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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2082 OF 2023

WITH

WRIT PETITION NO.2600 OF 2022

Shrichand Rajaram Kukreja ... Petitioner

vs.

The State of Maharashtra and Ors. ... Respondents

WITH

WRIT PETITION NO. 7510 OF 2022

Shrichand Rajaram Kukreja ... Petitioner

vs.

Kisan Shankar Bhalerao and Anr. ... Respondents

Mr. G. S. Godbole, Senior Advocate a/w. Mr. Nikhil Patil i/b. Mr. P. M. Jadhav for the Petitioners in above three Writ Petitions.

Mr. Vijay Killedar a/w. Mr. Sumedh Modak for Respondent No. 4 in WP/2082/2023.

Mr. V. S. Gokhale 'B' Panel counsel for the State in WP/2600/2022 and WP/2082/2023 for Respondent Nos. 1 to 3.

Ms. Minal Chandnani a/w. Mr. Bhavesh Sawant i/b. Jaiwant S. Chandnani & Associates for Respondent No. 5 in WP/2082/2023 for Respondent No. 1 in WP/7510/2023 and for Respondent No. 7 in WP/2600/2022.

CORAM : R. D. DHANUKA &

GAURI GODSE, JJ.

DATED : 17 APRIL, 2023

P C. :-

1. Writ Petition No. 2600 of 2022 is filed by the Petitioner inter alia praying for Writ of Mandamus directing the parties to restore the status quo *ante* dated 22nd October 2021 i.e. the date of filing of RTS Revision Application No. 117 of 2021 before the Additional Collector in respect of the 7/12 extract of the suit property by restoring the name of the Petitioner.

2. Writ Petition No. 7510 of 2022 is filed by the Petitioner inter alia praying for quashing and setting aside order dated 11th December 2021 passed by the Lok Adalat and the award dated 11th December 2021 made under the provisions of The Legal Services Authorities Act, 1987 in RCS No. 564 of 2021 as fraudulent and/or collusive and is nullity and therefore illegal and void.

3. Writ Petition No. 2082 of 2023 is filed by the Petitioner inter alia praying for Writ of Certiorari for quashing and setting aside order dated 10th June 2022 passed by the learned Minister in RTS Revision No. 2722 of 2022 and also prays for Writ of Certiorari for

quashing and setting aside the order dated 8th February 2021 passed by Respondent No. 3 i.e. Sub-Divisional Officer, Kalyan (“SDO”) in RTS Appeal No. 24 of 2021. The Petitioner has also prayed for Writ of Certiorari for quashing and setting aside order dated 30th September 2021 passed by the learned Collector, Thane in RTS Revision No. 07 of 2021.

4. By consent of parties, all the Writ Petitions were heard together. Some of the relevant facts briefed in these Petitions are as follows; it is the case of the Petitioner that he is the owner of the properties bearing Survey No. 4, Hissa No. 2 and Survey No. 4, Hissa No. 4 situated at Village Varap, Tal. Kalyan, Dist. Thane (herein referred to as ‘writ property’). By a registered Deed of Conveyance dated 18th June 2002 Respondent No. 4 -Tukaram Ambo Bhoir sold, transferred and conveyed the said writ properties to the Petitioner. On 25th July 2002 the name of the Petitioner is recorded in the 7/12 extract of the writ property vide Mutation Entry No. 638.

5. It is the case of the Petitioner that after about 15 years, Respondent No. 4 – Tukaram Ambo Bhoir filed RTS Appeal No. 24 of 2021/45 of 2019 under Section 247 of the Maharashtra Land Revenue Code against the Petitioner before the SDO, Kalyan and also

applied for condonation of delay of 18 years and three months in filing RTS Appeal No. 24 of 2021. The application for condonation of delay was opposed by the Petitioner by filing a reply. During the period between 2002 and 2022 various suits came to be filed by Respondent No. 4 –Tukaram Ambo Bhoir in various Civil Courts in respect of the writ property.

6. On 8th February 2021 the SDO allowed the application for condonation of delay in RTS Appeal No. 24 of 2021 filed by Tukaram Ambo Bhoir. On 19th March 2021, the Petitioner filed RTS Revision Application No. 7 of 2021 against order dated 8th February 2021 passed by the SDO before the Collector. On 23rd March 2021 the Collector granted stay to the order dated 8th February 2021 condoning the delay until the appearance and filing of written statement by Tukaram Ambo Bhoir. On 3rd August 2021, the Collector vacated the stay granted by it to the order dated 8th February 2021. On 3rd August 2021 Tukaram Ambo Bhoir filed an application before the SDO inter alia praying for hearing of R.T.S. Appeal No. 24 of 2021. The SDO thereafter issued notice of hearing to the Petitioner.

