Vinita

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.139 OF 2023

PRIME BUILDERS THR. PROPRIETOR ANTHONY CEDRIC DIAS ....Petitioner.
VS
ROQUE FREDDIE MENINON EXANO PEREIRA AND ANR. ....Respondents.

Mr. A. D. Bhobe and Ms. S. Shaikh, Advocate for the petitioner.
Mr. J. P. Mulgaonkar, Senior Advocate with Ms. Deeksha Sharma and Ms. Asmita Tirodkar, Advocate for the respondents.

CORAM: PRAKASH D NAIK, J

DATED: 9th AUGUST 2023

ORAL ORDER.

1. Heard both sides. The petitioner has challenged the order dated 23.1.2023 passed by the Principal District Judge, Panaji in Land Revenue Appeal no.1/2022 preferred by the respondents.

2. The petitioner had preferred an application for mutation in respect of property chalta no.16 of P. T. Sheet No. 38 of City Survey of Vasco Da-Gama situated at Mangor Villa Vasco-Da-Gama to the Inspector of Surveys and Land Records(City Survey) Vasco-da-Gama ("ISLR" for short) for passing necessary orders of mutation i.e. addition of petitioner's name in the survey records in "holder"column in Form- D along with other holders mentioned therein in respect of undivided area of 695/3475 sq. mts bearing chalta No.16(part) of P. T. Sheet No. 138 of City Survey of Vasco-da-Gama.

3. Respondents filed objections for mutation on 1.12.2020 with the ISLR.

4. Vide judgment and order dated 2.2.2021 the ISLR, City Survey Vasco, allowed the application and the objection raised by the respondents was dismissed. It was directed that the name of the petitioner shall be included in the mutation column of Form-D of the property Chalta No.16(part), P. T. Sheet No.138 of Vasco in respect of portion of the property admeasuring area of 695 sq. mts. It was directed that mutation entry shall be made in the property card register.

5. The respondents preferred appeal before the Superintendent of Survey and Land Records(City Survey) Margao Goa, under Section 88(1)(f) of the Goa Daman and Diu Land Revenue Code, 1968 (hereafter referred to as "the Code"). Vide order dated 27.1.2022, the appeal was dismissed.

6. The respondents preferred Land Revenue Appeal No. 1/2022 before the Administrative Tribunal. It was heard and decided by the Court of Principal District Judge, North Goa, Panaji. The Land Revenue Appeal No.1/2022 was allowed by the learned Principal District Judge, North Goa, Panaji vide order dated 23.1.2023 and the judgment and order dated 2.2.2021 passed by ISLR was set aside.

7. Mr. Ashwin Bhobe, learned Advocate for the petitioners submitted as follows:-

i. The Second Appellate Authority has committed an error in failing to appreciate that request for mutation made by the petitioner under Section 96 of the Code was in the nature of the reporting of right acquired by the petitioner in the subject property as a holder on the basis of the sale deed dated 18.2.2018.

ii. Sale deed was registered and valid.

iii. The Second Appellate Authority has erroneously held that the sale deed do not confer any right on the petitioner, such finding was without jurisdiction.

iv. Appeal ought to have been testified and considered in terms of Section 96 of the Code.

v. The Second Appellate Authority has considered the subject matter of the Land Revenue Appeal as if it was a civil dispute.

vi. Petitioner had produced documentary evidence in support of the application for mutation indicating that the petitioner had acquired right to the property on the basis of the legal document. The sale deed was registered.

vii. There was no occasion for the Second Appellate Authority to interfere with the findings given by the ISLR and the First Appellate Authority.

viii. The impugned order is without jurisdiction as provisions of the Code does not confer any right on the Authority functioning under the Code to decide and adjudicate the civil dispute and to test validity and legality of the documents in the nature of the registered sale deed.

ix. The ISLR had followed the procedures contemplated under the Code. No case was made out for setting aside the mutation entry. No other person had made any grievance and hence the conclusion of the Second Appellate Authority about the other parties being affected by mutation entry, is bad in law.

x. The observation of the Second Appellate Authority about the service of notice was not warranted as none of the interested parties have made any grievance.

xi. The Second Appellate Authority had no jurisdiction to decide the title or Civil right of the parties.

xii. Entries in the revenue records do not confer title to the property nor do they have any presumptive value on the title.

