IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3833 OF 2016

Boman Adi Bharucha and anr. ...Petitioners

V/s.

Daety Sohali Chinoy & Ors. ...Respondents

Ms. Prachi Tatke i/by. Mr. Vaibhav A. Sugdare, for the Petitioners.

Mr. Amit Shroff, for Respondent Nos.1 to 3,

Mrs. Vaishali Nimbalkar, AGP for Respondent No.4.

CORAM : SANDEEP V. MARNE, J.
Dated : 11 October 2023.

P.C. :

1. The challenge in the present petition is to the order dated 10 August 2014 passed by the Minister-Revenue rejecting the Revision Application filed by Petitioners.

2. I have heard Ms. Tatke, the learned counsel for Petitioners and Mr. Shroff, the learned counsel appearing for the Respondents.

3. It appears that a Sale Deed has been executed in favour of the Respondents in respect of the land in question in the year 2007 on

the strength of alleged Power of Attorney executed by Petitioners. Petitioners denied having executed any such Power of Attorney. It also appears that subsequently the Petitioners have executed the Sale-Deed in favour of Mrs. K.V. Bumb in respect of the very same land. Initially, the name of Mrs. K.V. Bumb was mutated to the record of rights of the land in question by Mutation Entry Nos. 709 and 711. Respondents filed complaint before the Circle Officer, which resulted in passing of order dated 30 June 2009 by the Circle Officer whereby Mutation Entry Nos. 709 and 711 came to be set aside and Mutation Entry Nos. 712 and 713 were effected mutating the names of the Respondents in the revenue records. Both the Petitioners as well as Mrs. K.V. Bumb thereafter filed Appeals before the Sub-Divisional Officer, Additional Collector and Additional Divisional Commissioner and were unsuccessful in the said proceedings. Petitioners as well as Mrs. K.V Bumb had also filed Revision Applications before the Minister-Revenue, challenging the decision of the Additional Divisional Commissioner. The Minister-Revenue has proceeded to reject the Revisions by Order dated 10 August 2014.

4. Ms. Tatke, the learned counsel appearing for Petitioners would submit that Petitioners did not receive any notice of hearing in the Revision. That they were merely directed to file written submissions in support of their contentions. She would submit that written submission would not be a substitute for an opportunity of

hearing in the form of presenting arguments before the concerned authority. She would rely upon the judgment of this Court in **Vinaykumar Kachrulal Abad Vs, Honourable Minister, Revenue and Forest Department, Mantralaya, Mumbai** 2002 (1) Mh.L.J. 854 and **M/s. Vijay Builders and Developers Versus. The Competent Authority**, [2022] 0 Supreme (Bom) 733 in support of her contention that an opportunity to present oral arguments before the Minister, Revenue ought to have been granted to the Petitioners. Ms. Tatke would further submit that Mrs. K. V. Bumb, who was another Revision Applicant before the Minister-Revenue, did not receive even the notice for filing of written submissions. That her notice was served on Petitioners and that she being the purchaser of the land, was required to be heard while deciding her revision application. Ms. Tatke would therefore pray for setting aside the order of the Minister-Revenue and to remand the revisions for fresh hearing.

5. *Per-contra*, Mr. Shroff the learned counsel appearing for the Respondents would oppose the petition and support the order passed by the Minister, Revenue. He would submit that Petitioners always filed written submissions before various authorities and therefore the complaint now sought to be raised for grant of opportunity to present oral arguments is misleading. He would submit that Petitioners have already instituted a Suit in the year 2012 seeking cancellation of Power of Attorney and that the same is

pending. That orders passed by the revenue authorities would be subject to the decree of the Civil Court. That the Minister-Revenue has considered all the aspects of the case and has passed the impugned order. That therefore no interference is required in his decision.

6. I have considered the submissions. It is Petitioner's own case that since the Sale-Deed executed in favour of the Respondents in the year 2007, based on illegal power of attorney, is ineffective and not binding, they have later sold the property in question in favour of Mrs. K.V. Bumb in the year 2008. So either the Respondents or Mrs. K. V. Bumb would be the owner and occupier of the land, even going by Petitioners' theory. Having already sold the property in question, it is incomprehensible as to why Petitioners are litigating before various revenue authorities in a series of litigation. To this query by the Court, Ms. Tatke's submission is that Petitioners want to ensure that perfect title is conferred upon Mrs. K. V. Bumb. Curiously, Mrs. Bumb, who is the subsequent purchaser and according to Petitioners, the real owner, has chosen not to challenge the Order of rejection of her Revision Application.

7. The order passed by the Minister-Revenue would indicate that though notices were not served in respect of the hearing scheduled to be held on 20 February 2014, on the next date of 19 June 2014, notices were issued to Petitioners as well as Mrs.

K.V. Bumb, who failed to remain present. There is no averment in the petition that the notice in respect of the hearing dated 19 June 2014 was served on the Petitioners. Ms. Tatke would submit that there is an averment in the Petition that no notice of hearing has been received. Be that as it may. There is no dispute to the position that the Minister-Revenue directed Tehsildar to issue written intimation to Petitioners for submitting written submissions. Accordingly, Petitioners submitted their written submissions on 5 July 2014, without any demur. It is sought to be contended that Mrs. K.V. Bumb never received any notice even in respect of filing written submissions and that the notice issued in her name was actually served on Petitioners. If that is the case, it was for Mrs. K.V. Bumb to take appropriate steps in that regard. Admittedly, Mrs. K.V. Bumb is not aggrieved by the order passed by the Minister, Revenue. In that view of the matter and especially considering the fact that the Petitioners have admittedly sold the property to Mrs. K.V. Bumb, their *locus* to question the mutation entries mutating the names of the Respondents to the record of rights of the property becomes debatable. Even if quest of Petitioners to handover clear title to Mrs. Bumb is to be appreciated, it would be too farfetched to suggest that the Minister's order must be set aside on technical ground of non-grant of opportunity to Petitioners to present oral arguments, who are admittedly no longer owners. Therefore, reliance of Ms. Tatke on judgments of this Court in ***Vinaykumar Kachrulal Abad*** (supra) and ***M/s. Vijay Builders and Developers*** (supra) would not assist Petitioners in the peculiar facts and circumstances of the present case.

8. Be that as it may, it is well settled law that revenue entries are not determinative of the rights and entitlements of parties to any property. The rights and entitlement are required to be established before a Court of competent jurisdiction. It appears that the Petitioners have already instituted a Suit in the year 2012 seeking cancellation of Power of Attorney. If indeed, the Power of Attorney is cancelled, the same may have the effect on the validity of the sale-deeds executed in favour of the Respondents. Thus, the Court of competent jurisdiction is already seized of the suit involving rights and entitlements of parties to the land in question. In such circumstances, this Court would be loathe to interfere in the order passed by the Minister-Revenue.

9. I therefore do not find any reason to interfere in the impugned order passed by the Minister-Revenue. Leaving all rights and contentions of the parties raised in the pending civil suit open, the Writ Petition is **disposed of**.

SANDEEP V. MARNE, J.

NEETA SHAILESH SAWANT

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