

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13426 OF 2017

Ashwinkumar Kalyandas Chauhan and Ors. ... Petitioners
V/s.
State of Maharashtra and Ors. ... Respondents

Mr. Vedchetan Patil with Sunayana Kashid - for the Petitioners.
Mr. S. L. Babar, AGP for the Respondent State.

**CORAM : UJJAL BHUYAN AND
MADHAV J. JAMDAR, JJ.**

**DATE OF RESERVE : 23rd SEPTEMBER 2021.
DATE OF PRONOUNCEMENT : 14th OCTOBER 2021.**

JUDGMENT (PER MADHAV J. JAMDAR, J.)

Petitioners are seeking following reliefs by the present writ petition filed under Articles 226 and 227 of the Constitution of India:-

a. That this Hon'ble Court be pleased to issue a writ of Mandamus or any other writ or direction in the nature of mandamus and direct the Respondents to register the Conveyance Deed as proposed/applied by the Petitioner No. 1 to 5 in respect of their respective properties.

aa. Be pleased to quash and set aside the letter/deemed order dated 27.07.2017, issued by Respondent No.6.

2. It is the contention of the Petitioners that respective Petitioners executed agreement of sale with certain individuals regarding respective lands and thereafter executed conveyance deeds. Petitioners have given details of transaction in the petition.

3. It is the contention of the Petitioners that the respective Sub-

Registrars refused to register conveyance deeds on the ground that in 7/12 extracts there is an entry that the lands are Devasthan lands and therefore for the said transaction, sanction of Charity Commissioner is required. The Petitioners relied on circulars dated 30.04.2005, 27.07.2009 and 05.12.2013 issued by the Inspector General of Registration and Controller of Stamps of Maharashtra State. The Petitioners also relied on Section 71 of the Registration Act, 1908 (hereinafter referred to as "said Act".) and Rule 44 of the Maharashtra Registration Rules 1961.

4. Affidavit in reply of Ms. Mangala M. Pawar, Joint Sub-Registrar (In charge) Vasai-I, District Palghar, dated 08th February 2019 was filed on behalf of Respondent No. 6. In the said affidavit-in-reply, it is the contention of the Respondent No. 6 that documents i.e. conveyance deeds were not produced by Petitioners for registration in the office of Respondent No. 6. It is contended that photocopies of said conveyance deeds are also not produced alongwith the petition. Thus there is no cause of action for filing writ petition. As far as the aspect of bar of transfer of Devasthan land is concerned, it is stated that for such transaction prior permission of the Charity Commissioner is required. It is contended that it is necessary to execute the conveyance deeds and present it for registration as per section 32 read with section 23 and 32(a) of the said Act and after presentation of conveyance deeds further action can be taken.

5. Petitioners have filed affidavit-in-rejoinder dated 10th June, 2019 through Ashwin K. Chauhan, the Petitioner No. 1. It is contended that Petitioners have already presented their documents

for registration and have also applied for the adjudication of stamp duty. The receipt of payment made for adjudication of the stamp duty are annexed at Exh. F to the petition. It is further contended that the subject land is not owned by Devasthan but merely revenue of such land is alienated in favour of Devasthan Inam. Petitioners have produced alongwith said rejoinder correspondence between the Petitioners and Respondent No. 6, copy of order dated 31.05.1976 passed by the Assistant Charity Commissioner, Nashik Region, Nashik rejecting the change report filed by the Vajreshwari Devasthan.

6. Arguments were partly heard on 25.08.2021 and for further arguments the writ petition was adjourned to 31.08.2021. Petitioners on 31.08.2021 produced compilation of documents including translation of certain documents already on record as well as certain new documents. Thereafter, the writ petition was heard on 23.09.2021.

7. Mr. Vedchetan Patil, the learned advocate appearing on behalf of the Petitioners raised following contentions :-

7.1 It is settled legal position that the registering authority should not enter into the question of title of the property. Requirements for registration are set out in the various provisions of the Registration Act, 1908 and also Maharashtra Registration Rules 1961. He submitted that entry in 7/12 extract could not be a ground for refusal of registration.

