IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1300 OF 2022

1. Ramesh Alidas Chawla
Aged 75 years,

2. Sagar Ramesh Chawla
Aged 35 years

Both adults, Occupation: Business
Having address at 201/202,
Jamuna Darshan, Natakwala Lane,
Borivali (West), Mumbai – 400 092. ...Petitioners

Vs.

1. Shantilal Zaverchand Jain
Proprietor of M/s. Varsha Export
Age-Adult, Occupation: Business
Address- Varsha Building, 13,
Adarsh Society, Ramchandra
Lane Extension, Malad (West),
Mumbai - 400 064

2. Bilal Rasool Patel
Age: Adult, Occupation: Business,
Residing at Kashi-Mira,
Mira Bhayander Road,
Opposite Raees Hotel,
Bhayander (East), District-Thane

3. Additional Commissioner,
Konkan Division

4. Additional Collector,
Thane

5. Sub-Divisional Officer,
Thane

6. Tehsildar,
Thane

7. The State of Maharashtra
Through Minister for Revenue ....Respondents

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WITH
INTERIM APPLICATION NO.13183 OF 2023
IN
WRIT PETITION NO.1300 OF 2022

Juber Ayyub Asamdi & Anr. ....Applicants
IN THE MATTER BETWEEN
Ramesh Alidas Chawla & Anr. ....Petitioners
V/S
Shantilal Zaverchand Jain & Ors. ....Respondents

...

Mr. Chandraprakash K. Tripathi for the Petitioners.
Mr. Suryajeet P. Chavan with Ms. Vishakha Shelar i/b M/s. One Legal Bay LLP for Respondent No.1.
Mr. P.P. Pujari, AGP for the Respondent Nos.3 to 7State.

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**CORAM : SANDEEP V. MARNE, J.**
**RESERVED ON** : DECEMBER 08, 2023.
**PRONOUNCED ON** : DECEMBER 13, 2023.

**JUDGMENT:**

1 ***Rule***. Rule is made returnable forthwith. By consent of the learned Counsels appearing for the parties the Petition is taken for final hearing and disposal.

2 Petitioners are aggrieved by Order passed by the Sub Divisional Officer, Thane (**SDO**) in RTS Appeal No.148 of 2018 filed by Respondent

No.1 directing removal of their names from revenue records by setting aside Mutation Entry No.2183. Petitioners' Appeal before the Additional Collector, Thane, first Revision before the Additional Commissioner (Konkan) and second Revision before Minister-Revenue, are rejected. The Orders passed by SDO, Addl. Collector, Addl. Commissioner and Minster-Revenue are under challenge in the present Petition.

3 Facts of the case are that the land bearing Survey No.152, Hissa No.2, admeasuring 610 square meters, and Survey No.152, Hissa No.3, admeasuring 580 square meters, situated at village Ghodbundhar, Taluka and District Thane (**land**), is the subject matter of Petition. Petitioners purchased the land from Respondent No.2-Bilal Rasool Patel by virtue of registered Deed of Conveyance dated 15 October 2011. On the strength of the said registered sale deed, names of the Petitioners came to be mutated to the record of rights of the land vide Mutation Entry No.2183, certified on 26 February 2012.

4 Respondent No.1 claims that by unregistered sale deed dated 27 April 1995, he purchased the land and that since the sale deed was unregistered, a declaration was executed and registered on 12 September 2007.

