11 October 2023.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7816 OF 2018

SHRI. SUBHASH AMOLAKCHAND GANDHI, Age : 71 years, Occ: Business, of Mumbai, Indian Inhabitant, having office at 15./16, Bhupen Chambers, Ground Floor, 9 Dalal Street, Fort, Mumbai-400 001, and residing at 47, Dr. Gopalrao Deshmukh Marg, (Peddar Road), Opp. HSBC Bank, Mumbai-400 026. **…PETITIONER**

: VERSUS :

1. THE SUPERINTENDENT, MUMBAI CITY SURVEY AND LAND RECORDS, Old Custom House, 1st Floor, Shahid Bhagat Singh Marg, Fort, Mumbai-400 001.

2. THE STATE OF MAHARASHTRA, Through the Principal Secretary Revenue and Forest Department, Mantralaya, Mumbai-400 032. **...RESPONDENTS**

Mr. Chetan G. Patil, for the Petitioner.

Mr. P.P. Pujari, AGP for Respondent Nos.1 and 2.

CORAM : SANDEEP V. MARNE, J.

DATED : 11 OCTOBER 2023.

ORAL JUDGMENT:

1. ***Rule***. With the consent of the parties, the Petition is taken up for hearing forthwith.

2. The challenge in the present Petition is to the order dated 6 February 2018 passed by the Maharashtra Revenue Tribunal rejecting Petitioner's Appeal filed challenging the decision of the Superintendent of Land Records dated 31 October 2015. Petitioner has twin grievances of (i) non-mutation of his name to the record of rights in respect of land and (ii)refusal on the part of the Respondents in subdividing the same and issuance of separate property card extracts.

3. The Petitioner has purchased the land bearing Plot No. 6A vide deed of conveyance dated 23 October 1997 from Mr. Latif Mohamed Hashambhoy and Mr. Gulamali Mohamed Hashambhoy who are the Administrators of the estate of one, Mr. Habib Mohamed Hashambhoy. The Deed of Conveyance has been registered in the office of Sub-Registrar of Assurances, Mumbai. Similarly, it appears that the Petitioner has also purchased undivided share in the land bearing Plot Nos. 7-B and Plot No. A vide registered Deed of Conveyance dated 18 December 1997 from one,

Mr. Govind Mathurdas Kapadia. Petitioner has thereafter purchased other half undivided share in land bearing Plot Nos. 7-B and A vide registered Deed of Conveyance dated 19 December 1997 from the heirs and legal representatives of Mr. Nooruddin Nomanbhai Malbari. This is how Petitioner claims ownership in respect of Plot Nos. 6A, 7-B and A in C.S. No.669 (Part) Hashambhoy Park, of Malabar and Cumballa Hills Division in Mumbai District.

4. After purchase of the said three plots, Petitioner applied to the City Survey Officer for recording his name in the property cards. He also submitted another application for subdivision of Plot Nos. 6A, 7B and A and for issuance of separate property cards. It appears that his name has been mutated to property card of Plot Nos. 7B and A. By order dated 31 October 2015, the City Survey Officer, Mumbai has rejected the request of the Petitioner for recording his name in respect of Plot No. 6A on the ground that the Petitioner has failed to obtain prior permission of the Court before executing Deed of Conveyance dated 23 October 1997 as the Letters of Administration specifically prohibited the Administrator from transferring the plots without prior permission of the Court. So far as the second request for sub-division of the Plots is concerned, the same is not specifically rejected but the Petitioner has been directed to pay the necessary measurement fees and to submit necessary documents so as to process his request.

5. I have heard Mr. Patil, the learned counsel appearing for the Petitioner. He would draw my attention to the provisions of Section 307 of the Indian Succession Act, 1955. He would submit that under Clause-(iii) of sub-section (2) of Section 307, disposal of a property by an Executor or Administrator in contravention of Clauses (i) or (ii) becomes voidable at the instance of any person interested in the property. He would submit that so far, no person has instituted any proceedings questioning the correctness of the Conveyance dated 23 October 1997. He would submit that the transaction is not void, but merely voidable. In support of his contention, he would rely upon the judgment of the Apex Court in **Dhurandhar Prasad Singh Vs. Jai Prakash University and Ors.** (2001) 6 SCC 534 He would also place reliance on the judgment of this Court in **Gotiram Nathu Mendre Vs. Sonabai w/o. Savleram Kahane and Others,** AIR 1970 Bom 753. Mr. Patil would further submit that in any case it is the bounden duty of the Revenue Authorities to record effect of any registered document and it is not for them to undertake enquiry into the correctness of that document. In support of his contention, he would place reliance on the judgment of this Court in **Shri. Shrikant R. Sankanwar & Ors. V/s. Shri. Krishna Balu Naukudkar** 2003 (1) ALL MR 1161. So far as the other grievance of subdivision of the plots is concerned, he would draw my attention to various documents received under the Right to

Information Act to suggest that the subdivision has actually been sanctioned and the Petitioner is ready to deposit the measurement fees. That despite of compliance on the part of Petitioner, the Respondents are illegally not effecting the subdivision and issuing separate property cards.

