IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12215 OF 2016

Janardhan s/o Lumaji Trimbake,
Died through L.Rs.

1. Rushikesh s/o Janardhan Trimbake,
Age: 40 years, Occu: Agril.

2. Amol s/o Janardhan Trimbake,
Age: 38 years, Occu: Agril.

3. Nandini w/o Bharat Borade,
Age: 61 years, Occu: Household.

4. Sanjeevani w/o Ashok Tapase,
Age: 58 years, Occu: Household.

5. Nirmala w/o Rajkumar Borade,
Age: 55 years, Occu: Household.

6. Surekha w/o Babasaheb Kadam,
Age: 51 years, Occu: Household.

7. Sunita w/o Anil Shinde,
Age: 49 years, Occu: Household.

8. Archana w/o Shahaji Tapase,
Age: 42 years, Occu: Household,
All R/o Mirajgaon, Tq. Karjat,
Dist. Ahmednagar. … Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
Forest Department,
Mantralaya, Mumbai-32.

2. The Hon'ble Minister,
Revenue and Forest Department,
Mantralaya, Mumbai-32.

3. The Deputy Director of Land Records,
Nashik.

4. The Superintendent of Land Records,
Ahmednagar.

5. Appasaheb s/o Gopinath Kalokhe,
Age: Major, Occu: Agril.,
R/o Mirajgaon Tq. Karjat,
Dist. Ahmednagar.

6. Taluka Inspector of Land Records,
Karjat, Dist. Ahmednagar. … Respondents

…

Mrs. M. A. Kulkarni, Advocate for Petitioners.
Mr. Y. G. Gujarathi, AGP for Respondents – State.
Mr. M. R. Sonawane, Advocate for Respondent No.5.

…

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 28th FEBRUARY, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.

2. The petitioner is aggrieved by the impugned judgment and order dated 21-09-2016, passed by respondent No.2 – Hon'ble Minister for Revenue and Forest Department, thereby reversing orders passed by respondent No.3 – Deputy Director of Land Records, Nashik and respondent No.4 – Superintendent of Land Records, Ahmednagar.

3. The property admeasuring 67 Sq. Meter land from C.T.S. No.900, situated at Mirajgaon, Tq. Karjat, District Ahmednagar (for short 'the suit property'), was put for Court auction in Regular Darkhast No.58/1974. The petitioner purchased the said property in the Court

auction and sale is confirmed in favour of the petitioner. The petitioner was put in possession of the suit property.

4. Taraka Deshmukh, legal heir of Dattatray Deshmukh, without any authority sold the suit property to respondent No.5 on 27-07-1990. On the basis of the sale Mutation Entry No.905 was sanctioned on 30-07-1990, thereby entering name of respondent No.5 to the suit property in the revenue record. No intimation was given to the petitioner at the time of taking Mutation Entry No.905.

When the petitioner learnt about the said mutation entry he challenged the same before Tahsildar, Karjat. Vide order dated 10-12-2019, Mutation Entry No.905 was set aside and name of the petitioner is entered to the revenue record of the suit property.

5. The respondent No.5 filed appeal before the Sub-Divisional Officer, Karjat, against the order of Tahsildar, which was dismissed on 29-04-1991. Thereafter, respondent No.5 applied to respondent No.6 – Taluka Inspector of Land Records, Karjat, for entering his name in the record of the said property. Without giving notice to the petitioner the name of respondent No.5 was entered in the record of the said property.

6. On 30-04-2014 the petitioner applied for copy of record for development of the property and came to know that entry of his name is deleted from the record without giving him intimation. He, therefore,

filed appeal before respondent No.4 – District Superintendent of Land Records, Ahmednagar. The appeal of the petitioner was allowed holding that the petitioner has purchased the said property in Court auction and accordingly he has become owner of the said property. In spite of that, Taraka Deshmukh has sold the said property vide sale deed dated 27-07-1990. The said property was attached from the father of Taraka Deshmukh and it was purchased by the petitioner in the Court auction, therefore, Taraka Deshmukh had no right to sale the said property. Though the Mutation Entry No.905, taking entry of name of respondent No.5, was set aside by the order of the Tahsildar and the said order is confirmed by the Sub-divisional Officer and accordingly name of the petitioner is entered in the record of the said property, however, by placing reliance on the sale deed executed by Taraka Deshmukh in favour of respondent No.5, again the name of respondent No.5 was entered by deleting name of the petitioner. The appeal filed by the petitioner was, therefore, allowed by respondent No.4 vide order dated 29-12-2014. This order is confirmed by respondent No.3 Deputy Director of Land Records, Nashik, holding that respondent No.5 has failed to produce on record Court order by which name of the petitioner was deleted and name of respondent No.5 was entered in the record.