7.2 He relied on full bench judgment reported in ***AIR 2007 Andhra Pradesh 57*** particularly paragraphs 122 and 123 of the said judgment which reads thus:-

“122. For the reasons stated hereinabove, all the writ petitions are allowed.

G. CHANDRAIAH, J. :— 123. I am in complete agreement with the detailed judgment prepared by my learned brother Justice V. V. S. Rao. However, I would like to reiterate that there is no specific prohibition under the Registration Act, 1908 (for short The Act') to register a deed of cancellation. The registering officer can refuse registration in the situations arising under Sections 19 to 22, 32 and 35 and the relevant rules are Rules 26, 58 and 117. But in all other cases where the conditions under the Act i.e., Sections 17 and 18 of the Act are fulfilled. the registering officer is bound to register the document and it is not in dispute that the cancellation deed fulfills the conditions for the purpose of registration. However, the Act does not permit the registering officer to enquire into the title of the party presenting the document for registration and the situations mentioned in the above said provisions under which the registration can be refused are for different purpose and only under those contingencies he can refuse. This Court cannot enlarge the scope of these provisions under the guise of interpretation of statute. Further when there is no prohibition under the Act the registering officer has to register the documents presented for registration in accordance with law and this Court by judicial interpretation cannot impose the same into the statute. It is well settled that what has not been provided for in a statute cannot be supplied by Courts and to do so will amount to legislating which is not the function of the Courts.”

7.3 Mr. Vedchetan Patil relied on judgment of Assistant Charity Commissioner, Nashik Region, Nashik passed in change Report Nos. 223 of 1972 and 428 of 1972 and contended that the lands in question are not Devasthan land.

8. On the other hand Mr. S. L. Babar, the learned AGP appearing

for the Respondents raised following contentions:-

8.1 As per Section 72 of the said Act an alternate remedy of appeal to Registrar is available to the Petitioner assuming that the documents namely conveyance deeds were presented for registration and registration is refused.

8.2 There is nothing to indicate that the said documents namely respective conveyance deeds were submitted in the office of Respondent No. 6 for registration. He submitted that reply on 27.07.2017 was given as notice dated 10.07.2017 was issued on behalf of the Petitioners. However even notice dated 10.07.2017 also do not indicate that conveyance deeds were executed and presented for registration.

8.3 Entry in 7/12 extracts of the subject land shows that the lands are Devasthan lands and therefore unless permission under section 36 of the Maharashtra Public Trust Act is obtained the conveyance deeds can not be registered. He relied on the clause in the registered agreement for sale to the effect that as the lands are Devasthan lands, permission of the appropriate authorities would be taken. Therefore, he submitted that no fault can be found with the impugned letter/action.

8.4 He relied on recent 7/12 extract indicating that the lands in question are Devasthan lands to contend that the transaction requires sanction of Charity Commissioner under section 36 of the Maharashtra Public Trust Act.

9. Submissions made by learned counsel of both the sides have received the due consideration of the Court.

10. The Petitioners have executed registered agreement for sale with various persons with respect to various lands and the details of same are set out in the writ petition as under :-

