

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4673 OF 2017

Kishor Gulabchandji Agawal__ Vs. __Vasantrao Narayanrao Mehre thr L.Rs and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. K.B.Zinjarde, Advocate for petitioners
Mr. J.B.Kasat, Advocate for Respondents
Mr. N.R.Patil, AGP for respondent/State

CORAM : AVINASH G. GHAROTE, J.
DATE : 20/03/2023

1] Heard Mr. Zinjarde, learned counsel for the petitioner and Mr. Kasat, learned counsel for the respondents.

2] The petition challenges the order of the Divisional Commissioner, Amravati, dated 30.5.2017 (pg.38), whereby the review has been allowed and the order of the Additional Commissioner dated 29.8.2011 is maintained. The ground for maintaining the order dated 29.8.2011 is stated to be absence of notice to the Respondent No.1A to 5C, who also claim a right to the land of Gat No. 69, admeasuring 0.13 HR of Mouza Kandli.

3] Mr. Zinjarde, learned counsel for the

petitioner by inviting my attention to the 7/12 extract at page 50A submits that since the names of the aforesaid respondents were not entered in the 7/12 extract, they had no right to any notice consequent to the sale deed dated 16.6.1999 by Anant Narayan Mehre in favour of the petitioners.

4] Though Mr. Kasat, learned counsel appearing for Respondent No. 1B submits that the property was ancestral and therefore all the aforesaid respondents had a right therein, relying upon the mutation entry dated 18.1.90 (pg.49A), however, the record indicates that the land of Gat No. 69 admeasuring 0.13 HR was separated and stood in the name of Ananat Narayan Mehre alone (pg.50A) and therefore, since the names of the aforesaid respondents, including the respondent No.1B do not appear in the 7/12 extract, the question of issuance any notice to them did not arise at all. The judgment of the learned Additional Commissioner which is based upon this position is clearly untenable.

5] It is further contended by Mr. Zinjarde, learned counsel for the petitioner that since the 7/12 extract at page 50A in respect of Gat No. 69

has no entry that the land is a fragment, the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, would not be attracted.

6] Though the above proposition is opposed by Mr. Kasat, learned counsel for respondent no.1B and Mr. Patil, learned AGP, it would be necessary to note that the 7/12 extract for the agriculture year 1998-99 indicates that there is no entry of the land being declared as a fragment. That apart, the entry in column no. 14 of Form 12 itself indicates that it is the irrigated land. It is also material to note that under Section 7 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, the transfer of a fragment is barred, however, the language indicates that before that there has to be the existence of the notice under Section 6(2) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Admittedly, no such notice has been placed on record by either of the respondents to indicate that the provisions of Section 7 of the said Act would be attracted. That apart, since the 7/12 extract in respect of Gat no. 69 itself indicates that it is an irrigated land, the concerned Talathi, considering the notification for

the standard area and the extent of standard area, has not taken an entry in the 7/12 extract regarding the land of Gat no. 69 being a fragment, as the standard area for the irrigated land is 0.10 HR.

7] That being the position, the sale deed dated 16.6.1999 in favour of the petitioners or the mutation entry made in pursuance thereto could not have been challenged by the respondents on the above counts. The impugned order dated 30.5.2017 does not consider this position, as a result of which the same is clearly not tenable and is hereby quashed and set aside and the order of the Additional Collector, Amravati dated 10.5.2006 is restored.

8] The petition is accordingly allowed in the above terms. No costs.

JUDGE

Rvjalit