such permission is required under the provisions of

this Code or any law for the time being in force, such person shall on being required by the Talathi so to do produce such evidence of the order by which such permission is given as may be required, by rules made under this Code.

Explanation I. - The rights mentioned above include a mortgage without possession, but do not include an easement or a charge not amounting to a mortgage of the kind specified in Section 100 of the Transfer of Property Act, 1882.

Explanation II. - A person in whose favour a mortgage is discharged or extinguished or lease determined, acquires a right within the meaning of this Section.

Explanation III.- For the purpose of this Chapter, the term "Talathi" includes any person appointed by the Collector to perform the duties of a Talathi under this Chapter."

"150. Register of mutations and register of disputed cases

(1) *The Talathi shall enter in a register of mutations every report made to him under Section 149 or any intimation of acquisition or transfer under Section 154 or from any Collector.*

(2) *Whenever a Talathi makes an entry in the register of mutations, he shall at the same time post up a complete copy of the entry in a conspicuous place in the Chavdi, and shall give written intimation to all persons appearing from the record of rights or register*

of mutations to be interested in the mutation, and to any other person whom he has reason to believe to be interested therein.

5 *[Provided that, where the record of rights are maintained under section 148A by using the storage device, as soon as the Tahsildar in the Taluka receives an intimation under section 154, the Talathi in the Tahsildar office shall send it to all persons appearing from the record of rights or register of mutation to be interested in the mutation*
10 *and to any other person whom he has reason to believe to be interested therein and also to the concerned Talathi of the village, by short message service or electronic mail or any such device as may be prescribed; and upon receipt of such intimation, the Talathi of the village shall*
15 *immediately make an entry in the register of mutations:*

Provided further that, no such intimation as provided under the first proviso shall be required to be sent by the Talathi in the Tahsildar office to the persons who have executed the document in person before the
20 *officer registering the document under the Indian Registration Act, 1908]*

(3) *When any objection to any entry made under sub-section (1) in the register of mutations is made either orally or in writing to the Talathi, it shall be the duty of*
25 *the Talathi to enter the particulars of the objections in a register of disputed cases. The Talathi shall at once give a written acknowledgement for the objection to*

the person making it in the prescribed form.

(4) Disputes entered in the register of disputed cases shall as far as possible be disposed of within one year by a Revenue or Survey Officer not below the rank of an Aval Karkun and others disposing of objections entered in such register shall be recorded in the register of mutations by such officer in such manner as may be prescribed by rules made by the State Government in this behalf.

(5) The transfer of entries from the register of mutations to the record of rights shall be effected subject to such rules as may be made by the State Government in this behalf:

Provided that, an entry in the register of mutations shall not be transferred to the record of rights until such entry has been duly certified.

(6) Entries in the register of mutations shall be tested and if found correct, or after correction, as the case may be, shall be certified by any Revenue or Survey Officer not below the rank of an Aval Karkun in such manner as may be prescribed:

[Provided that, entries in respect of which there is no dispute may be tested and certified by a Circle Inspector:]

[Provided further that] no such entries shall be certified unless notice in that behalf is served on the parties concerned.

(7) The State Government may direct that a register of tenancies shall be maintained in such manner and under such procedure as may be prescribed by rules made by the State Government in this behalf.

5 *[(8) The Commissioner may specify, from time to time, the storage device for preparation, maintenance and updation of all registers and documents be maintained under section 148A.]*

10 14. The above provisions would thus indicate that the act of recording an entry in the mutation register, or the record of rights, is not a mere surplusage, but is a solemn act, which results in recognizing rights and entitlements. The entries therein therefore, can only be changed, by following
15 the due procedure as prescribed, based upon at times where a document is available on such document provided such document complies with the requirements of law. It cannot be gainsaid, that even if a document does not comply with the statutory requirements a mutation entry taken on its basis will
20 have legal effect and would bind the parties, as doing so, would be rendering the statutory provisions applicable thereto clearly redundant. It is trite position of law, that statutory provisions, contained in different statutes, affecting rights to immovable property have to be read together, con-jointly and
25 in consonance with each other so as to give a harmonious effect to them as per the provisions as contained therein, in light of which in case a statutes prohibits the doing of a certain

thing, except in a certain manner, it cannot be heard to be said that the prohibition can be done away with, merely because, under a different statute the prohibition is not so expressed in so many words. An overall holistic view, of the various provisions applicable has to be considered. Thus it cannot be said while effecting a mutation entry, that it would not be permissible for the concerned Revenue Authority to take into consideration, the requirement of the Registration Act, as well as the prohibition as contained in the terms of allotment under the Tenancy Act.