6. *Per-contra*, Mr. Pujari, the learned AGP appearing for the State Government would oppose the petition and support the orders passed by the Tribunal and the Superintendent of Land Records. He would submit that so far as Plot No.7-B and A are concerned, the name of the Petitioner has already been recorded in the property card register relating to C.S. No.669 (Part). That his name cannot be recorded in respect of land bearing plot No.6A as the transaction executed in his favour is in violation of provisions of Section 307 of the Indian Succession Act. He would submit that the Administrator has no authority to transfer the land without seeking prior permission of the Court. The Petitioner has admittedly not obtained prior permission of the Court before executing the deed of conveyance dated 23 October 1997 and since the transaction itself is invalid, no Mutation Entry can be effected based on such invalid transaction. So far as sub-division of the plots is concerned, since Plot No.6A cannot be mutated in the name of the Petitioner, his request for effecting sub-division in respect of Plot No.6A, 7B and A, cannot be entertained. He would pray for dismissal of the petition.

7. I have considered the submissions canvassed by the learned counsels appearing for the parties.

8. It appears that the Petitioner has purchased three plots of land bearing Nos. 6A, 7B and A. In respect of purchase of Plot Nos. 7B and A, there is no dispute and it appears that Petitioner's name has already been recorded in the property card register in respect of Plot Nos. 7-B and A. The entire dispute is with regard to the land bearing Plot No.6A. That plot has been purchased by the Petitioner vide Deed of Conveyance dated 23 October 1997 from Mr. Latif Mohamed Hashambhoy and Mr. Gulamali Mohamed Hashambhoy. The said two persons were appointed as administrators by this Court in respect of the estate of one Mr. Habib Mohamad Hashambhoy. The power of the Executor or Administrator to dispose of the property is dealt with under Section 307 of the Indian Succession Act, 1925. Section 307 reads thus :

> 307(1) Subject to the provisions of sub-section (2), an executor or administrator has power to dispose of the property of the deceased, vested in him under Section 211, either wholly or in part, in such manner as he may think fit.
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> (2) If the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jain or an exempted person, the general power conferred by sub-section (1) shall be subject to the following restrictions and conditions namely:-
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> (i) The power of an executor to dispose of immovable property so vested in him is subject to any restriction which may be imposed in

this behalf by the will appointing him unless probate has been granted to him and the Court which granted the probate, permits him by an order in writing, notwithstanding the restriction, to dispose of any immovable property specified in the order in a manner permitted by the order.

(ii) An administrator may not, without the previous permission of the. Court by, which the letters of administration were granted

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immovable property for the time being vested in him under Section 211, or
(b) lease any such property for a term exceeding five years.

(iii) A disposal of property by an executor or administrator in contravention of clause (i) or clause (ii), as the case may be, is voidable at the instance of any other person interested in the property.

9. Thus in respect of the properties of a Hindu, Muhammadan, Buddhist, Sikh or Jain or an exempted person, the power conferred on Executor or Administrator to dispose of the property is subject to the condition that the same cannot be transferred without previous permission of the Court, by which Letters of Administration were granted. However, Clause-(iii) of sub-section (2) of Section 307 provides that disposal of any property by an Executor or Administrator in contravention of the condition requiring prior permission of the Court becomes voidable at the instance of any other person interested in the property. Thus, the transaction does not become void but merely becomes voidable. If the transaction was to be void, the same was not to be acted upon and can be set aside or ignored even in a collateral proceeding.

However, this is case involving a voidable transaction. In respect of voidable transaction, a person claiming adverse title/interest in the property is required to institute a suit seeking declaration to the effect that the transaction effected has been rendered illegal on account of contravention of any condition. The law in this regard is well settled by the judgment of the Apex Court in ***Dhurandhar Prasad Singh*** (supra) relied upon by Mr. Patil. In para-22, the Apex Court held as under :

> 22. Thus the expressions “void and voidable” have been the subject-matter of consideration on innumerable occasions by courts. The expression "void" has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a g minor without being represented by a next friend. Such a transaction is a good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as the apparent state of affairs is the real state of affairs and a party who alleged otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given, a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases where

legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.

