

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

WRIT PETITION NO. 8292 OF 2019

Maroti Vitthalappa Pimple vs. Sunita Kishore Salunke and another

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

Court's or Judge's Orders.

Mr. Zeeshan Z. Haq, Advocate for petitioner.
Mr. D. P. Thakare, Addl. G. P. for respondent No.2.

CORAM : MANISH PITALE J.

DATE : 30/03/2022

By this writ petition, the petitioner has challenged order dated 17/10/2019, passed by the respondent No.2 – Divisional Commissioner, whereby the aforesaid respondent partly allowed an appeal filed by respondent No.1 and certain directions were given. The proceeding in the present case was initiated before the Naib Tahsildar, Murtizapur, in connection with revenue entry pertaining to land in Gat No.84, although a reference was also made to land in Gat No.80. A perusal of the order dated 17/04/2015, passed by the Naib Tahsildar shows that after considering the rival contentions, the Naib Tahsildar gave a specific direction with regard to land in Gat No.84 only.

2. The said order was made subject matter of challenge at the behest of the petitioner before the Sub-Divisional Officer (SDO). The appeal filed by the petitioner was partly allowed and it was directed that the Naib Tahsildar ought to give proper opportunity to the petitioner and to conduct a fresh enquiry into the matter. The respondent No.1 was aggrieved by the said order and she filed an appeal before the District Collector. By order dated 28/02/2018, the appeal was dismissed and the order of the SDO was maintained, with a direction to the Naib Tahsildar to decide the matter on merits. Aggrieved by the same, respondent No.1 filed revision application before the respondent No.3 Commissioner, which was disposed of in the aforesaid manner by the impugned order dated 17/10/2019.

3. This Court issued notice dated 18/12/2019 in the present writ petition, specifically recording that the impugned order directed enquiry with regard to Gat No.80, which perhaps could not have been in contemplation for the reason that the dispute as reflected in the orders passed by the authorities below, pertained to Gat No.84. While issuing notice, this Court granted ad-interim stay of the impugned order, which has continued to operate during the pendency of the present writ petition.

4. The respondent No.2 is represented by the learned Additional Government Pleader, while the respondent No.1 has chosen not to appear before this Court, despite service.

5. Mr. Haq, learned counsel appearing for the petitioner submitted that the direction given in the impugned order to the Naib Tahsildar to undertake independent enquiry as regards Gat No.80, was totally misplaced, for the reason that the proceedings from the Naib Tahsildar upto the Collector were concerned with the land in Gat No.84. It was submitted that although reference was made to a Civil Suit pending between the parties along with an observation that the parties ought to obtain an appropriate order in such proceedings, the directions given in the operative portion of the impugned order were wholly unsustainable.

6. On instructions, the learned counsel for the petitioner submitted that this Court could directed the entries pertaining to Gat Nos.80 and 84 to be recorded in the register of disputed entries, as contemplated under Section 150 of the Maharashtra Land Revenue Code, 1966, which may be subject to the result of the suit pending before the competent Civil Court.

7. Mr. Thakare, learned Additional Government Pleader appearing on behalf of respondent No.2 submitted that even if an appropriate direction was to be given in terms of Section 150 of the Code, such a direction can be issued to the Talathi who maintains the register of mutation entries.

8. A perusal of the material placed on record shows that the orders passed by the Naib Tahsildar, the SDO and the Collector, all pertained to the dispute between the parties pertaining to said land in Gat No.84. This is clear from the operative portion of the order passed by the Naib Tahsildar dated 17/04/2015 and the order of the SDO directing a fresh enquiry was obviously in the context of Gat No.84. Yet, the respondent No.2 Commissioner in the impugned order erroneously referred to Gat No.80 and gave a specific direction to the Naib Tahsildar to undertake an independent enquiry as regards Gat No.80. The error committed by the respondent No.3 is obvious from the material available on record. The reference made to the pending Civil Suit and the proceedings remanded back to the Naib Tahsildar being subject to such Civil Suit cannot be count fault with, but the direction to conduct an enquiry as

regards Gat No.80 is found to be wholly unsustainable.

9. There is no dispute about the fact that Regular Civil Suit No. 360 of 2017, is pending between the parties before the Court of Civil Judge Senior Division Akola, which pertains to a prayer for declaration, permanent injunction and separate possession made on behalf of the plaintiffs, wherein the petitioner before this Court is one of the plaintiffs. The revenue entries would have to be recorded subject to the rights that would be finally decided by the Civil Court in the aforesaid suit.

10. In this backdrop, the writ petition is disposed of by holding that the Naib Tahsildar would proceed with the enquiry as directed by the respondent No.2 – Divisional Commissioner in the impugned order dated 17/10/2019, with a rider that the enquiry would be restricted to Gat No.84 only. The Talathi as per Section 150 of the aforesaid Code, shall record entries pertaining to Gat Nos.80 and 84 in the register of the disputed cases, subject to the result of the Regular Civil Suit No. 360 of 2017.

JUDGE

*Digitally signed by*RAVIKANT
CHANDRAKANT KOLHE
*Signing Date:*05.04.2022
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