

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

WRIT PETITION NO. 773 OF 2019

Arun s/o Ganpat Bhatkar
Vs.
Additional Commissioner, Amravati and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S.S. Dhengale, Advocate for petitioner.
Mr. K.L. Dharmadhikari, AGP for respondents/State.
Mr. A.S. Deshmukh, Advocate for respondent No.4.

CORAM : MANISH PITALE J.

DATE : 11.04.2022.

By this petition, the petitioner has challenged concurrent orders passed by the Sub-Divisional Officer and the Commissioner whereby appeal filed by the petitioner regarding mutation entry in respect of subject property was rejected.

2. The Sub-Divisional Officer dismissed the appeal primarily on the ground that there was a delay of about seven years on the part of the petitioner in filing the appeal. It was recorded that the petitioner himself claimed that he found Will-Deed dated 05.01.1998 while cleaning and searching old files,

which prompted him to file the appeal in the year 2012.

3. The Commissioner, while confirming the order passed by the Sub-Divisional Officer further held that since there was a dispute amongst family members regarding mutation entries, recording of names of all the members, including the petitioner herein, was the best option available. It was further held that since the Will-Deed is unregistered and disputed, till the genuineness of the Will is proved in the competent Court of civil jurisdiction, it would not be appropriate to interfere with the order passed by the Sub-Divisional Officer.

4. Heard Mr. S.S. Dhengale, learned counsel appeared for petitioner, Mr. Deshmukh, learned counsel appeared for respondent No.4 and Mr. K.L. Dharmadhikari, learned AGP appeared for respondent Nos. 1 and 3. The other respondents have been served. In respect of the respondent No.7, there is an endorsement that when service was attempted on him, he refused to accept the notice, which amounts to good service.

5. There were intense submissions made on behalf of the rival parties as regards the correctness

or otherwise of the impugned orders. There can be no doubt about the fact that insistence upon the Will-Deed being registered was wholly misplaced on the part of the Commissioner because registration of Will-Deed is not mandatory. As regards, dispute between the parties and Civil Court competent jurisdiction deciding the matter, it is a matter of debate to which party would have to approach the civil Court for resolving the dispute.

6. Nonetheless, one aspect is amply clear that there is indeed a dispute amongst the parties with regard to the mutation entry and in these circumstances, neither the Sub-Divisional Officer nor the Commissioner adverted to Section 150 of the Maharashtra Land Revenue Code, 1966. The said provision pertains to register of mutations and register of disputed cases. Under Section 150(3) of the aforesaid Code, it is provided that when an objection either orally or in writing is raised, the Talathi would be duty bound to enter the particulars of such objections in a register of disputed cases. In the present matter also the aforesaid entry in the register of disputed cases can be made, leaving it open for the rival parties to obtain appropriate orders from the competent Civil Court to resolve *inter se* dispute between them.

7. In view of the above, the writ petition is disposed of, by modifying the impugned orders. The Talathi is directed through the respondent Nos.3 – Sub-Divisional Officer to enter the particulars of objections in the register of disputed cases, in respect of the property in question in the present matter.

8. The parties are liberty to approach the competent Civil Court to resolve their *inter se* dispute.

JUDGE

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