8. Learned Counsel for the petitioner has relied upon following decision:-

(i) ***Prahlad Pradhan and others Vs Sonu Kumhar and***

others.[1]

9. Mr. J. P. Mulgaonkar, learned Senior Advocate appearing for the respondents opposed the relief sought in this petition. It is submitted that there is no infirmity in the impugned order. The objections urged by the respondents were not appreciated in the proper perspective by ISLR, City Survey as well as by the Superintendent of Survey and Land Records, Margao Goa. Mutation was applied on the basis of the sale deed dated 13.6.2018 comparison of Form D available in the office of Survey and Land Records with the Deed of sale would show that persons who are shown as holder in Form D and vendor in Deed of Sale are totally different. Variance between vendor shown in deed of sale and holder shown in Form D would be sufficient to reject the application for mutation. The First Appellate Authority had no jurisdiction to effect mutation on the basis of the sale deed. The application dated 14.8.2020 provides details of how the title was flown. The Survey officer contemplated under the Code had no jurisdiction to decide on the title issue. Jurisdiction of the survey officer dealing with mutation was limited to amending survey records based on registered document provided person whose name appears as holder in the record has transferred his right by a registered deed. Form D shows that heir of Asterio Simeao Pereira Sebastiao Pereira jointly hold 2/5th share contrary to

1 (2019) 10 SCC 259

the sale deed which mentions that Asterio Simeao Pereira and Roque Carlos Borromeau Pereira hold 1/5th and 3/5th shares. The mutation proceedings give rise to factual and title dispute which cannot be decided in mutation proceedings. Notice was not properly effected on the parties. The Second Appellate Authority had power to decide the issue. At most, the most matter could be remanded to the Lower authority for reconsideration.

10. Mr. Mulgaonkar, has relied upon following decisions:-

i. Jainabai and ors vs Ravishankar.[2]

ii. Shrikant R. Sankanwar and ors Vs Krishna Balu Naukudkar.[3]

11. The petitioner had preferred the application for mutation before the ISLR on 14.8.2020 in respect to aforesaid property. In the said application it was contended that the property is bifurcated into two separate parts by a public road running through the property in north south direction. One part of the property is lying to the east of the public road and the other part is lying to the west of the public road. Part of the land lying to the east of the public road has a total area of 3475 sq.mts. The property originally belonged to Joao Piedade Pereira and his wife Maria Anastasia Gonsalves. Upon the death of

2. 2004(4) ALL MR 885
3. 2003(3) Bom Cr 45.

Joao Piedade Pereira, title in the property got vested in his wife Maria Gonsalves and her children Antonion Pereira, Asterio Pereira, Jose Pereira, Santana Pereira, Sebastino Pereira,Rosa Pereira were legal heirs. By deed of gift, acceptance, partition and division dated 7.4.1907, drawn before the notary of Judicial Division of Salcete, Mr. Camilo Vincent Antonio Da Silva Coelho and Maria Gonsalves gifted shares in equal share of 1/5th to each of her five sons namely Antonio Pereira, Asterio Pereira, Jose Pereira, Santana Pereira and Sebastino Pereira. In the said deed it was stated that Rosa Maria Pereira was given a downy at the time of her marriage to Joao Godinho, on account of her legitimate share in the inheritance of her father late Joao Piedade Pereira. The 1/5th share of Sebastiao Pereira and his wife Ana Pereira was the subject matter of Inventory Proceedings No.5/1996 before the Civil Judge, Senior Division, Vasco da Gama and in the said Inventory Proceedings, the entire 1/5th share of Sebastiao Pereira and his wife Ana Pereira, was purchased in auction by Joseph Sebastian Pereira. Mr. Joseph Pereira expired on 27.4.2002 and his 1/5th share in the property devolved upon his children namely Edgar Pereira, Donald Pereira, William Pereira, Rodney Pereira, Kenneth Pereira and Jacqueline Pereira. Edgar Pereira died on 28.8.2008 and his share devolved upon his wife Mary Pereira and their two children. Rodney Pereira died on 24.4.2015 and his share devolved upon his wife Sandra Pereira and their children