7. On 30th September 2021, the Collector dismissed the RTS Revision No. 7 of 2021 filed by the Petitioner and confirmed the order dated 8th February 2021 passed by the SDO. On 18th October 2021, the SDO proceeded to decide RTS Appeal No. 24 of 2021 and quashed and set aside the Mutation Entry No. 638 which was issued in favour of the Petitioner. On 22nd October 2021, the Petitioner filed RTS Appeal No. 117 of 2021 before the Collector challenging the order dated 18th October 2021. On 27th October 2021, the Collector passed an order granting ad-interim relief to the Petitioner and ordered status quo to be maintained by the parties.

8. On 26th October 2021, the Petitioner addressed an email to Tukaram Ambo Bhoir and the Additional Collector, Thane informing that the Petitioner had filed an Appeal against order dated 18th October 2021 passed by the SDO and requested not to proceed with the execution of the order dated 18th October 2021 until the disposal of RTS Revision Application No. 117 of 2021.

9. On 27th October 2021, the Circle Officer sanctioned Mutation Entry No.1104 and deleted the name of the Petitioner on the 7/12 extract in respect of the writ property. On 2nd November 2021, an Application was moved for correction in the order dated 27th October

2021, SDO issued revised interim order dated 8th November 2021.

10. On 16th December, 2021 the Petitioner challenged the orders dated 8th February 2021 and dated 30th September 2021 by filing RTS Revision No. 613 of 2021 before the Additional Commissioner. On 25th March 2022, the Additional Commissioner, Kokan Division dismissed the RTS Revision No. 613 of 2021 observing that the State Government has jurisdiction to entertain the Revision Application. The Petitioner accordingly filed RTS Revision No. 2722 of 2022 before the learned Minister.

11. On 24th February 2022, the Petitioner filed Civil Writ Petition No. 2600 of 2022 for various reliefs including restoration of status quo ante in respect of mutation entries and 7/12 extract of the writ properties as on 22nd October 2021 i.e. the date of filing of RTS Appeal No. 117 of 2021. On 17th January 2022, the Circle Officer sanctioned Mutation Entry No. 1109 in respect of Survey No. 4 Hissa No. 2 thereby recording name of Respondent Nos. 4 and Respondent No. 5 – Tukaram Ambo Bhoir and Kisan Shankar Bhalerao.

12. It is the case of the Petitioner that, the Petitioner upon perusal of the Mutation Entry No. 1109 came to know that the writ property has been sold by a registered Sale Deed dated 29th December 2021 in

respect of Survey No. 4 Hissa No. 2 in favour of two parties i.e. Tukaram Ambo Bhoir and Kisan Shankar Bhalerao.

13. It is the case of the Petitioner that during the hearing of Writ Petition No. 2600 of 2022, the learned Advocate for Tukaram Ambo Bhoir informed the Court that RTS Revision No. 2722 of 2022 is already decided by the learned Minister by passing order dated 10th June 2022. On 7th December 2021, Kisan Shankar Bhalerao filed RCS No. 564 of 2021 in the Court of the Learned Civil Judge Junior Division, Kalyan seeking injunction against Tukaram Ambo Bhoir in respect of the land bearing Survey No. 4 Hissa No. 2.

14. It is the case of the Petitioner that the said Tukaram Ambo Bhoir and Kisan Shankar Bhalerao entered into collusive consent terms dated 11th December 2021 in RCS No. 564 of 2021 and filed consent terms before the Lok Adalat. In view of the said consent terms, Lok Adalat disposed of RCS No. 564 of 2021. Aggrieved by the said order passed by the Lok Adalat, the Petitioner challenged the said award of the Lok Adalat by filing Writ Petition No. 7510 of 2022 inter alia filed for staying the effect, operation and implementation of the order dated 11th December 2021 passed by the Lok Adalat and also the award of even date. On 10th June 2022,

learned Minister rejected the Revision Application filed by the Petitioner on the ground that the same has become infructuous.

