

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 250 OF 2021

Avinisha Realtors Private Ltd.,
a Company Incorporated and registered under
the Indian Companies Act, 1956,
having its Regd. Office at Plot No. 128,
Opposite Sonegaon Police Station,
Somalwada, Wardha Road, Nagpur.

PETITIONER

.....VERSUS.....

1. The Court of Wards & Collector,
Nagpur.
2. Nitin s/o Kisan Patil,
aged about 33 years,
R/o Sharda Chowk, Old Subhedar Layout,
Nagpur.
3. Raje Raghuji Ajitsingh Bhonsle,
aged major.
4. Raje Madhavji Ajitsingh Bhonsle,
aged major.
5. Rajkumari Anjali Raje Kadad,
aged major.
6. Rajkumari Uttaraja Jitendrasingh Ghatge,
aged major.
7. Rajkumari Ambika Raje Shumbhsingh Desai,
aged major.
8. Rutababa Shrikantrao Pawar,
aged major.
9. Prachi Shrikantrao Pawar,
aged major.

Respondent Nos. 3 to 9 are R/o
Senior Bhosala Palace, Mahal, Nagpur.

RESPONDENTS

Shri S.V. Manohar, Senior Advocate with Shri Rohit Joshi and Shri Atharva S. Manohar, Advocates for the petitioner.
Shri A.S. Fulzele, Additional Government Pleader for respondent No.1/ State.
Shri S.K. Mishra, Senior Advocate with Shri Sachin Agrawal, Advocate for respondent Nos. 2 to 6.
Shri S.P. Dharmadhikari, Senior Advocate with Shri K.N. Shukul, Advocate for respondent Nos. 7 to 9.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI, JJ.

ARGUMENTS WERE HEARD ON : NOVEMBER 9, 2022

ORDER IS PRONOUNCED ON : JANUARY 6, 2023

JUDGMENT : (PER : A.S. CHANDURKAR, J.)

The challenge raised in this Writ Petition is to the notice dated 2/7/2020 issued by the in-charge Officer, Court of Wards, Nagpur. By the said notice, the predecessors of the petitioner - Company have been called upon to attend the hearing of the proceedings that was to be conducted by the Collector/ Commissioner of the Court of Wards. In the said notice, it was stated that there was an objection raised to the revenue record maintained with regard to Khasra No. 128/1, Mouza – Somalwada and in that context, the stand of the said vendors was sought.

2. The petitioner is a Company registered and incorporated under the Companies Act, 1956 (for short “the Act of 1956”). According to the Company, on 22/12/2008, it purchased various lands including land bearing Khasra No. 128/1, Mouza – Somalwada admeasuring 1 hectare 45 ares. Since then it is in possession and occupation of the

Company. On 13/7/2018, respondent No.2 herein in his capacity as power of attorney holder for respondent Nos. 3 to 9 moved an application before the Tahsildar stating therein that the mutation entries in 7/12 extract had been incorrectly recorded. It was stated that respondent Nos. 3 to 9 were the owners of the said land and despite that names of about 21 other persons had been mentioned. The power of attorney holder submitted that by invoking the provisions of Section 258 of the Maharashtra Land Revenue Code, 1966 (for short “the Code of 1966”), permission be obtained from the Sub-Divisional Officer and necessary corrections be made in the revenue record. Pursuant thereto, the Tahsildar on 21/1/2019 issued a communication to the Manager, Court of Wards, Nagpur and brought to his notice the application moved by the power of attorney holder and requested necessary guidance in the matter. The application dated 13/7/2018 was forwarded to the Manager, Court of Wards, Nagpur. It is thereafter that on 2/7/2020 the aforesaid notice came to be issued by the Presiding Officer, Court of Wards, Nagpur to the predecessors of the Company. On being informed of the same, the petitioner initially filed an application for dismissal of the said proceedings on 7/8/2020 stating therein that the power of attorney holder had no locus whatsoever to move the application dated 13/7/2018. It is thereafter that the Company has filed the present Writ Petition on 12/8/2020.