15. In the case of **Marazban** (supra) it has been held that Section 149 and 150 of the Code have a limited scope and the Revenue Authorities cannot go into the disputed questions, between the parties, which in that case were in respect of the tribal status of the Watandar through whom the petitioner therein was claiming a transfer of tenancy, in respect of which a suit was already decreed in his favour and the appeal was pending, apart from which the entry questioned already stood certified. There cannot be any quarrel with the proposition that Sec.149 & 150 of the Code, have a limited scope and the Talathi cannot decide undisputed questions of title. However, in the instant case when the acquisition of right, was reported under Section 149 of the Code before recording any such entry on its basis, the Talathi would be entitled to verify compliance with the provisions of the Registration Act. **Marazban** (supra) does not

indicate anything contra and therefore, is of no assistance to the plea as advanced by the learned counsel for the petitioner.

16. In ***Ramesh Modi*** (supra) relied by the learned counsel for the petitioner, it has been held that the Revenue Authority has no power to adjudicate upon title as to the property in respect of which an application for reporting rights under Section 149 is made and such power is restricted to ascertain the veracity of the proposed entry, based on the document produced by the parties. In the instant case, the Authority has not embarked upon any exercise to determine the title in respect of the property in question but has only tested the veracity of the document produced on the basis of the provisions of the Registration Act, and found it lacking. ***Ramesh Modi*** (supra) therefore, also is of no assistance to the learned counsel for the petitioner.

17. In ***Narayan Patil*** (supra), the Hon'ble Apex Court, in light of Section 148 to 150, read with 2(12), (23) and (25) of the Code has held as under :

“24. It is thus clear that to exercise the right under Section 148 read with Sections 149 and 150 of the Code for entering one's name in the record-of-rights, the applicant has to be a holder, occupant, owner, mortgagee or tenant. Such a right is also available to a person acquiring interest in the property by succession, survivorship, inheritance, partition, purchase mortgage,

gift, lease or otherwise. We fully approve the view taken by the Bombay High Court in the aforesaid decision. The appellant claimed that he along with others is in possession of the suit land for the last 15-20 years and, therefore, his claim was required to be entered in the “other rights” column. This contention has been rejected by the Sub-Divisional Officer as well as by the Deputy Collector (Appeals) but confirmed by the Additional Commissioner. Merely a holder or occupant does not meet the requirements of law for exercising such a right. Section 2(12) of the Code, as reproduced hereinabove, makes it clear that to be a “landholder” or “holder of land” means to be lawfully in possession of land, whether such possession is actual or not and as per Section 2(23) “occupant” means a holder in actual possession of unalienated land. It was, therefore, necessary for the appellant to prove that his possession or occupation over the suit land was lawful or he had come in possession by a legal conveyance/title or any other instrument like receipt etc. to which the Respondent 1 was a party or at its instance. It is also not the case of the appellant that he has perfected his title over the land in question by way of adverse possession.

25. Merely saying that the Respondent 1 or the original owner did not object at any time to the possession, does not make his possession lawful, even if it is accepted that

he was in possession. The appellant has to prove his title of possession by pointing out that it was lawful and if such requirement could not be proved, mutation entry is required to be canceled. Recording the name of the appellant along with six others in the other rights column merely on the basis of possession is nothing short of perversity and unless the officer concerned was satisfied that the said possession was lawful such an entry could not have been made irrespective of whether the original owners appeared and contested the plea and more so when the officer was performing a statutory duty. When the statute states that a duty has to be performed or an enquiry has to be conducted in a particular manner, it is well settled, it has to be done in that manner alone and it was necessary for the Tehsildar to ensure that the requirements of the Code were satisfied by the petitioners' predecessor."

18. Thus though the general principle is that the entries in the record of rights are prepared mainly based on possession, however, when such possession is claimed to be based upon a written document, then in order consider that such possession is lawful, it would be necessary for the Revenue Authority, to make an inquiry, as contemplated by Sections 148 to 150 and other provisions of the Code before making an entry in the mutation register, recording any rights, which inquiry, would encompass, the ascertainment

of the veracity of the document produced, based upon which, the entry is sought to be made, on the touchstone of the provisions of the Registration Act, in addition to what has been mandated by the Hon'ble Apex Court, in **Narayan Patil** (supra), which goes a steps further in laying down that the person seeking an entry, has to prove that his possession or occupation over the land was lawful or he had come in possession by a legal conveyance / title.