15. On 12th July 2022, this Court granted ad-interim stay in Writ Petition No. 7510 of 2022. The Petitioner thereafter filed RCS No. 366 of 2022 inter alia challenging the Sale Deed dated 29th December 2021 between Tukaram Ambo Bhoir and Kisan Shankar Bhalerao. On 16th July 2022, the Civil Judge Senior Division, Kalyan passed an order of injunction against the two parties – Tukaram Ambo Bhoir and Kisan Shankar Bhalerao from alienating the suit property. On 16th November 2022 and 25th October 2022, SDO passed orders under Section 144 of the Code of Criminal Procedure, 1973 in respect of the writ property. The Petitioner has already filed a separate Criminal Writ Petition No. 4171 of 2022 against the said orders in this Court. On 28th November 2022, this Court passed an order directing the parties to maintain status quo in the said Criminal Writ Petition No. 4171 of 2022.

16. In pursuance of the Administrative orders passed by the Hon'ble Acting Chief Justice, Civil Writ Petition No. 2082 is directed to be heard along with Writ Petition No. 2600 of 2022 and 7510 of 2022. It is made clear that we have permitted the Petitioner to

proceed with the Writ Petition No. 2082 of 2023 on the basis that allegation made by Tukaram Ambo Bhoir are kept open in the suit.

17. Mr. Godbole, learned Senior Counsel for the Petitioner invited our attention to some of the orders which are subject matter of the three Petitions and vehemently urged that Respondent No. 4 - Tukaram Ambo Bhoir has fraudulently obtained a collusive decree from the Lok Adalat and thereafter has fraudulently obtained and executed Sale Deed between Tukaram Ambo Bhoir and Kisan Shankar Bhalerao . He submitted that at the first instance, the SDO could not have condoned the delay for more than 15 years. Though there was no stay against the said order passed by the SDO and the fact remains that the Revision Application filed by the Petitioners was pending before the learned Minister, the SDO could not have proceeded with the Appeal filed by Tukaram Ambo Bhoir against the mutation entry issued in favour of the Petitioner. He submitted that the learned Minister could not have rejected the Revision Application filed by the Petitioner against the said order passed by the SDO in condoning delay of more than 15 years. He submitted that the Revision Application filed by the Petitioner has not become infructuous. If the learned Minister would have entertained the Revision Application and would have set aside the order condoning

the delay of more than 15 years, subsequent orders passed by the SDO would have been set aside consequently.

18. In so far as the order passed by the Lok Adalat on the consent terms filed by Tukaram Ambo Bhoir and Kisan Shankar Bhalerao is concerned, it is submitted that the said consent terms are obtained fraudulently so as to cause prejudice to the rights of the Petitioner in the pending proceeding before the Appellate Authority. He submitted that though the Petitioner was not party to the said suit and to the consent terms, the Petitioner has locus to challenge the said order passed by the Lok Adalat and award given by the Lok Adalat passed on the consent terms entered into between the two parties Tukaram Ambo Bhoir and Kisan Shankar Bhalerao. He submitted that this Court has specified that if the consent terms between Tukaram Ambo Bhoir and Kisan Shankar Bhalerao are fraudulently obtained by subsequent steps taken by these two parties would be consequently set aside. He also relied upon ad-interim order of this Court in Writ Petition No. 7510 of 2022 passed on 12th July 2022.

19. The question that arose for consideration of this Court is whether the learned Minister has rightly rejected the Revision Application filed by the Petitioner against the order passed by the

SDO condoning delay of more than 15 years in view of the subsequent orders passed by the SDO after condoning delay and having proceeded with the Appeal filed by Tukaram Ambo Bhoir or not.

20. It is common ground that though the Petitioner had filed Revision Application against order passed by the SDO condoning delay of more than 15 years, the fact remains that there was no stay on the said order passed by the SDO in the Revision Application filed by the Petitioner. Since there was no stay, the SDO proceeded with the Appeal filed by Tukaram Ambo Bhoir and allowed the said appeal thereby setting aside the mutation entry issued in favour of the Petitioner.

21. It is not the case of the Petitioner that, the Petitioner applied for early hearing before the learned Minister or applied for staying of the proceeding before the SDO. Perusal of the prayers in the Writ Petition No. 2600 of 2022 clearly indicates that the Petitioner had prayed for Writ of Mandamus for restoration of the status quo ante as on 22nd October 2021 on last date of filing RTS Appeal No. 117 of 2021 before the Additional Collector in respect of the 7/12 extract of the writ property by restoration of the name of the Petitioner and

also prayed for order of stay to the effect and operation of the Mutation Entry No. 1104 in respect of the writ property till final disposal of RTS Appeal No. 117 of 2021 pending before the Additional Collector.