Sr. No.	Purchaser Petitioner	Vendor	Particulars of Land	Document no./Date of Agreement
1]	Ashwinkumar K. Chauhan - Petitioner No. 1 and Pratima A. Chauhan - Petitioner No. 2	a) Damodar Bhau Bhoir, b) Jaywanti D Bhoir c) Rajendra D Bhoir, d) Eknath D Bhoir, e) Sham Damodar Bhoir	S. No. 10 H. No. 1/1 admeasuring 0-45-00 HRP out of total 01-32-4 HRP, Village Vadghar, Post Saiwan, Tal. Vasai, Dist. Palghar.	10424/2012 25.09.2012
2]	Bomi P. Sachinwalla – Petitioner No. 3 and Dr. Firoza Jamsed Pande - Petitioner No. 4	a) Mr. Meghji bhai Devalia, b) Ramesh M. Devalia, c) Rajesh M. Devalia	S. No. 3, Hissa No. 1 (part) admeasuring 0-98-1 HRP at village Ambode, Tal. Vasai, Dist. Palghar.	795/2013 28.02.2013
3]	Bomi P. Sachinwalla – Petitioner No. 3 and Dr. Firoza Jamsed Pande - Petitioner No. 4	a. Smita Tawade b. Anita Tawade	S. No. 3 Hissa No. ½ admeasuring 1-21-41 HRP, Village Ambode, Tal. Vasai, Dist. Palghar.	--
4]	Bomi P. Sachinwalla – Petitioner No. 3 and Dr. Firoza Jamsed Pande - Petitioner No. 4	a. Rajaram Y Tawade, b. Anita R Tawade C. Ashish R Tawade	S. No. 3 Hissa No. 2/2 admeasuring 1-51-66 HRP out of 1-82-0 HRP, Village Ambode, Tal. Vasai, Dist. Palghar	--
5]	Bomi P. Sachinwalla – Petitioner No. 3 and Dr. Firoza Jamsed Pande - Petitioner No. 4	a. Ashawari Chetan Jagtap	S. No. 3 Hissa No. 2/2 admeasuring 0-30-34 HRP, Village Ambode, Tal. Vasai, Dist. Palghar	--
6]	Bomi P. Sachinwalla – Petitioner No. 3 and Dr. Firoza Jamsed Pande - Petitioner No. 4	Bright Engineering Co. through its partner, Smt. Anita Ramakant Tawade, Ashish R. Tawade and Ashawari C. Jagtap	S. No. 2, Hissa No. 2/1, S. No. 3, Hissa No. 1/3 S. No. 3 Hissa No. 1/4 at Village Ambode, Tal Vasai, District Palghar	--
7]	Bomi P. Sachinwalla –	Bright Engineering	S. No. 2, Hissa No.	

	Petitioner No. 3 and Dr. Firoza Jamsed Pande - Petitioner No. 4	Co. through its partner, Ashawari C. Jagtap	2/1, S. No. 3, Hissa No. 1 / 3 S. No. 3 Hissa No. ¼ at Village Ambode, Tal Vasai, District Palghar	
8]	M/s Dias Reality through its Partner – Petitioner No. 5	Harishchandra Narayan Patil	Survey No. 53, Hissa No. 03, admeasuring (H.R.) 1-04-5, Village Ghodbunder, Mira Road (East), Taluka 86 District Thane.	

10.1 Copy of one registered agreement is produced before us by Mr. Babar, the learned AGP. He pointed out following clause in the said registered agreement:-

"सदर मिळकत देवस्थान इनाम वर्ग ३ ची असल्याने सदर देवस्थान इनाम वर्ग ३ ची परवानगी श्री योगीनी वज्रेश्वरी देवस्थान ट्रस्ट किंवा संबंधित अधिकाऱ्यांकडून लिहून घेणार यांनी स्वखर्चाने मिळवायची आहे. मात्र त्याकामी लागणारे जाबजबाब , अर्ज, सद्द्या, लिहून घेणार सांगतील तेव्हा लिहून देणार यांनी द्यावयाचे आहेत ".

Mr. Babar, the learned AGP submitted that above clause or similar clause is in all the agreements of the Petitioners. Mr. Patil has not denied the same.

10.2 Petitioners have produced copies of 2 registered agreements alongwith the compilation of documents. Above clause or similar clause is also found in those registered agreements.

10.3 Petitioners through their Advocate had sent notice dated 10th July 2017. In the notice, it is stated that the Petitioners had approached office of Sub-Registrar, Vasai-I and Joint Sub-Registrar,

Vasai-6 on various occasions. However, registration of conveyance deeds without citing any reasons has been refused. We must note that perusal of paragraphs 2(7) and 3(3) of the said notice conclusively do not show that documents of conveyance deeds were presented for registration and thereafter the registration is refused. The said paragraphs 2(7) and 3(3) are reproduced hereinbelow for ready reference:-

“2(7) That my clients are now desirous of executing and registering the conveyance deed for the said, however, the Your office of addressee No. 1 and 2 has denied my client his right to register the Sale Deed/Conveyance Deed for the said lands without citing any reasons.”