5 Respondent No.1 has instituted a Special Civil Suit No.545 of 2015 against Petitioners and Respondent No.2 in the Court of Civil Judge

Senior Division, Thane, for a declaration that he is the owner of the land by virtue of sale deed dated 27 April 1995 and declaration dated 12 September 2007. He has also sought the relief of declaration of Deed of Conveyance dated 15 October 2011 executed in favour of Petitioners to be fraudulent, illegal and void. During pendency of the suit, Respondent No.1 filed RTS Appeal No.148 of 2018 before the Sub Divisional Officer, Thane, challenging Mutation Entry No.2183 dated 26 February 2012 by which the names of Petitioners were mutated to the record of the rights of land. By order dated 15 December 2018 delay in filing the Appeal was condoned. The Sub Divisional Officer therefore proceeded to pass order dated 5 February 2019 allowing the Appeal filed by Respondent No.1 and directed cancellation of Mutation Entry No.2183. Petitioners filed RTS Appeal No.49 of 2019 before the Additional Collector, Thane which came to be rejected by Order dated 13 September 2019. Petitioners filed First Revision before the Additional Commissioner, Konkan, which also came to be rejected by Order dated 6 March 2020. Petitioners thereafter preferred Second Revision before the Minister-Revenue, which came to be rejected by Order dated 31 December 2020. Aggrieved by the Orders passed by the Sub Divisional Officer, Additional Collector, Additional Commissioner and Minister-Revenue, Petitioners have filed the present Petition.

6 Mr. Tripathi, the learned counsel appearing for the Petitioners would submit that no right, title or interest is created in favour of Respondent No.1 by virtue of unregistered Sale Deed allegedly executed

in the year 1995. That the declaration is a unilateral document executed by Respondent No.1, which cannot have the effect of registering the unregistered Sale Deed. On the contrary, the Petitioners have purchased the suit property through registered Conveyance Deed dated 15 October 2011. That Mutation Entry No.2183 was correctly effected by taking a note of registered Conveyance Deed executed in favour of the Petitioners. That after execution of registered Conveyance Deed dated 15 October 2011, Petitioners are in continuous undisturbed possession of the land in question. That the Petitioners have filed Writ Petition No.7695 of 2015 seeking removal of encroachment on the land through Mira Bhayander Municipal Corporation in which this Court gave various directions to the Municipal Corporation.

7 Mr. Tripathi would further submit that Respondent No.1 had earlier filed Regular Civil Suit No.385 of 2009 against the original vendor which came to be dismissed for want of prosecution. That he has now instituted Special Civil Suit No.545 of 2015 seeking declaration of ownership on the basis of unregistered Sale Deed and registered Declaration. That he has also challenged the Conveyance Deed executed in favour of the Petitioner. That until the suit is decided right, title and interest of the Respondent No.1 and in question cannot be established. That during pendency of the suit, there was no necessity for the SDO to entertain belated Appeal filed by Respondent No.1 for the purpose of disturbing the mutation entry effected in the year 2012. That the Orders passed by the Sub Divisional Officer, Additional Collector, Additional

Commissioner and Minister-Revenue, suffers from non-application of mind. That Respondent No.1 made false statements before the Sub Divisional Officer that he acquired knowledge of effecting of mutation entry on 11 July 2018 when infact the suit was already instituted by him in the year 2015 to challenge Petitioners' Conveyance Deed. He would pray for setting aside the Orders passed by the various authorities.

8 *Per contra,* Mr. Chavan, the learned counsel appearing for Respondent No.1 would oppose the Petition and support the Orders passed by the Revenue Authorities and the State Government. He would submit that delay in filing the Appeal was already condoned by the Sub Divisional Officer by order dated 15 December 2018, which has attained finality and that therefore Petitioners cannot raise the issue of delay. That Respondent No.1 has acquired right, title and interest in respect of the land in question by way of a prior document in the form of Sale Deed and registered Declaration of 2007. That it was the duty of the revenue authorities to take cognizance of the registered document under Section 154 of the Maharashtra Land Revenue Code (**MLR Code**) for effecting mutation entry in the name of Respondent No.1. That since the document in favour of Respondent No.1 is executed at prior point of time, subsequently executed Conveyance Deed in favour of the Petitioners would not have the effect of conferring any title on them.

9 Mr. Chavan would further submit that this Court need not intervene in the concurring findings recorded by three Revenue Authorities as well

as by the State Government after taking into consideration the entire facts of the case. That the rights and entitlements between the parties would ultimately be decided by the Civil Court and therefore till such determination, the Orders passed by the Revenue Authorities and State Government are required to be sustained.