Sabrina Pereira and Rowena Pereira. Vide Deed of sale dated 18.6.2018 duly registered with the Sub Registrar of Mormugao, under Registration No. MOR-BK1-01100-2018 heirs of Joseph Sebatian Pereira sold their 1/5th share in the part of the said property lying to the east of the public road which has a total area of 3475 sq. mts to the Petitioner. Mormugao Planning and Development Authority issued their NOC dated 13.6.2018 for the sale of 695/3475sq. mts. Thus, the petitioner has purportedly purchased the property in question vide sale dated 18.6.2018 which was duly registered. Along with the application submitted to ISLR the petitioner had enclosed Form D in original, copy of survey plan, Plan showing bifurcation of property in two parts, copy of notarial Deed of Gift , Acceptance, Partition and Division dated 7.4.1907, Notarised copy of inventory proceeding No. 5/1996, notariased copy of MPDA NOC dated 13.6.2018, notarised copy of deed of sale dated 18.6.2018 and affidavit dated 18.6.2018 from Mr. Donald Joseph Pereira. Notice was issued by ISLR Vasco on 1.10.2020. Objections were filed by the respondents on 1.12.2020. The ISLR allowed the application. Objection of the respondents was rejected by directing the name of the petitioner to be included in the mutation column of the Form D of the property. While passing aforesaid order the authority had considered several documents which are referred to in the order dated 2.2.2021. The publication of the notice was carried out in the daily newspaper on 4.11.2020. Hearing was given to both sides. The applicant had produced relevant documents. The ISLR noted the objection of the opponents about the name in the Form D and person who signed the deed of sale do not match. There is dispute as regards the title of the property and hence the authority had no jurisdiction. The ISLR observed that the records and documents make it evident that there is no dispute with regards to the property and the shares of objections doesnt contravene with that of the share of the applicant. The Appeal by the respondents was adjudicated by the Superintendent of Survey and Land Records. The order of the First Appellate Authority was confirmed. The Appellate Authority had noted objections of the respondents about the fact that Form D and party who signed the deed of sale do not match and there is dispute with regards to title and hence, Land Revenue Department had no jurisdiction to entertain the mutation application. The First Appellate Authority however observed and rightly so since Section 96 of the Code is very clear about the reporting of acquisition of rights, aforesaid objection by the objector does not stand. It was further observed that ISLR has rightly come to the conclusion that mutation application has to be allowed. The computerised mutation process is such that whenever ILSR certifies a mutation entry the records are updated automatically. While dealing with the objection of the respondents about notice issued to the affected party, it was observed that the statement of the appellant therein was absurd and false and frivolous. The appellants have not filed any proceedings challenging the title however if any title dispute is settled in the matter in due course of time, the same would always be considered to change the records.

12. Learned Counsel for the respondents has submitted that the authorities ought not to have gone into title of the property as jurisdiction in relation to the title would vest in some other authority and not the authorities below. However, the order dated 27.1.2022 is very clear wherein it was categorically stated that Section 96 of the Code deals with reporting of acquisition of rights.