3. Shri S.V. Manohar, learned Senior Advocate for the Company submitted that the Court of Wards had no jurisdiction whatsoever to entertain the application dated 13/7/2018 that had been moved by the power of attorney holder. When the said application was moved before the Tahsildar, he had forwarded the same to the Manager, Court of Wards, Nagpur on 21/1/2019. Correction in revenue records was a matter to be considered by the Tahsildar under the provisions of the Code of 1966 and the said dispute did not fall within the purview of the Court of Wards. Inviting attention to various provisions of the Central Provinces Court of Wards Act, 1899 (for short “the Act of 1899”), it was submitted that there was no power of adjudication conferred on the Court of Wards especially the manner of dispute as sought to be raised by the power of attorney holder. He invited attention to the Notification dated 12/2/1925 by which the Court of Wards was empowered to assume superintendence of various properties of the Bhonsle family. It was urged that the property in question being Khasra No. 128/1 was not mentioned in the Schedule of Properties under the said Notification. For that reason, it could not be said that the subject property fell within the purview of the Court of Wards. Under Section 21 of the Act of 1899, the Court of Wards could exercise powers only with regard to the properties in which there was interest created and not otherwise. If respondent Nos. 3 to 9 were claiming title to the property in question, the remedy for the same was

before the Civil Court and not before the Court of Wards. In absence of any jurisdiction whatsoever with the Court of Wards to inquire into the status of property that was not under its superintendence and there being no power of adjudication with the Court of Wards, it was submitted that the notice dated 2/7/2020 being without jurisdiction was liable to be quashed. It was submitted that it was a fit case for issuance of a writ of prohibition restraining the Court of Wards from adjudicating upon the notice dated 2/7/2020. Since such jurisdiction was being usurped, this Court could under Article 226 of the Constitution of India issue writ of prohibition. In that regard, the learned Senior Counsel placed reliance on the decisions in *Bengal Immunity Co. Ltd. Vs. State of Bihar and others* [AIR 1955 SC 661] and *Shantilal Ambalal Mehta and others Vs. N.A. Rangaswami, Collector Of Customs, Bombay and others* [1977 Mh.L.J. 587 (FB)]. To urge that extraordinary jurisdiction under Article 226 of the Constitution of India could be exercised in the present case, reliance was placed on the decision in *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai And Others* [(1998) 8 SCC 1]. As regards the order passed in *Writ Petition No. 1537/2022 [Zahirul Kabir Siddiqui s/o Maquesudul Kabir Siddiqui and others Vs. Custodian, Court of Wards, Collector, Nagpur and others]* decided on 16/3/2022] it was submitted that the questions raised in the present proceedings were never raised therein nor was there any adjudication on merits. It was thus submitted

that the reliefs sought in the Writ Petition ought to be granted.

4. Shri A.S. Fulzele, learned Additional Government Pleader for respondent No.1 opposed the aforesaid submissions. According to him, since the Court of Wards had merely issued a notice to the predecessors of the Company, they were free to respond to the same and the challenge as raised to the said notice at this stage was premature. The notice dated 2/7/2020 was issued in exercise of powers under Section 6 of the Act of 1899 with a view to verify the status of the property in question. Since it was brought to the notice of the Court of Wards that certain mutation entries had been incorrectly recorded, the matter was being examined. He also drew attention to the additional affidavit filed on behalf of respondent No.1 dated 4/5/2022 in which it was stated that the Court of Wards would not examine the fate of the mutation entries or the application dated 13/7/2018. Hence, there was no reason to interfere in writ jurisdiction.

5. Shri S.K. Mishra, learned Senior Advocate for respondent Nos. 2 to 6 also opposed the prayers made in the Writ Petition. He submitted that the Collector in his capacity as guardian of the property that was under superintendence of the Court of Wards was entitled to examine the status of such property. It was submitted that though the

Notification dated 14/10/1983 had been issued, the same was not published in the official gazette as required by Section 36 of the Act of 1899. Unless there was a Notification published in the official gazette, the property in question would continue to be under superintendence of the Court of Wards. The sale deed on the basis of which the Company was claiming title was itself under cloud and it was in that backdrop that such inquiry was being made under the Court of Wards. Since merely a notice had been issued on 2/7/2020 for gathering the relevant facts, there was no reason to interfere at this stage. The grievances raised herein could be raised before the Collector in response to the impugned notice. Placing reliance on the decision in *Commissioner of Central Excise, Haldia Vs. Krishna Wax Private Limited [(2020) 12 SCC 572]* it was submitted that the Writ Petition raising challenge to the show cause notice was not liable to be entertained. It was thus submitted that the Writ Petition was liable to be dismissed.