“3(3) That my clients are now desirous of executing and registering the deed of conveyance for the said lands, however, You No. 1 and 2 has denied my client their right to register the Deed of Conveyance without citing any definite reasons.”

10.4 In paragraph 2(4) and paragraph 3 (5) of said notice there is reference of payment of stamp duty but earlier paragraph indicates that said stamp duty is pertaining to agreement for sale.

10.5 In the present case notice dated 10.07.2017 sent on behalf of the Petitioners is replied on 27.07.2017 by Respondent No. 6 setting out in detail reasons for refusal for registration. In the said order/letter main reason set out is regarding previous permission of the Charity Commissioner. Mr. Babar, learned AGP stated that although conveyance deeds were not presented for registration however in view of contents of notice dated 10.07.2017 reply dated 27.07.2017 was sent.

10.6 The above factual position clearly shows that there is specific recital in the respective agreements for sale that the said land is Devasthan land i.e. of public trust and therefore, necessary permissions would be obtained. If a land belongs to public trust the previous permission of Charity Commissioner is required to be obtained under section 36 of the Maharashtra Public Trust Act. However as it is the contention of Petitioners that the said aspect can not be looked into by the registering authorities as the same is relating to title and therefore we are not going into this aspect. However we keep all the contentions in that behalf open.

11. It is the contention of the Petitioners that the said documents were presented for registration before the Collector of Stamps, Palghar and entire procedure of adjudication is followed. In spite of this, the Respondents have refused to register the said documents. In this behalf, the Petitioners are relying on the receipts produced at pages 27 and 28. However, it is to be stated that it cannot be conclusively established from the receipts whether the same pertains to the conveyance deeds which are subject matter of the present writ petition. In affidavit-in-reply of Ms. Mangala M. Pawar, Joint Sub-Registrar (In charge) Vasai-I, District Palghar dated 08.02.2019 it is specifically stated that no such documents of conveyance deeds were presented for registration.

11.1 Petitioners in their affidavit-in-rejoinder have contended that Petitioners have already presented their documents for registration and also applied for adjudication of the stamp duty and for that

purpose relying on the receipts annexed to the Petition at Exh. F, however, it is to be noted that there is nothing to show that the actual conveyance deed is presented for registration. There is serious factual dispute whether actually conveyance deed was executed and presented for registration.

11.2 Petitioners on 31.08.2021 during the course of arguments presented compilation of documents including the translated copies of some of the Exhibits to the petition and correspondence of Petitioners for adjudication for stamp duty entered with the Collector of Stamps. In fact relevant documents produced in compilation (pages 224-243) reveals following :-

(i) On 05.07.2017 some of the Petitioners presented instrument of conveyance deeds with Collector of Stamps, Palghar for adjudication or Collector of Stamps, Palghar received reference from Collector under sections 31(1) and (2) of the Maharashtra Stamp Act.

(ii) Collector of Stamps, Palghar issued notice dated 11.10.2017 to some of the Petitioners stating that market value of property has not been truly and fully set forth in the instrument and requiring them to produce evidence regarding market value of the property.

(iii) By replies dated 20.10.2017, it has been informed to the Collector of Stamps, Thane Rural by some of the Petitioners that they are ready to pay higher stamp duty determined by the

department of Collector of Stamps.

(iv) By order dated 28.11.2017 passed by Collector of Stamps, Palghar the proper stamp duty was determined and the same was higher than as mentioned in the conveyance deeds. As per said order the market values in respective conveyance deeds are shown at lower rate than the market rate.

(v) It is not clear whether after payment of proper stamp duty as per said orders all these conveyance deeds were presented for registration.

12. It is significant to note that the writ petition was filed on 25.07.2017 and the same was amended on 20.12.2017. There is no averment that by abovereferred orders stamp duty was determined and the same was paid and thereafter the instruments of conveyance deeds were presented for registration before registering authorities. The same will have to be done on or after 28.11.2017 as proper stamp duty was determined on that day. Therefore reliance of petitioners on notice dated 10.07.2017 and reply dated 27.07.2017 to contend that the Petitioners have executed and presented conveyance deeds for registration to the registering authority is totally incorrect as the same can only be done after 28.11.2017. In fact the conveyance deeds were presented for adjudication on 05.07.2017 but the same was suppressed in the writ petition. The fact that Petitioners had sent various replies dated 20.10.2017 showing readiness to pay higher stamp duty is also completely suppressed although writ petition was amended on 20.12.2017. Order of Collector of Stamps, Palghar as set

out hereinabove is also suppressed in the writ petition.