13. Section 96 of the Code reads as follows:-

> *96. Acquisition of rights to be reported.— (1) Any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, mortgagee, landlord, tenant or Government lessee of any land, shall report in writing his acquisition of such right to the Mamlatdar of Taluka alongwith fee as specified in the Table below and in case such right has been acquired by a registered document, along with receipt of such fee paid to the Registration Department, and upon receipt of the same, he shall proceed to dispose*

such case as prescribed:—

TABLE

Sr.No.	*Category*	*Fees*
(1)	*(2)*	*(3)*
1.	*for parcel of property upto1,000 square meters.*	*Rs.1000/-*
2.	*or parcel of property above 1,000 square meters and upto 10,000 square meters.*	*Rs.2,500/-*
3.	*for every parcel of property of 10,000 square meters or part thereof, above 10,000 square meters.*	*Rs.5,000/-*

Provided that no such fee shall be payable where the right to the land is acquired under,—
(i) the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act 7 of 1964); or
(ii) the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (Act 1 of 1976). or
(iii) any law for the time being in force, dealing with the acquisition of land by the Government: Provided further 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 Mamlatdar of Taluka.

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 a kind specified in section 100 of the Transfer of Property Act, 1882 (Central Act 4 of 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 "Mamlatdar of Taluka" includes Joint Mamlatdar; and in case of City Survey Records, the Inspector of Surveys and Land Records.

(2) The provisions of sub-section (6A) and (6B) of section 32 shall mutatis mutandis apply for amending any entry in the Table in sub-section (1).

14. In consonance with the requirements of Section 96 of the Code, I do not think that first two authorities has entered into the arena of title of the property which was beyond the scope of Section 96 of the Code whereas Second Appellate Authority has disturbed the concurrent findings of two authorities by affecting into denova issues and in fact has travelled beyond the scope of Section 96 of the Code. Findings and observations contained in the order dated 23.1.2023 were not called for.

15. It is pertinent to note that none other than the respondents has objection for mutation. The scope of Section 96 of the Code does not enter into the subject of title of the property although the objections of the respondents were clearly dealt with by the two authorities. Hence, the Second Appellate Authority has committed an error in setting aside the two orders.

16. The Second Appellate Authority has considered the issue which was not even raised by either party.

17. In the case of ***Prahlad Pradhan and others vs Sonu Kumhar and others*** *(supra)* relied upon by the learned counsel for the petitioner, the Apex Court has observed that the entries in the revenue record do not confer title to a property nor do they have any presumptive value in title. They enable the person in whose favour the mutation is recorded to pay the land revenue in respect of the land in question.

18. The petitioner has purchased the property by registered sale deed. The petitioner has placed for consideration several documents in support of the application for mutation entries. The object of Section 96 of the Code is reporting of acquisition of rights. The mutation entries were allowed in consonance of scope of Section 96 of the Code and there was no reason to set aside the same by the

Second Appellate Authority.

19. In the case of ***Jainabai and other Vs Ravishankar***(supra) this Court has observed that it is settled law that whenever there is dispute of title to the property, the same can be adjudicated only by the Civil Court and not by any executive assuming the jurisdiction of the Civil Court.

20. In the case of ***Shrikant R. Sankanwar and ors. Vs Krishna Balu Naukudkar***(supra), it was observed that while exercising the power under the Code and Rules made therein the authority under the Code cannot assume jurisdiction under different statutes to investigate into the rights of the parties in relation to property which are referred to in the application for mutation of the entries.

21. The application was preferred by the petitioner for making mutation entries and it was supported by several documents. Orders passed by the first two Authorities do not determine the issue relating to title of the property. Hence, the impugned order passed by the Second Appellate Authority is required to be set aside.

ORDER

(i) Writ Petition No. 139 of 2023 is allowed.

(ii) The Impugned order dated 23.1.2023 passed by the Principal

District Judge In Land Revenue Appeal No. 1 of 2022 is set aside.

(iii) Order dated 2.2.2021 passed by the Inspector of Survey and Land Records, City Survey, Vasco is restored.

(iv) Writ Petition stands disposed of.

PRAKASH D NAIK, J.

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