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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1488 OF 2023

Gauribai Bala Bhoir (since deceased) through her legal heirs & ors. .Petitioners

Vs.

Sonibai Baliram Patil & ors. .Respondents

Mr. V. V. Nene, Advocate, for the Petitioners
Mr. Atul Damle, Senior Advocate i/b. Ms Payal Vardhan & Mr. Nimish Gavali i/b. Zunjarrao & Co., for Respondent No. 19
Ms. V. S. Nimbalkar, AGP, for the Respondent – State

CORAM : MADHAV J. JAMDAR, J.

DATE : 07.11.2023

ORAL JUDGMENT

1. Heard Mr. Nene, learned counsel appearing for the Petitioners, Mr. Damle, learned senior counsel a/w. Ms. Payal Vardhan learned counsel appearing for Respondent No. 19 and Ms. Nimbalkar, learned AGP appearing for the Respondent No. 20 – State.

2. The challenge in the present Writ Petition filed under Article 227 of the Constitution of India is to the order dated 15.12.2022 passed by the Hon'ble Minister of Revenue, Mantralaya, Mumbai in Revision Application No. RTS-2720/282/ Pra. Kra.54/J-4. By the impugned order dated 15.12.2022, the

Hon'ble Minister has allowed the Revision Application filed by Respondent Nos. 17 & 18. By the impugned order, the order dated 22.03.2018 passed by the Additional Commissioner, Konkan Division, Konkan in RTS Revn. 339 of 2017 is quashed and set aside. The Additional Commissioner, by the said order dated 22.03.2018 dismissed the Revision Application filed by Respondent Nos. 17 & 18 challenging the legality and validity of the order dated 10.02.2017 passed by the Additional Collector (Appeal), Thane. The Additional Collector (Appeal) dismissed the Appeal filed by Respondent Nos. 17 & 18 and confirmed the order dated 16.12.2013 passed by the Sub Divisional Officer, Bhiwandi Division, Bhiwandi. By the said order dated 16.12.2013 passed by the Sub Divisional Officer, Bhiwandi Division, Bhiwandi, Mutation Entry No. 49 dated 01.12.1999 was cancelled.

3. Thus, it is seen that all the authorities except the Hon'ble Minister of Revenue have confirmed the order of cancellation of the said Mutation Entry No. 49 dated 01.12.1999.

4. At this stage only, it is required to be noted that the property in question has been purchased by the Respondent No. 19 and therefore, the Respondent No. 19 is the only contesting

Respondent.

5. It is an admitted position that one Mr. Sonawane and Mr. Marathe have sold out Survey No. 212, Hissa No. 3 and Survey No. 212, Hissa No. 5 situated at Mouje - Bharodi, Taluka – Bhiwandi, District – Thane (hereinafter referred to as **“The Said Property”**) to Respondent No. 19. It is also an undisputed position that one Smt. Gauribai Bala Bhoir was one of the co-owners of the said property.

6. It is the contention of learned counsel appearing for the Petitioners that Smt. Gauribai Bhoir passed away on 02.07.1988. However, a fabricated/fraudulent Power of Attorney was shown to be executed by said Smt. Gauribai Bhoir on 15.11.1999 i. e. about 11 years after her death and on the same day, a registered Agreement dated 15.11.1999 was executed in favour of Respondent Nos. 17 & 18. Accordingly, Mutation Entry No. 49 dated 01.12.1999 was mutated in the name of Respondent Nos. 17 & 18. The said Mutation Entry No. 49 is the subject matter of the present Petition.

7. It has also come on record that the present Petitioner

filed a Suit bearing R. C. S. No. 1547 of 2012 against the Respondents for cancellation of the said Sale Deed bearing No. 3986 dated 15.11.1999 and an interim order has been passed below Exhibit 5 in the said Suit restraining the Defendants in the said Suit from creating third party rights. It is the contention of learned counsel appearing for the Petitioners that despite the said injunction order, Respondent Nos. 17 & 18 sold out the Suit property to one Mr. Sonawane and Mr. Marathe on 01.08.2012. Respondent Nos. 17 & 18 again sold the same property to one Mr. Dilip Mutha and four others on 26.04.2016. Again Mr. Sonawane and Mr. Marathe sold the same property to Respondent No. 19 on 03.01.2019. It is the contention of learned counsel appearing for the Petitioners that when the property was sold to Respondent No. 19, who is the contesting Respondent in the present Petition, the said Mutation Entry No. 49 certified on 01.12.1999 has already been quashed & set aside. It is the contention of learned counsel appearing for the Petitioners that the said Power of Attorney allegedly executed by Smt. Gauribai Bhoir on 15.11.1999 is a forged, fabricated and fraudulent document, given that Smt. Gauribai Bhoir had died on 02.07.1988. He submitted that all the authorities have passed the order cancelling the said Mutation Entry No. 49 and have confirmed the said order on the ground that the said Power of Attorney is a forged, fabricated and fraudulent document. He submitted that the Hon'ble Minister of Revenue has reversed all the orders *inter alia* on the ground that there is a delay of 13 years in challenging the said Mutation Entry No. 49, that without condoning the delay of 13 years the orders were passed and that on 15.11.1999, registered Agreement was executed with respect to the said property. Thereafter, various transactions were entered into and unless, the Civil Court sets aside those transactions, the Mutation Entry cannot be cancelled. It is the submission of learned counsel appearing for the Petitioners that the foundation of all the transactions is a forged, fabricated and fraudulent Power of Attorney. It is clear that fraud has been played. The principle that fraud vitiates everything will apply to the present case.

