

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 913 OF 2023

Shree Dharmanath Ventures LLP .. Petitioner
 Versus
 State of Maharashtra and Ors. .. Respondents

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- Mr. Virag Tulzapurkar, Senior Advocate a/w. Mr. Bhushan Deshmukh and Ms. Disha Shetty, Advocates i/by Wadia Ghandy & Co. for Petitioner
 - Ms. V. S. Nimbalkar, AGP for State – Respondent Nos. 1 to 3
 - Mr. Aditya Shiralkar a/w. Mr. Amar Parab, Advocates i/by Kalpesh Joshi Associates for Respondent Nos. 10, 11 and 24
 - Mr. Sandesh D. Patil i/by Prithviraj S. Gole, Advocates for Respondent Nos. 30 to 35
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 31, 2023.

P.C.:

1. Heard Mr. Tulzapurkar, learned Senior Advocate for Petitioner; Ms. Nimbalkar, learned AGP for Respondent Nos. 1 to 3; Mr. Shiralkar, learned Advocate for Respondent Nos. 10, 11 and 24 and Mr. Patil, learned Advocate for Respondent Nos. 30 to 35.

2. The order impugned dated 11.11.2022 in the present Writ Petition is passed by the learned Sub-Divisional Officer (SDO) in First Appeal proceedings under the provisions of Section 247 of the Maharashtra Land Revenue Code, 1966 (“**M.L.R.C.**”). First Appeal was filed to challenge the order passed by the learned Tahasildar in respect

of Mutation Entry No. 1970 in the name of the Petitioner. It is an admitted position that the aforesaid Mutation Entry was mutated and has stood in the revenue record i.e. the 7 X 12 extract, *inter alia*, pertaining to 9310 sq.mtrs. out of 55000 sq. mtrs. of the larger property since long.

3. Mr. Tulzapurkar restricts his case only to the aforesaid property i.e. 9310 sq.mtrs. belonging to Petitioner.

4. Perusal of the impugned order admittedly reveals that Petitioner was not heard by the learned SDO and the order has been passed *exparte*. Ms. Nimbalkar, learned AGP confirms this position. Thus principles of natural justice are not complied with admittedly.

5. It is seen that by virtue of the said order, the learned SDO has given specific directions for carrying out corrections in the earlier order dated 20.08.2008 passed by the Tahasildar in respect of the subject Mutation Entry. That apart, directions for addition and deletion of specific names, *inter alia*, pertaining to the transfer of the subject land which has taken place has been directed by the SDO in the impugned order.

6. I have perused the impugned order and more specifically the operative part thereof which is at page No. 247 of the Writ Petition. The directions contained in Clause-2 of the operative part of the order are substantive and could not have been passed without hearing the Petitioner/ the affected party. Admittedly proceedings before the SDO

are appellate statutory proceedings under the M.L.R.C., 1966 and parties are required to be heard.

7. Mr. Patil, learned Advocate appearing for Respondent Nos. 30 to 35 would submit that he has a preliminary objection that the impugned order is appealable and Appeal under Section 257 of the MLRC lies to the District Collector and the said remedy has not been exhausted by the Petitioner. He however would submit that the impugned order passed by the learned SDO has been correctly passed in the facts and circumstances of the present case and in that view of the matter the same needs to be sustained. He would further submit that there are two civil suits filed before the Civil Court by Respondent Nos. 30 to 35 as well as Mr. Shiralkar's clients for various reliefs in respect of the entire larger property which includes the Petitioner's property, and the said suits are pending hearing and final disposal. He would further submit that the learned Civil Court has passed injunctive reliefs restraining the Respondents from creating any third party rights in both the civil suits in Exhibit-5 proceedings. However, Mr. Tulzapurkar has strongly refuted the submissions made by Mr. Patil and would submit that in so far as the Petitioner is concerned, there is no such injunctive relief passed against the Petitioner at all. Mr. Shiralkar confirms the submissions made by Mr. Tulzapurkar and supports the Petitioner's case in this respect. In this context he has submitted that his clients namely Respondent Nos. 10, 11 and 24 had

never authorised Respondent No.30 to file the statutory Appeal before the learned SDO wherein the *exparte* impugned order has been passed and therefore he has a very strong objection to the passing of the impugned order. However in the facts of the present case as pointed out by Mr. Tulzapurkar and alluded to hereinabove, I am of the opinion that gross dereliction has happened by not hearing the Petitioner and passing the impugned order *exparte* which directly affects the Petitioner's substantive right by virtue of the Mutation Entry No. 1970.

8. Considering the submissions made by the learned Advocates and the manner in which the impugned order has been passed, as also the substantive directions given by the learned SDO in Clause-2 of the operative part of the impugned order, it would be appropriate to set aside the impugned order and remand the hearing of the Appeal afresh to the learned SDO for reconsideration and passing a fresh order after hearing all the concerned parties.

9. In view of the above, the impugned order dated 11.11.2022 is quashed and set aside.

10. The learned SDO i.e. Respondent No.2 is directed to hear Appeal No. 168 of 2021 filed by Respondent No. 30 afresh after hearing all the concerned parties who are before me in the present Writ Petition and after considering their oral arguments/submissions, pass a reasoned order.

11. All contentions of the concerned parties are expressly kept open for agitating the same before the learned SDO.
12. The learned SDO is directed to hear the parties and pass a reasoned speaking order within 6 weeks from today.
13. All parties are permitted to file additional say/reply before the SDO. Parties are also at liberty to file additional written submissions as also additional documents in support of their respective case which shall be taken on record and shall be exchanged by the parties before the learned SDO.
14. It is clarified that the learned SDO shall not be influenced by any of the observations made by this Court in the present case and decide the Appeal strictly on its own merits and in accordance with law.
15. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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by SONALI
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