10 I have considered the submissions canvassed by the learned counsel appearing for the rival parties and I have also perused the records of the case.

11 Petitioners and Respondent No.1 claim right, title and interest in the land in question on the strength of documents executed in their favour. So far as the Petitioners are concerned, title in the property is claimed on the strength of registered Conveyance Deed dated 15 October 2011 executed by Respondent No.2-Bilal Rasool Patel. On the strength of said registered Conveyance Deed, Mutation Entry No.2183 was effected mutating the names of Petitioners to the record of rights of the land. On the contrary, Respondent No.1 claims that the land was sold to him vide unregistered Sale Deed dated 27 April 1995 executed by Premlata Mehra, Rajkumar Mehra and Manoj Mehra with the consent of Mukesh Mehra and Chetan Mehra. Respondent No.1 claims that he was put in possession of the land and he was occupying the warehouse/shed constructed thereon and paying taxes to Mira Bhayander Municipal Corporation. It is further claimed by Respondent No.1 that Bilal Rasool Patel was disturbing possession of Respondent No.1, on account of which

Respondent No.1 filed Regular Civil Suit No.385 of 2009 before Civil Judge Junior Division, Thane, against Respondent No.2. He further claims that Respondent No.2 apologized for his conduct and therefore Respondent No.1 did not prosecute the suit further which came to be dismissed for default. It appears that Respondent No.1 has executed a unilateral Declaration stating that he has purchased the land in question. The said Declaration came to be registered on 12 September 2007. It is on the strength of the unregistered Deed dated 27 April 1995 and registered Declaration dated 12 September 2007 that Respondent No.1 claims right, title and interest in the land.

12 Respondent No.1 has instituted Special Civil Suit No.545 of 2015 with following prayers:

> "31. The plaintiff therefore prays:
>
> (a) That this Hon'ble be pleased to declare that the Sale deed dated 27/04/1995 r/w. declaration dated 12/09/2007 duly registered with registrar of assurance under the Indian Registration Act is a valid and having binding effect upon the defendants, their servants, agents or any person claiming through them in respect of the suit property described as Survey No.152, Hissa No.2, adm area 728 Sq. Yd, equivalent to 807 Sq. Mtr and bearing Survey No.152. Hissa No.3 adm. area 885 Sq Yd., equivalent to 581 Sq. Mtrs aggregating to 1401 Sq. yds equivalent to 1188 Sq. Mtrs in the Registration District and Sub District Thane, along with shed adm. 101'.5 x 54'.8 bearing House No.393 on plot being Survey No.152 Hissa No.2 & 3.
>
> (b) The this Hon'ble Court be pleased to declare deed of conveyance dated 15/10/2011 executed by the defendant no.3 in favour of the defendant no.1 & 2 is a fraudulent, illegal, shame & bogus document in respect of the suit property i.e. Survey No.152, Hissa No.2, adm area 728 Sq. Yd, equivalent to 807 Sq. Mtr and bearing Survey No.152. Hissa No.3 adm. area 885 Sq Yd., equivalent to 581 Sq. Mtrs aggregating to 1401 Sq. yds equivalent to 1188 Sq. Mtrs in the Registration District and Sub District Thane, along with shed adm. 101'.5 x 54'.8 bearing House No. 393 on plot being Survey No. 152 Hissa No.2 & 3 and the same be cancelled and quashed.

(c) That this Hon'ble Court by its mandatory order & direction direct the defendants, their servants, agents or any person claiming through them to remove themselves from the suit property i.e. Survey No.152, Hissa No.2, adm area 728 Sq. Yd, equivalent to 807 Sq. Mtr and bearing Survey No.152. Hissa No.3 adm. area 885 Sq Yd., equivalent to 581 Sq. Mtrs aggregating to 1401 Sq. yds equivalent to 1188 Sq. Mtrs in the Registration District and Sub District Thane, along with shed adm. 101'.5 x 54'.8 bearing House No.393 on plot being Survey No. 152 Hissa No.2 & 3.