8. It is the contention of Mr. Damle, learned senior counsel appearing for Respondent No. 19 that Respondent No. 19 is a subsequent purchaser of the said property and he is not concerned with the forged Power of Attorney dated 15.11.1999. It is his submission that R. C. S. No. 1547 of 2012 is already pending with respect to the various transactions concerning the

said property. Therefore, no interference is warranted in the impugned order of the Hon'ble Revenue Minister. He submitted that the record of death of Smt. Gauribai Bhoir is not available in the Grampanchayat records. Therefore, the date of her death cannot be ascertained. In the impugned order, it was observed that the order passed by the Minister will be subject to the outcome of the Civil Suit pending before the Civil Court. Therefore, no prejudice is caused to the Petitioners. He also submitted that part of the Suit property is acquired by the Government. Therefore, no interference by this Court in the impugned order is warranted. He further submitted that the Civil Court can adjudicate the Petitioners' allegation that the Power of Attorney dated 15.11.1999 is forged, fabricated and fraudulent given that Smt. Gauribai Bhoir, the executor of the same had died on 02.07.1988.

9. As Respondent No. 19 raised certain dispute regarding date of death of Smt. Gauribai Bhoir, this Court by order dated 13.09.2023 directed the Petitioners as well as Respondent No. 19 to file further affidavits regarding exact date of death of Smt. Gauri Bhoir and supporting material in that behalf. Accordingly, Petitioner No. 1.4 – Rajan Shinu Bhoir filed

affidavit dated 16.10.2023 stating therein that Smt. Gauribai Bhoir passed away on 02.07.1988. To support the said contention, the Petitioners have produced the Death Certificate of Smt. Gauri Bhoir issued by the Gramsevak, Grampanchayat – Bharodi, Bhiwandi, District – Thane, affidavit of one Mr. Bhalchandra Dinkar Bhagat, death report of deceased Smt. Gauribai Bhoir maintained by Grampanchayat – Bharodi and Certificate issued by Gramsevak. Respondent No. 19 i. e. Mr. Sachin Dashrath Dhaktode filed affidavit dated 18.10.2023. In the said affidavit, it is stated that there is no record available regarding the date of death of Smt. Gauri Bhoir. However, Respondent No. 19 has not stated anything about whether Smt. Gauribai Bhoir is alive or not and if she had passed away, what is the exact date of her death.

10. Perusal of the record clearly shows that Smt. Gauri Bhoir passed away on 02.07.1988. The Death Certificate has been issued by the Gramsevak, Grampanchayat – Bharodi, Bhiwandi which mentions the date of death of Smt. Gauri Bhoir as 02.07.1988. The Petitioners have also annexed the Death Report dated 12.07.1988 maintained by Grampanchayat – Bharodi, Bhiwandi to the said affidavit dated 16.10.2023 stating therein

that Smt. Gauribai Bhoir passed away on 02.07.1988. As per the said Death Report maintained under Rule 5 of the Maharashtra Birth and Deaths Registration Rules, 1976 regarding maintaining birth and death register, the date of death of Smt. Gauribai Bhoir is 02.07.1988. A Certificate dated 30.11.2017 issued by the Gramsevak, Grampanchayat – Bharodi, Bhiwandi stating that the Death Certificate is as per the record of the Grampanchayat is also annexed to the said Affidavit.

11. Thus, it is clear that the documentary evidence produced on record by the Petitioners clearly shows that Smt. Gauribai Bhoir passed away on 02.07.1988. Therefore, it is very clear that the alleged Power of Attorney dated 15.11.1999 of Smt. Gauribai Bhoir is a forged, fraudulent and fabricated document. All the authorities have found that the said Mutation Entry No. 49 certified on 01.12.1999 was taken on record on the basis of the said fraudulent Power of Attorney. It is settled legal position that fraud vitiates everything.

12. The decision of the Supreme Court in the case of ***Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Ors.***, reported in ***(2005) 7 SCC 605*** and particularly paragraphs 9, 10

and 11 are applicable for the present case. The relevant portion reads as under :-

> *“**9**. By “fraud” is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from ill will towards the other is immaterial. The expression **“fraud” involves two elements, deceit and injury to the person deceived**. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. [See Vimla (Dr.) v. Delhi Admn. and Indian Bank v. Satyam Fibres (India) (P) Ltd.*
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> ***10**. A **“fraud” is an act of deliberate deception with the design of securing something by taking unfair advantage of another**. It is a deception in order to gain by another’s loss. It is a cheating intended to get an advantage. (See S. P. Chengalvaraya Naidu v. Jagannath.)*
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> ***11. “Fraud” as is well known vitiates every solemn act. Fraud and justice never dwell together.**”*

(Emphasis added)

Therefore, all the authorities are justified in confirming the order of cancelling Mutation Entry No. 49.