10. The effect of a voidable transaction effected in contravention of the condition specified in Clause-(iii) of sub-section (2) of Section 307 is considered by the judgment of this Court in ***Gotiram Nathu Mendre*** (supra) in which this Court held as under :

> 16. In the final analysis, what the Full Bench held was that where a sale was voidable at the instance of a person interested and there is an article in the Limitation Act applicable to such a suit, he can only get it set aside by a suit. In the Indian Limitation Act, 1908 there was Article 91 for setting aside voidable sales to which no other specific article was applicable. In the Limitation Act, 1963 there is Article 59. The position in law now, therefore, is that where a sale is voidable at the instance of a person interested he can only get it set aside by a suit. This will however not apply to a reversioner challenging a sale by a limited owner. A reversioner may treat such; a sale as a nullity without the intervention of a Court. A person other than a reversioner must sue to set aside a voidable sale even if he is not a party to the instrument or a person claiming under a person who has executed the instrument and even if the onus of proving circumstances establishing the void ability of the instrument is not upon him, but on the person affirming the instrument.
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> 17. In the present case a suit to set aside the sale deed dated 16th June, 1937 would have been governed by the residuary Article 91 of Schedule I to the Indian Limitation Act, 1908. The said transfer being both voidable in terms of Section 307 of the Indian Succession Act and being governed by Article 91 of the Indian Limitation Act, 1908, it was necessary for Shivnath to have it set aside by a suit within three years of Shivnath's attaining majority, which he did on 1st June, 1954. Since Shivnath has not got the sale deed set aside, I am afraid, a suit for possession by him is not maintainable.

> 18. The Full Bench decision in AIR 1920 Bom. 1 was referred to in the case of Gangadhar Balkrishna v. Dattatraya Baliram, AIR 1953 Bom. 424 where it was held that an agreement entered into in contravention of Order 32, Rule 7(1) is not altogether void, but is voidable only at the option of the minor and if it is so voided, before the agreement was made. But if the minor does not avoid the agreement, the other parties were bound by the agreement, and it would be fully efective against them. In the above case the judgments of Bombay High Court in ILR 42 Bom. 638 : (AIR 1918 Bom. 188 (F.B.)) and the judgment of the Privy Council in (1907) ILR 34 Cal. 329 (PC) were also discussed and thereafter their Lordships came to the conclusion that it was necessary for the plaintiff to have sued within three years of his attaining majority to set aside the impugned compromise. In view of these two judgments of the Bombay High Court, I am of the view that in this case also, it was necessary for Shivnath to file suit within three years of Shivnath attaining majority.

11. Thus, the law is now well settled that in respect of any voidable transaction, the proceedings are required to be instituted for the purpose of seeking a declaration in respect of such a transaction. As of now, there is nothing on record to indicate that any person has instituted a suit for a declaration in respect of the transaction involved in the Deed of Conveyance dated 23 October 1997.

12. The request made by the Petitioner is only for the purpose of mutation of his name to the revenue records. It has been repeatedly held in catena of judgments that revenue entries are not

determinative of final adjudication of rights and entitlements of parties. In this connection, reference can be made to the judgment of this Court in ***Shri. Shrikant R. Sankanwar*** (supra) relied upon by Mr. Patil in which this Court has held in paras-9 and 10 as under :

> 9. Bare reading of Sections 149 and 150 of the said Code and the said Rules would therefore disclose that the powers which are to be exercised by the Revenue Officers in relation to the mutation of entries in the revenue records pertaining to the immovable properties in the villages are for the purpose of updating such revenue records in respect of rights acquired by the parties in different modes specified under the said Sec. 149. Such right might have been acquired by way of any document executed by the parties and duly registered or on account of pronouncement of decision by the Courts or authorities competent to deal with the matters pertaining to the rights and interests of the parties in relation to the immovable properties. Neither Section 149 nor Section 150 empowers the revenue authorities acting thereunder and according to the procedure prescribed under the said Rules to adjudicate upon the rights of the parties or their title to the immovable properties. The said provisions of law only deal with the revenue records being updated in relation to the immovable properties for the purpose of assessment of revenue and collection thereof.
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> 10. The Sub Sec.(3) of Sec 150 of the said Code clearly speaks of "any objection to any entry made under sub-section (1) in the register of mutations". Sub-sec. (6) thereof deals with the powers of the revenue authorities to test "Entries in the register of mutations" and "if found correct or after correction" the same to "be certified..................in such manner as may be prescribed". Thus, the objections which are to be entertained and to be dealt with under Section 150 of the said Code by such Revenue Officers are in relation to the entries proposed to be made pursuant to acquisition of rights by the parties intimated under the report made by the parties or by the registering authorities to the Talathi and not in relation to the right itself of the parties in or to the immovable properties. The enquiry pursuant to such reports to the Revenue Officers, has to be restricted to the matters pertaining to the mutation of the entries in the revenue records. Such enquiry cannot travel beyond the power given to the authorities under the said provision of law. Such power being restricted to ascertain the veracity of the proposed entry,