(d) That pending the hearing final disposal of the suit the Registrar/ and or any officer of this Hon'ble Court be appointed as a Court Receiver of the suit property i.e. Survey No. 152, Hissa No. 2, adm area 728 Sq. Yd, equivalent to 807 Sq. Mtr and bearing Survey No. 152. Hissa No. 3 adm. area 885 Sq Yd., equivalent to 581 Sq. Mtrs aggregating to 1401 Sq. yds equivalent to 1188 Sq. Mtrs in the Registration District and Sub District Thane, along with shed adm. 101'.5 x 54'.8 bearing House No.393 on plot being Survey No.152 Hissa No. 2 & 3 with all power as contemplate under Order XL of the Code of Civil Procedure, 1908 and this Plaintiff be appointed as an agent of the Court Receiver with further direction to remove the defendants from the aforesaid suit property and put the Plaintiff in possession of the suit property.

(e) That pending the hearing final disposal of the suit the defendants, their servants, agents or any person claiming through them be restrained by an order and injunction of this Hon'ble Court from creating third party interest in any manner and/or to enter into any agreement for development purpose in respect of suit property i.e. Survey No.152, Hissa No.2, adm area 728 Sq. Yd, equivalent to 807 Sq. Mtr and bearing Survey No.152. Hissa No.3 adm. area 885 Sq Yd., equivalent to 581 Sq. Mtrs aggregating to 1401 Sq. yds equivalent to 1188 Sq. Mtrs in the Registration District and Sub District Thane, along with shed adm. 101'.5 x 54'.8 bearing House No.393 on plot being Survey No.152 Hissa No.2 & 3.

(f) That pending the hearing final disposal of the Suit the defendants be ordered and directed to pay compensation in terms of measne profit @ 80/- per sq. ft per month till the decision of the suit and/or pending the suit the defendants be ordered and directed to pay measne profit till recovery of possession.

(g) That ad-interim and interim relief in terms of prayer clause (d), (e) &

(f) be granted.

(h) That the cost of the suit be provided for.

(i) That such other and further reliefs as this Hon'ble court may deem fit and proper under the fact and Circumstances of the case be granted.'

13 Thus, the claim of Respondent No.1 about his title in the land would be decided by the Civil Court in Special Civil Suit No.545 of 2015.

The only issue is whether the Respondent-Authorities ought to have disturbed Mutation Entry No.2183 certified on 26 February 2012 during pendency of proceedings before the Civil Court. Here the conduct of Respondent No.1 in filing RTS Appeal No.148 of 2018 needs to be considered. He filed the said Appeal on 3 August 2018, by which time he had already instituted a Special Civil Suit No.545 of 2015. He had acquired the knowledge of Conveyance Deed executed in favour of the Petitioners before filing of the suit. He had notice of possession of the land by Petitioners on 15 February 2014. He admits in the suit that he was dispossessed from the suit property on 15 August 2015. However when Respondent No.1 filed RTS Appeal No.148 of 2018 he made a false representation before the Sub Divisional Officer that he had never applied for 7/12 extracts and that for the first time he acquired knowledge upon Mutation Entry No.2183 on 11 July 2018. It is highly unbelievable that Respondent No.1, who had acquired knowledge about execution of Deed of Conveyance before 2015 and had noticed possession by Petitioners in the year 2014 and was admittedly dispossessed in the year 2015, was unaware of certification of Mutation Entry No.2183 till 2018.

14 Also of relevance is the fact that Respondent No. 1 was pursuing Special Civil Suit No.545 of 2015 and had sought interim injunction therein. Before he could establish his title, why he made an attempt to dislodge the names of the Petitioners from revenue records by filing RTS Appeal No.148 of 2018 on 3 August 2018 is difficult to comprehend. It

must be noted here that the name of Respondent No.1 was never mutated to the record of rights of the land. Therefore, why he wanted names of the Petitioners removed from the revenue records by filing Appeal in the year 2018 is perplexing. In my view, Respondent No.1 could not have approached revenue authorities seeking deletion of names of Petitioners from revenue records when his suit seeking title to the properties was pending since the year 2015. This is more so because name of Respondent No. 1 was never reflected in revenue records nor is reflected after deletion of names of Petitioners.

