



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1493 OF 2024

Suvarnamala Shivajirao Jadhav

VERSUS

State Of Maharashtra Through
The Secretary and Others

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Ms. M. P. Patel, Advocate for the Petitioner

Mr. S. B. Narwade, AGP for Respondents - State

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CORAM : RAVINDRA V. GHUGE &
R. M. JOSHI, JJ

DATE : MARCH 04, 2024

PER COURT :

1. There are peculiar facts before us. The property at issue is located at plot no. 5 in survey no. 49 situated at Khadgaon, Tq and District Latur bearing municipal house no. 3998. The Petitioner purchased eastern half of the property vide sale deed no. 1671/1998 on 23.06.1998 and the western half of the property vide sale deed no. 991/2002 dated 28.03.2002. The name of the Petitioner was recorded as the owner and possessor of the suit property vide mutation entry no. 2048 dated 30.10.2005. However, a bogus and illegal sale deed of the suit property using the power of attorney drawn by the Petitioner was made by one Vijay Kumar Sonawane in favour of Sushila Sonawane and

got the mutation corrected in the revenue record vide mutation entry no. 7578 dated 20.03.2012 and the earlier mutation entry in the name of the Petitioner was cancelled.

2. The Petitioner approached the Civil Court in RCA No. 230/2012 only seeking declaration of ownership and perpetual injunction. A prayer for setting aside the mutation entry by seeking an order that the sale deed is bad in law and not binding on the Petitioner, was not made. By judgment dated 17.12.2018, the Civil Court decreed the suit while declaring the Petitioner as the owner of the said property. An observation is made in paragraph 21 that the sale deed is not legal. In paragraph 23, the power of attorney, is said to be a bogus document. However, as the Petitioner did not seek a declaration, the trial Court did not pass an order declaring that the sale deed is illegal, not binding upon the Petitioner. The Appeal preferred by the original defendants in RCA No. 11/2019 was dismissed by judgment dated 24.12.2021. The Appellate Court also declared the Petitioner to be owner and possessor of the property and confirmed the perpetual

injunction.

3. The Petitioner approached the SDO, Latur with a representation dated 30.07.2021 praying for cancellation of the mutation entry no. 7573. The said Authority has replied to the Petitioner vide communication dated 05.07.2021 that she should approach the Appellate Authority for seeking an order of cancellation of the earlier mutation entry made by the SDO, Latur with reference to Gut No. 49/2/B.

4. The Original Defendants are not before the Court since they have not been arrayed as Respondents.

5. We are of the view that because of lack of appropriate advise, from the legal representative appearing on behalf of the Petitioner before the Civil Court, for seeking a declaration that the sale deed be hold as null and void, we cannot allow the revenue authorities to make the Petitioner run from pillar to post. In normal circumstances, whoever is armed with a registered sale deed, can approach the authorities for change in the mutation entries which are purely for fiscal purpose (Read **Shrikant R. Sankanwar and Ors vs**

Krishna Balu Naukudkar, 2003 (3) Bom.CR 45). The competent authority in such circumstances is not justified in directing the said person to approach a Superior Authority under Section 247 of the Maharashtra Land Revenue Code, 1966 (for short "MLRC"). What is expected is that a notice will be issued to the erstwhile owners and after verifying the records, a new mutation entry can be carried out on the basis of sufficient material.

6. In the case in hand, the Petitioner has a judgment and decree of the Civil Court, which is confirmed by the Appellate Court. The Petitioner contends that she has no knowledge that the original Defendants have approached this Court by filing a second appeal. The learned AGP submits that the defendants have filed Second Appeal (Stamp) No. 17762/202.

7. In view of the above, **this Petition is disposed off.** We, grant liberty to the Petitioner to avail of the remedy as is permitted under the Maharashtra Land Revenue Record of Rights and Registers

(Preparation and Maintenance) Rules, 1971 and on the basis of the judgment of the trial Court. The concerned authority shall initiate appropriate steps by giving reasonable opportunity of hearing to all the stakeholders. Needless to state, such exercise is to be undertaken only if there is no other legal impediment or an order of this Court in the pending Second Appeal (Stamp) No. 17762/2021.

(R. M. JOSHI, J)

(RAVINDRA V. GHUGE, J)

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