7. Being aggrieved by the above decisions, respondent No.5

approached respondent No.2 by filing revision under Section 257 of the Maharashtra Land Revenue Code, 1966. The revision is allowed on the ground that though the said property was purchased in Court auction by the petitioner in the year 1977, however, the name of Taraka Deshmukh was entered in the revenue record as per succession, after the death of original owner Dattatray Deshmukh. Taraka has sold the said property by a registered sale deed on 27-05-1990 to respondent No.5. Thereafter, the entry of 1977 Court auction was taken in the record in the year 1990. It is not clear as to why there was delay of 13 years for the same. The 1977 Court auction sale deed is not registered and the petitioner has tried to register the same in the year 2016. By citing the judgment reported in **AIR 2006 SC 1458**, where the Hon'ble Apex Court has held that the auction should be implemented within a period of one year and the decision of this Court in **Ghanshyamdar Vallabhas Gujrathi Vs. M/s Brijraman Rasikala**, reported in **1984(2) Bom CR 50, First Appeal No.35 of 1982**, where it is held that the auction needs to be challenged within a period of 12 years, the respondent No.2 held that claim of the petitioner was beyond limitation. The petitioner was not in possession of the said property since 1976. Therefore, respondent No.2 allowed the revision application of respondent No.5 and set aside the orders passed by respondent Nos. 4 and 3 in favour of the petitioner. Hence the present petition.

8. Heard the learned advocate for petitioner, learned Assistant Government Pleader for respondents – State and the learned advocate for respondent No.5 at length. Perused the record and written notes of arguments filed on record by both the respective parties.

9. Admittedly, the suit property was purchased by the petitioner in Court auction in the year 1977. In terms of Section 65 of the Code of Civil Procedure, where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute. Admittedly, the sale has become absolute in favour of the petitioner in the year 1977. The record further reveals that M.E. No.905 taken in the name of respondent No.5, as Taraka Deshmukh sold the said property to respondent No.5, was set aside by the order of the Tahsildar, Karjat dated 10-12-1990 rightly as the said Taraka Deshmukh had no right or title in the said property since the property was attached from her father in a recovery proceedings and the same was purchased by the petitioner in Court auction. This order is confirmed by the Sub-Divisional Officer, Karjat. Nothing is placed on record to show that the orders of the Tahsildar and Sub-Divisional Officer were challenged either by

respondent No.5 or by Taraka Deshmukh.

10. In the background of this, the C.T. survey of the suit property is recorded in the name of respondent No.5 allegedly on the basis of Court's order. There is no date of taking that entry and it is stated to be taken in 'July, 1990'. The petitioner had no knowledge about the same and when he came to know about the said entry, he preferred appeal before respondent No.4. After hearing respondent No.5 the appeal is allowed by a reasoned order. Respondent No.3 confirmed the order passed by respondent No.4, by specifically observing that respondent No.5 has failed to produce on record any Court order/decree in support of his contention that his name was entered on the basis of Court's decree/order.

11. In the light of the above facts, respondent No.2 has committed an error in allowing the revision filed by respondent No.5. Though it is noted in the impugned order that the petitioner has purchased the suit property in the year 1977 in Court auction, it is held that sale deed of the petitioner is not registered. The learned advocate for respondent No.5 or the learned Assistant Government Pleader were not able to point out that it is a requirement of law that the document of purchase of property in Court auction is required to be registered. Reliance placed on the judgment in **Ghanshyamdar Vallabhas Gujrathi**

(supra) by respondent No.2 is misplaced and misconceived. Respondent No.2 has erroneously exercised jurisdiction and passed the impugned order by relying on the irrelevant factors. He failed to consider the cogent and proper reasons given by respondent Nos. 3 and 4 while passing the orders in favour of the petitioner. The impugned order, therefore, is unsustainable and the same is hereby quashed and set aside. The writ petition is allowed in terms of prayer clause 'C'.

12. Rule is made absolute in the above terms. No costs.

(NITIN B. SURYAWANSHI, J.)