22. We have perused the Roznama in the Writ Petition No. 2600 of 2022. The Petitioner did not apply for any ad-interim relief in the Writ Petition No. 2600 of 2022 for want of time, on the contrary, the Petitioner applied for leave to amend the Writ Petition in view of the order passed by the State Government on 10th June 2022 in RTS Revision Application No. 2722 of 2022. This Court accordingly granted liberty to the Petitioner to file fresh Petition in view of the said order passed by the State Government.

23. In our view, Mr. Godbole learned Senior Counsel is not right in his submission that though the SDO had granted condonation of delay and though there was no stay granted by the learned Minister in respect of the Appeal proceeding filed by Tukaram Ambo Bhoir impugning the original mutation entry in favour of the Petitioner, the decision of the said appeal on merits by the SDO, will not render the proceeding before the learned Minister infructuous. In our view, the Petitioner not having obtained stay of the proceeding before the

SDO, or against Tukaram Ambo Bhoir, while proceeding ahead with the appeal filed by him against the original mutation entry, SDO was justified in proceeding with the appeal filed by Tukaram Ambo Bhoir.

24. Once the substantive proceeding filed by Tukaram Ambo Bhoir against his order of mutation entry in favour of the Petitioner having been proceeded with after passing order of condonation of delay, nothing survives in the Revision Application filed by the Petitioner before the learned Minister. We do not find any fault in the order passed by the learned Minister refusing to interfere with the Revision Application filed by the Petitioner that the same has become infructuous.

25. It is common ground that the Petitioner has already filed Appeal bearing RTS Appeal No. 117 of 2021 before the Collector challenging the order dated 18th October 2021 passed by the SDO. We are informed that the learned Collector has already granted interim relief. The Collector has ordered status quo to be maintained by the parties. In so far as the prayers in Writ Petition No. 2600 of 2022 are concerned, in view of subsequent events and more particularly in view of the order passed by the learned SDO allowing

the Appeal filed by Tukaram Ambo Bhoir and the learned Minister rejecting the Revision Application filed by the Petitioner, the said Writ Petition No. 2600 of 2022 does not survive and has become infructuous.

26. In so far as Writ Petition No. 7510 of 2022 filed by the Petitioner inter alia impugning the order and award passed by the Lok Adalat in RCS No. 564 of 2021 is concerned, it is not in dispute that the Petitioner was not a party to the said suit. Be that as it may, based on the said consent order, the said Tukaram Ambo Bhoir and Kisan Shankar Bhalerao have already entered into a Sale Deed which is already subject matter of the said Civil Suit filed by the Petitioner. We do not propose to make any observation about any alleged collusion between the said Tukaram Ambo Bhoir and Kisan Shankar Bhalerao in obtaining the said award dated 11th December 2021. In view of the fact that the suit impugning the Sale Deed between these two parties and filed by the parties is still pending before the Civil Court, we do not propose to make any observation on the averments of fraud and collusion made by the Petitioner in these Petitions.

27. We make it clear that since the Petitioner could not obtain any stay against order passed by the SDO condoning delay in filing

appeal challenging the mutation entry and the said order having not been stayed by the learned Minister and in the meanwhile the appeal proceeding filed by Tukaram Ambo Bhoir itself having been decided, the Petitioner cannot be allowed to agitate the issue of condonation of delay granted by the SDO in these proceedings or in the Appeal filed by the Petitioner against the order by the SDO before the Collector.

28. No case is made out for interference with the order passed by the learned Minister. The issue of ownership in the writ property is already the subject matter of various Civil Suits. We do not propose to make any observation on the right, title or interests of any of the parties in the Writ property as same is subject matter of the suit. We accordingly pass the following order :

- (i) Writ Petition No. 2600 of 2022 is dismissed as infructuous.
- (ii) Writ Petition No. 2082 of 2022 is dismissed.
- (iii) Writ Petition No. 7510 of 2022 is disposed of in the aforesaid terms.
- (iv) Ad-interim relief granted by this Court on 22nd February, 2023 in Writ Petition No. 2600 of 2022 and 2082 of 2023 is

continued for a period of eight weeks from today.

(v) Ad-interim relief granted by this Court on 12th July 2022 in Writ Petition No. 7510 of 2022 is also continued for a period of eight weeks from today.

(vi) In RTS Revision Application No. 117 of 2021, the Additional Collector to grant adjournment for a period of eight weeks from today.

(vii) Parties to act on an authenticated copy of this order.

(GAURI GODSE, J.)

(R. D. DHANUKA, J.)