Shri S.P. Dharmadhikari, learned Senior Advocate for respondent Nos. 7 to 9 also opposed the Writ Petition. He submitted that the application dated 13/7/2018 was moved before the Tahsildar invoking the provisions of the Code of 1966. In that regard, the Tahsildar had under Section 258 of the Code of 1966 sought invocation of the powers of review of the superior authority who was the Sub-Divisional

Officer. The apprehension of the Company that the Collector may decide the application under Section 258 of the Code of 1966 was unfounded. Moreover, with the clarification tendered by the Collector that there would be no adjudication of any right whatsoever, there was no reason to entertain challenge to the impugned notice. Under the Notification dated 12/2/1925, various properties were placed under the superintendence of the Court of Wards. Thus, whether a property was under the purview of Court of Wards or not was a question of fact that could be considered by the appropriate authority. Moreover, the sale deed dated 22/12/2008 was also questioned and hence the Court of Wards was seeking to consider the matter in exercise of its power of superintendence under Section 6 of the Act of 1899. For these reasons there was no case made out to interfere in writ jurisdiction. It was submitted that the Writ Petition was liable to be dismissed.

6. We have heard the learned Counsel for the parties at length and we have perused various documents placed on record. It is seen that initially on 12/2/1925, a Notification came to be issued by the Governor in Council in exercise of powers conferred by Section 6 of the Act of 1899. After referring to the provisions of Section 9 of the Act of 1899, it was stated that the Court of Wards of the Nagpur Division would assume superintendence of all the properties belonging to Raja Bahadur Raghoji

Rao Bhonsle wherever situated. On issuance of such Notification, the Court of Wards became entitled to assume superintendence of the said properties under Section 6 of the Act of 1899. There is another Government Resolution dated 14/10/1983 issued by the Revenue and Forest Department of the State Government. It states thereunder that the State Government was pleased to accord sanction under Section 34 of the Act of 1899 to the withdrawal of superintendence by the Court of Wards, Nagpur of the property of Sr. Bhonsle, Nagpur. This was in view of compromise decree in Special Civil Suit No. 121/1974. It further states that withdrawal of superintendence of the property is required to be notified in the Maharashtra Government Gazette under Section 36 of the Act of 1899. There is no gazette notification published by the State Government under Section 36 of the Act of 1899 to indicate that withdrawal of superintendence by the Court of Wards under Section 34 of the Act of 1899 has been taken to its logical end. Thus, on record, we only have copy of the Notification dated 14/10/1983 issued under Section 34 of the Act of 1899.

The Company claims its title on the strength of the sale deed dated 22/12/2008. Respondent Nos. 3 to 9 have raised dispute by stating that the mutation entries taken against the said property being Khasra No. 128/1 are incorrect and that they are entitled to have their names

mutated in the revenue records. For that purpose, they have invoked jurisdiction of the Tahsildar under the Code of 1966 and in furtherance thereof, the Tahsildar has sought to invoke the provisions of Section 258 of the Code of 1966. In the backdrop of the application dated 13/7/2018, the communication dated 21/1/2019 has been issued to the Manager, Court of Wards bringing to his notice the application dated 13/7/2018 as moved. The reason for this appears to be the statements made in paragraphs 5 to 8 of the application dated 13/7/2018. It is in this context that the notice dated 2/7/2020 has been issued by the Presiding Officer, Court of Wards, Nagpur/ Collector. The said notice requires the predecessors of the Company to appear in the proceedings and submit explanation in that regard. According to the Company, there is no such jurisdiction with the Court of Wards to either entertain or proceed with any sort of adjudication under the Act of 1899.