12.1 For the first time these documents were produced alongwith the compilation on 31.08.2021 during the hearing and some facts were disclosed in Affidavit-in-rejoinder dated 10.06.2019.

12.2 In any case it is not clear whether all the Petitioners have presented their respective conveyance deeds before the Collector of Stamps, Palghar. It is also not clear whether Petitioners have presented the conveyance deeds executed by all the parties and by paying proper stamp duty as determined by the Collector of Stamps, Palghar before the registering authority.

12.3 Therefore, there are serious disputed questions of facts in the present writ petition. It is also clear that Petitioners have not disclosed all the facts and documents and have not approached the Court with clean hands.

13. At this stage it is important to note that adjudication as to stamps is done under the provisions of the Maharashtra Stamp Act by the authorities constituted under the Maharashtra Stamp Act. The instruments are registered by the authorities constituted under the Registration Act, 1908. Thus the authorities under both these enactments are different and distinct.

13.1 Apart from that, Mr. Babar, learned AGP is right in his submission that there is an alternate remedy available to the Petitioners assuming that the Petitioners have presented the

respective conveyance deeds for registration and registration has been refused. In that behalf, he has invited our attention to Section 72 of the Registration Act, 1908. Said section 72 is extracted hereunder for ready reference:-

“Section 72. Appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution.—

(1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.”

13.2 Thus it is clear that there is availability of statutory alternate remedy of filing appeal to Registrar against refusal of registration.

14. Mr. Patil submitted that refusal of registration is on the ground that in 7/12 extract there is entry to the effect that the lands belong to Devasthan Inam. He submitted that the registering authorities can not

go into the aspect of title of the property and the reason given in the impugned letter dated 27.07.2017 shows that the Respondents have refused the registration on the ground of title. In that behalf, he has pointed out the order of Charity Commissioner and submitted that the lands in question do not belong to the public trust and therefore permission of the Charity Commissioner is not necessary. However, we are not going into these aspects as there is serious dispute whether the Petitioners have presented the respective conveyance deeds for registration by paying applicable stamp duty. In any case there is alternate remedy available to the Petitioners of filing appeal under Section 72 of said Act.

15. It is significant to note that elaborate provisions are made in the Registration Act, 1908 in part XII consisting of sections 71 to 77 regarding refusal to register. Under section 71 reasons for refusal to register are required to be recorded. If registration of documents is refused by Sub-Registrar there is an appeal provided under Section 72 to the Registrar. Section 76 is concerning order of refusal by Registrar. Sub section (2) of section 76 specifies that no appeal lies against order of refusal by Registrar. Section 77 specifies that where the Registrar refuses to register the documents the aggrieved person is required to institute Civil Suit in the Civil Court within 30 days from the date of order of refusal. Thus there is statutory alternate remedy available as per the provisions of said Act.

16. There is serious dispute whether the documents namely conveyance deeds were actually presented for registration or not. The conduct of the Petitioners show that in the respective agreements for

sale specific averment is made that the property is of public trust and therefore permission from authority would be obtained. Now contention sought to be raised that property is not of public trust. The Petitioners have not placed before this Court all the facts and in fact suppressed many relevant facts. Orders passed by Collector of Stamps determining that documents of conveyance deeds do not set out proper market value were suppressed and produced only at the fag end after arguments were partly heard. There are no pleading in the writ petition in that behalf. There is no clarity whether the sale deeds by paying stamp duty as determined by the Collector of Stamps, Palghar were presented by Petitioners for registration.

17. For all the aforesaid reasons, we decline to exercise our discretionary jurisdiction under Article 226 of the Constitution of India. Therefore writ petition is dismissed with no order as to costs.

[MADHAV J. JAMDAR, J.]

[UJJAL BHUYAN, J.]