15. It must also be observed here that SDO has noticed the factum of pendency of the suit filed by Respondent No.1 but has erroneously proceeded to entertain the application filed by Respondent No.1. The SDO has failed to appreciate that by seeking deletion of names of Petitioners from revenue records, the name of Respondent No.1 was not to be mutated. The SDO's order dated 5 February 2019 merely directs removal of the names of Petitioners by setting aside Mutation Entry no.2183. The said order does not direct mutation of name of Respondent No.1.

16 Perusal of the order passed by SDO would indicate that the main reason for setting aside Mutation Entry No.2183 is execution of documents in favour of Respondent No.1 at prior point of time than the Petitioners. This is the exact issue which is pending before the Civil Court and therefore SDO ought to have steered clear of the controversy pending

before Civil Court. SDO has also recorded finding that there was illegality in certification of earlier Mutation Entries by which the name of Respondent No.2-Bilal Rasool Patel was recorded and that therefore Mutation Entry No.2183 based on document executed by Bilal Rasool Patel is erroneous. In my view, right, title and interest in the land cannot be decided merely on the basis of revenue entries especially when civil suit is pending between the parties.

17 The Additional Collector, Additional Commissioner and Minister-Revenue, have failed to notice that the Revenue Authorities were essentially determining the very same issue which is pending before the Civil Court, which will ultimately decide various issues as to whether the Respondent No.1 has acquired title in the suit property by virtue of unregistered document in respect of which unilateral Declaration is registered in the year 2007. Till such issues are determined, the revenue authorities ought not to have gone into the issue of supremacy of documents executed in favour of Petitioners and Respondent No.1.

18 In ordinary course, this Court would not interfere in concurrent findings recorded by four revenue authorities including the State Government. However, the manner in which Respondent No.1 filed RTS Appeal No.148 of 2018 seeking removal of names of Petitioners from revenue records during pendency of the suit filed by him coupled with non-mutation of name of Respondent No. 1 consequent to deletion of names of Petitioners, would be a fit ground for this Court to interfere in the Orders passed by the revenue authorities.

19 Reliance by Mr. Chavan on judgment of the Apex Court in ***Suraj Bhan and others vs. Financial Commissioner & others,*** (2007) 6 SCC 186, far from assisting his case, actually militates against him. In paragraph 9 of the judgment, the Apex Court has held as under:

> 9. There is an additional reason as to why we need not interfere with that order under Article 136 of the Constitution. It is well settled that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. It is settled law that entries in the revenue records or *jamabandi* have only "fiscal purpose" i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent civil court (vide *Jattu Ram v. Hakam Singh*, (1993) 4 SCC 403 : AIR 1994 SC 1653). As already noted earlier, civil proceedings in regard to genuineness of will are pending with the High Court of Delhi. In the circumstances, we see no reason to interfere with the order passed by the High Court in the writ petition.

20 Thus, the revenue authorities must yield to the findings recorded by Civil Courts. Since the suit between the parties relating to the land is pending, the revenue authorities ought to have exercised restraint rather than determining as to whose documents confer better title in respect of the land.

21 The Writ Petition accordingly succeeds. Order dated 5 February 2019 passed by SDO, Order dated 13 September 2019 passed by Additional Collector, Order dated 6 March 2020 passed by the Additional Commissioner and Order dated 31 December 2020 passed by Minister-Revenue are set aside. The Writ Petition is allowed in above terms. Rule is made absolute.

22 In view of the disposal of the Writ Petition, the Interim Application does not survive and the same is disposed of accordingly.

**(SANDEEP V. MARNE, J.)**