7. We find that it would not be very necessary to probe deeper into the nature of proceedings before the Court of Wards or the purpose for issuance of the notice dated 2/7/2020. This is for the reason that the Collector in her affidavit dated 4/5/2020 has in clear terms stated that the notice has been issued in exercise of administrative powers conferred on the Court of Wards and the fate of the mutation entries in dispute or the application dated 13/7/2018 would not be decided. In paragraph 2 of

the said affidavit, it has been stated as under :

“2. It is submitted that, from the averments made in the petition and the relief prayed in the prayer clause, it would be clear that, the petitioner is challenging the notice issued by the respondent no.1. Respondent no.1 assumes the Superintendent under the C.P. Courts of Wards Act, 1899, who has a power of Superintendent over the property of Government Wards. In view of the same, the notice is an administrative act on behalf of the respondent no.1. The Court of Wards would not at all be deciding the fate of the mutation entries or the application dated 13.7.2022, filed by the respondent no. 2 to 6.”

From the aforesaid, it becomes clear that respondent No.1 merely seeks to invoke the powers of superintendence as conferred by Section 6(1) of the Act of 1899. The apprehension expressed on behalf of the Company that respondent No.1 is likely to enter into the merits of the mutation entries standing in its name or adjudication of the application dated 13/7/2018 is therefore taken care of by the statements made in paragraph 2 of the said affidavit.

8. For issuance of a writ of prohibition so as to prohibit an authority from proceeding with adjudication of any matter before it for lack of jurisdiction, the absence of jurisdictional authority should be amply clear on the factual front. If on an undisputed factual matrix it is demonstrated that the authority concerned has sought to usurp

jurisdiction not conferred upon it and is seeking to proceed further in the matter, issuance of writ of prohibition would be justified. However, if the factual scenario is not clear, it would not be feasible to prevent such authority from determining whether it is entitled to exercise jurisdiction or not. In such case, the party aggrieved by initiation of such proceedings can always demonstrate before the said authority that for lack of necessary jurisdictional facts, it cannot proceed further in the matter.

As stated above, we have on record initial Notification dated 12/2/1925 issued under Section 6 of the Act of 1899 and thereafter the Government Resolution dated 14/10/1983 issued under Section 9 of the Act of 1899 in context of Section 34 of the Act of 1899. Gazette publication under Section 36 of the Act of 1899 is not on record. We therefore have an assertion by the Company that it is the owner of Khasra No. 128/1 having acquired title pursuant to the sale deed dated 22/12/2008. On the other hand, it is the stand of respondent Nos. 2 to 9 as can be seen from paragraph 3 of the affidavit dated 15/1/2021 that the sale deed is a nullity and does not confer any right on the Company since the property despite being under control of the Court of Wards has been sold to the Company. We therefore find that unless this factual aspect is resolved, the Court would not be in a position to prohibit the Court of Wards to consider the notice dated 2/7/2020 in accordance with

law. Notwithstanding the observations in paragraph 14 of the judgment of the Full Bench in *Shantilal Ambalal Mehta (supra)* as well as in paragraph 144 of the judgment of the Constitution Bench in *Bengal Immunity Co. Ltd. (supra)*, we find that since the factual premise as to whether Khasra No. 128/1, Mouza – Somalwada falls within the purview of the Court of Wards for being subjected to its superintendence requires adjudication, we are not inclined to issue a writ of prohibition as prayed for. Instead, after noting the statement made on oath by the Collector dated 4/5/2022 that what was being exercised was merely a power of superintendence, the said notice can be permitted to be taken to its logical end.

9. Accordingly, while we refuse to issue a writ of prohibition so as to restrain respondent No.1 from considering the matter in the light of notice dated 2/7/2020, we accept the statement made on oath by the Collector that the said notice is merely an administrative act in view of power of superintendence conferred by Section 6 of the Act of 1899. Respondent No.1 would not be either deciding the fate of the mutation entries standing in the name of the Company nor would the application dated 13/7/2022 (Sic 13/7/2018) be decided by respondent No.1. The Company having moved an application for dismissal of the proceedings dated 7/8/2020, it is free to pursue that application in accordance with

law. Respondent No.1 while considering notice dated 2/7/2020 shall take into consideration the objection as raised by the Company and after considering the same in accordance with law shall act in furtherance of its decision.

10. By keeping the legal points raised in the Writ Petition open, it is disposed of in the light of the observations and directions issued hereinabove. The parties shall bear their own costs.

(M.W. CHANDWANI, J.)

(A.S. CHANDURKAR, J.)

Sumit