13. The Hon'ble Minister has given more emphasis on the fact that there was delay in challenging the said mutation entry and thereby set aside the impugned orders. However, in view of the said legal position that fraud vitiates every solemn act, the said delay is not relevant. In fact, the factual position on record clearly shows that registered Agreement dated 15.11.1999 was executed in favour of Respondent Nos. 17 & 18 on the basis of the forged, fabricated and fraudulent Power of Attorney dated 15.11.1999 of Smt. Gauribai Bhoir, who had passed away on 02.07.1988. Thereafter, in spite of an order of the Civil Court prohibiting Respondent Nos. 17 & 18 from creating any third party interest, Respondent Nos. 17 & 18 sold the property by registered Sale deed dated 01.08.2012 in favour of Mr. Sonawane and Mr. Marathe. Thereafter, again, Respondent Nos. 17 & 18 sold the same property to Mr. Dilip Mutha and four others on 26.04.2016. Again Mr. Sonawane and Mr. Marathe sold the said property to the present Respondent No. 19 on 03.01.2019. The impugned order of the Hon'ble Minister of Revenue shows that it has been passed without taking into consideration very vital aspects of the matter and the same is required to be quashed and set aside.

14. It is further significant to note that although all the authorities have rejected the challenge to the cancellation of the impugned mutation entry, the Hon'ble Minister of Revenue by order dated 03.12.2020 granted interim relief. The said order has been challenged before this Court by filing Writ Petition No. 95443 of 2020. A learned Single Judge while setting aside the said order has observed as follows :-

> *"**It is pertinent to note that all the authorities below had concurrently held that the Mutation Entry No. 49 was effected on the basis of forged and fabricated sale deed**. Moreover, no interim relief was operating in favour of Respondent Nos. 17 and 18 during the pendency of the Appeal before the Divisional Collector and during the pendency of revision application before the Additional Commissioner, Konkan Division. Under such circumstances, learned Minister was required to apply his mind and record prima facie satisfaction about requisite ingredients for grant of interim relief. **Instead, learned Minister has exercised the jurisdiction in an absolutely casual and cavalier manner. Though the order appears to be innocuous, its adverse effect is clearly apparent as it is seen that based on the said interim order, the Tahsildar has recorded the names of Kishore Sonawane and other subsequent purchasers in the survey records**. The impugned order is perverse, unreasonable and against the established canons of justice. The impugned order therefore cannot be sustained.*

> *10. Under the circumstances, the following order is passed :-*
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> *(a) The Writ Petition is allowed.*
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> *(b) The impugned order dated 3/03/2020 passed by Respondent No. 20 – learned Minister for Revenue, State of Maharashtra in Revision Application No. 2720/282/PK.54/J-4 is hereby quashed and set aside.*
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> *(c)* ***The Mutation Entry No. 921 effected by learned Tahsildar, Bhiwandi pursuant to the order dated 03/03/2020 is set aside and the order dated 16/12/2013 passed by the learned Sub-Divisional Officer, Bhiwandi in RTS Revision Application No. 219/2012 is restored.****"*
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> (Emphasis added)

15. The above observations of the learned Single Judge with respect to the interim order passed by the Hon'ble Minister are also squarely applicable to the final order passed by the Hon'ble Minister.

16. For the above reasons, the Writ Petition deserves to be allowed by passing the following order.

O R D E R

(i) The order dated 15.12.2022 passed by the Hon'ble Minister of Revenue, Mantralaya, Mumbai in Revision Application No. RTS-2720/282/Pra. Kra.54/J-4 is quashed & set aside and the said Revision Application is dismissed;

(ii) The order dated 16.12.2013 passed by the Sub Divisional Officer, Bhiwandi Division, Bhiwandi, the order dated 10.02.2017 passed by the Additional Collector (Appeal), Thane as well as the order dated 22.03.2018 passed by the Additional Commissioner, Konkan Division, Konkan are confirmed and restored;

(iii) The prayer clause (b) of the Petition is granted. The said prayer clause (b) reads as under :-

> "(b) Mutation entry bearing No. 1392 mutated by learned Competent Authority, Bhiwandi with regard to the said property in favour of Respondent No. 19, pursuant to the order dated 15.12.2022 passed by the Learned Minister for the Revenue, Mantralaya, Mumbai in RTS No. 2720/282/P.K.54/ J4 be quashed and set aside and order dated 16.12.2013 passed by the Learned Sub Divisional officer, Bhiwandi in R. T. S. No. 219 of 2012 be confirmed."

17. Accordingly, the Writ Petition is allowed. Costs of Rs. 25,000/- be paid by Respondent No. 19 to the Petitioners.

18. Stand over to **10.11.2023** to report compliance of this order.

(MADHAV J. JAMDAR, J.)