19. The above view is supported by **Nalini O. Patil Vs. Girdhar K. Patil 2002(2) B.C.R. 287**, in which while considering the provisions of Section 149 of the Code read with Section 17(1) of the Registration Act, it has been held thus:

10. Bare reading of Section 149 discloses that question of mutation of entry by the Talathi on oral or written intimation in that regard by any person can arise only in case where the person has acquired some right to the immovable property in the concerned village. The section indicates various modes of acquisition of rights in such properties, which can entitle the party to request for necessary mutation of entry in relation to such properties in the record of rights. The modes of acquisition of rights specified therein are by way of succession, survivorship, inheritance, partition, purchase, mortgage, gift,

lease or otherwise. Considering the phraseology of the section, it is but natural that the expression "otherwise" has to be read ejusdem generis with the preceding expressions. It cannot be disputed that for the purpose of acquisition of right in immovable property either by way of succession, or survivorship, or inheritance or partition or purchase or mortgage or gift or lease, there are various statutory provisions in different statutes. None of those statutory provisions would entitle any person to claim right to any immovable property by any of the modes specified in the said section otherwise than by following the procedure prescribed under the respective statutes. These provisions of law invariably provide for necessary documentation either by way of deeds inter vivos or by way of order of the court or the authority. The provisions contained in the Indian Registration Act as well as in the Indian Stamp Act provide that such document relating to a property worth Rs. 100/- and above is not only required to be registered with the registering authority but is also required to be properly accompanied by necessary stamp duty. No doubt, if the stamp duty even is found to have been paid less, the deficiency can be subsequently remedied by paying necessary penalty but the

same has to be by following the procedure prescribed in that regard. This clearly discloses that the acquisition of right in respect of immovable property worth Rs. 100/- and above to be intimated to the Talathi under Section 149 of the Code for the purpose of mutation of entry, must be by way of appropriate document and not otherwise. The conclusion to this effect is inevitable from various other provisions in the Code and other statutory provisions of law relating to the matter.

11. As rightly submitted by the learned advocate for the petitioner, Section 154 of the code makes it obligatory for the registering authority to give necessary intimation to the Talathi of the concerned village, moment a document in relation to the agricultural land or in respect of which record of rights is created is registered under the said Act before such registering authority. In other words, every document of conveyance of right in any immovable property specified under Section 154 of the code, moment is subjected to registration, the intimation in that regard has to follow to the Talathi of the concerned village. This is also apparent from the second proviso to Section 149 of the Code itself. The said proviso exempts the person acquiring

right to the property by virtue of any registered document from informing about his acquisition of right to the Talathi. This further discloses that it is only in case of a document which is not required to be registered in accordance with the Indian Registration Act, that the Talathi can act for the purpose of mutation of entry under Section 149 on an application or oral intimation without being accompanied by the document in support of the claim of acquisition of right. Such an eventuality naturally would arise only in case of immovable property worth less than Rs. 100/- and not otherwise. This is clear from rule 9 of the said Rules and the Form prescribed thereunder. Form VII which prescribes the form of receipt regarding the oral or written intimation by a person regarding acquisition of right under Section 149 for the purpose of mutation of rights specifically provides for the application to be accompanied by the documents in support of such application.

12. It is, therefore, clear that while exercising powers for mutation of entry pursuant to the request in that regard either orally or in writing by a person claiming to have acquired right as specified under Section 149 of the Code, the Talathi is required to insist and to consider the

documentary evidence in support of such claim before effecting any mutation of entry when the property apparently appears to be worth Rs. 100/- or above. Undisputedly the property in question admeasures 46 ares in area. It was purchased by Onkar Patil in 1979 for a sum of Rs. 9000/-. Once this fact is not in dispute, it was but necessary that the application ought to have been accompanied by the necessary document of conveyance of right therein. The provisions of Section 149 of the Code are to be harmoniously interpreted. There is no doubt that the Code basically relates to the land revenue and the matters connected thereto as has been submitted by the learned advocate for the respondents No. 1 and 2. However, simultaneously the various provisions contained therein in the Code and particularly Section 157 thereof clearly gives presumptive value to the entries made in the record of rights as well as in the register of mutations and bearing the same in mind the authority acting under Section 149 cannot be presumed to have unbridled and unguided powers. Any other interpretation of Section 149 and permitting the Talathi to cause mutation of entries on mere applications by the parties without any support of a lawful document in

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respect to the claim of acquisition of rights to the immovable property may virtually amount to giving carte blanche to the authority to cause any entry in those records and such power can certainly be misused by such authority and there cannot be a better example of such instance than the case in hand.”

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20. Reliance can also be placed upon **Sanjay Manya Ludrik and others Vs. Hon'ble Additional Commissioner, Konkan and others 2017(3) Mh.L.J.246**, in which while considering the provisions of Section 149 of the Code the learned Single Judge of this Court held that the section is widely worded and takes within its sweep various types of transactions mentioned therein and even 'otherwise' of which cognizance is required to be taken by the Revenue Authorities.

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21. In light of the above position the impugned order as passed does not need any interference. The petition therefore, is without any merit and is accordingly dismissed. In the circumstances, there shall be no order as to costs.

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22. At this juncture, Mr. Ghuge, learned counsel for the petitioners submits that the interim order of status-quo dated 25.07.2018 be extended for period of eight weeks.

23. Considering that the order of status-quo is operating till today the same is extended for a period of four weeks from today, so as to enable petitioners to seek appropriate remedy.

JUDGE

Sarkate