> based on the document produced by the parties, the authorities cannot adjudicate upon the rights acquired by the parties to such properties in respect of which the mutation of entry is requested for. In other words the Authorities in such enquiry will have to ascertain as to whether documents produced before such authorities apparently disclose acquisition of right in favour of the applicant in a manner and of the nature claimed by him or her and not whether the applicant is in fact entitled to claim such right in or to the property. The power to adjudicate regarding such issue pertaining to right of the parties to the immovable properties vests in the Courts and the Authorities duly empowered to enquire and adjudicate about the same and not with the revenue officers acting under Section 149 and 150 of the Code and the provisions of the said e Rules. In brief, therefore, the enquiry o contemplated under section 150 in relation to e application for mutation of entries is to of ascertain whether the document produced Es reveal acquisition of right stated to have been "acquired in the land in respect of which mutation of entry is sought for, and does not empower such Authorities to adjudicate upon the title and rights of the parties to the h immovable properties. In fact the entire proceedings prescribed under Section 149 and 150 of the said Code and the procedure prescribed for the same under the said Rules relate to the dispute pertaining to the mutation and certification of entries in the register depending upon the documents which are produced by the parties and not to decide about the rights of the parties to such properties.

13. Thus, on mere mutation of Petitioner's name to the revenue records, rights of any person, who is interested in seeking declaration in respect of transaction involved in the Deed of Conveyance dated 23 October 1997 would not be extinguished. If in future, any person claiming adverse title or interest in respect of Plot No.6-A, secures a declaration that the Deed of Conveyance dated 23 October 1997 is invalid, such declaration would prevail over the revenue entry made by Respondents at Petitioner's instance. I am therefore of the view that since the transaction involved in Deed of Conveyance dated 23 October 1997 is not void, but merely

voidable and in absence of any declaration secured or sought, there should be no difficulty for the revenue authorities to mutate the name of the Petitioner in the revenue records pertaining to Plot No.6A.

14. So far as second request for sub-division of Plots No.6A, 7B and A is concerned, the main reason why the proposal is not processed and finalized is apparently on account of refusal by the authorities to mutate Petitioner's name in respect of Plot No.6A. Once mutation of name of Petitioner in respect of Plot No.6A is effected, I do not see any difficulty why the Respondents cannot process the proposal for subdivision of the three plots by issuing separate property cards. From various documents obtained by Petitioner under the Right to Information Act, 2005, it appears that the authorities are not averse to sanctioning the proposal for sub-division of the plots and issuance of separate property cards. Petitioner has already expressed his willingness to cooperate for measurement of the three plots and to pay the necessary measurement fees.

15. The present petition accordingly succeeds and I proceed to pass the following order :

(i)The Order dated 6 February 2018 passed by the Maharashtra Revenue Tribunal as well as order dated 31

October 2015 passed by the Superintendent, Mumbai City Survey and Land Records are set aside.

(ii) The Superintendent, Mumbai City Survey & Land Records is directed to process the proposal for mutation of Petitioner's name in the revenue records pertaining to Plot No. 6A, C.S. No.669 (Part) and to effect the mutation entry within a period of eight weeks from today.

(iii) Upon mutation of Petitioner's name in respect of Plot No.6A, Respondent No.1 shall process the proposal for subdivision of Plots No.6A, 7B and A. The Petitioner to pay the necessary measurement fees to Respondent No.1 and after carrying out the necessary measurements, Respondent No.1 shall take a final decision with regard to the proposal for subdivision and issuance of separate property cards in respect of Plot Nos. 6A, 7Band A within a period of four months from the date of mutation of Petitioner's name in respect of Plot Nos.6A.

16. With the above directions, the Writ Petition is **allowed**. Rule is made absolute.

NEETA SHAILESH SAWANT
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Date: 2023.10.18 16:36:47 +0530

SANDEEP V. MARNE, J.