



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 15153 OF 2023

1. Farukshah s/o Chandshah,
Age: 70 years, Occu.: Labour & Agri.,
2. Latifshah s/o Chandshah
Age: 65 years, Occu.: Labour & Agri.,
3. Nurjahan w/o Mujsashha,
Age: 70 years, Occu.: Household
4. Ekbalsah s/o Musashah,
Age: 48 years, Occu.: Service
5. Alimshah s/o Harunshah,
Age: 55 years, Occu.: Household
6. Nasimbegem w/o Salimshah,
Age: 55 years, Occu.: Household
7. Abed s/o Salimshah,
Age: 35 years, Occu.: Labour & Agri.,

All R/o. Police Station Road, Vaijapur,
Tq. Vaijapur, Dist. Aurangabad

.. Petitioners
(Orig. Plaintiffs)

Versus

1. Police Inspector,
Police Station, Vaijapur,
Through Shamsundar Ramchandra Kauthale,
Age: 52 years, Occu.: Service,
R/o.: Vaijapur, Tq.: Vaijapur, Dist.: Aurangabad
2. The Sub Divisional Police Officer,
Through Shamsundar Ramchandra Kauthale,
Office of the Divisional Police Officer,

Vaijapur, Tq. Vaijapur, Dist. Aurangabad

(Orig. Appellants & Orig.
Deft. No.4 & 5)

3. The State of Maharashtra,
Through – Collector,
Collector Office, Aurangabad
4. The Sub Divisional Officer,
Sub Divisional Office, Vaijapur,
Tq. Vaijapur, Dist. Aurangabad
5. The Tahsildar,
Tahsil Office, Vaijapur,
Tq. Vaijapur, Dist. Aurangabad
6. The Deputy Superintendent of
Land Records, Land Records Office,
Vaijapur, Tq. Vaijapur, Dist. Aurangabad .. Respondents
(Rep.3 to 6 Ori. Defendants)

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Advocate for the Petitioners : Mr. Narendra D. Sonawane
Advocate for Respondent/State : Ms. P. R. Bharaswadkar

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CORAM : ARUN R. PEDNEKER, J.

Reserved on : 06.03.2024
Pronounced on : 25.04.2024

JUDGMENT:

1. Heard **Mr. Narendra D. Sonawane**, learned counsel for the petitioners and **Ms. P. R. Bharaswadkar**, learned AGP for the respondents.

2. By the present petition, the petitioners are challenging the order dated 29.11.2023, passed by the District Judge-1, Vaijapur in Miscellaneous Civil Appeal No.35 of 2023.

3. The facts and submissions of the the petitioners are as under:-

A. The petitioners are the original plaintiffs and have filed suit for declaration and injunction. The declaration is sought that, they may be declared as owners and possessors of 73 Are land in survey no.1 of Vaijapur, Tq. Vaijapur and the respondents i.e. original defendants may be perpetually restrained from disturbing possession of the petitioners. Along with the plaint application below Exh. 5 was filed, which was allowed by the learned Civil Judge Senior Division, Vaijapur, by order dated 21.08.2023. The respondents no.1 and 2 filed the Miscellaneous Civil Appeal No.35 of 2023 before the District Judge challenging the order dated 21.08.2023 of the trial court and the District Judge by impugned order dated 29.11.2023 has allowed the M.C.A. and thereby set aside the order below Exh.5, dated 21.08.2023, passed in Regular Civil Suit No.12 of 2023. The

petitioners by the present writ petition are challenging the order dated 29.11.2023, passed in M.C.A. No.35 of 2023.

B. It is the case of the plaintiffs / petitioners as stated in the plaint in R.C.S. No.12 of 2023 is that, the plaintiffs are the original owners i.e. ancestor of the petitioners i.e. late Chandshah Jamalshah was the owner and possessor of 72 Are land in survey no.1 of village Vaijapur. The said land was regranted to him and revenue entry no.455 dated 26.07.1962 shows that, the land was regranted as per the provisions of the Hyderabad Inam Abolition Act. After the demise of original owner, the names of petitioners are shown as owner and possessor of the said land.

C. The said suit land was given on lease to Yadav Kisan Gaikwad in 1960 for 51 years and lease has to come an end in the year 2011. The land of defendant no.1 i.e. respondent no.1 herein is to the southern side of the land of the petitioners and as the land of the petitioners is vacant the same was used as parking space by the defendant no.5. On 05.12.2022 the petitioners were obstructed from entering in the suit property and hence the petitioners have enquired and it was informed by the defendant that the name of

defendant no.5 is recorded as owners in CTS no.467 qua the land. The revenue record shows that, the land of defendant no.5 is in survey no.7 and they are no way concerned with the land of petitioners and land of the petitioners is never acquired by the respondents. Hence, the suit for declaration and injunction was filed along with application seeking temporary injunction.

D. The petitioners submits that the respondents herein who are original defendants have appeared in R.C.S. No.12 of 2023 and have filed written statement and say to the stay application. The defendant no.4 and 5 in the written statement have denied the ownership of the petitioners only on the basis of entry in P.R. card bearing no.467 which shows that the land in survey no.7 and some land out of survey no.1 is allotted for police quarter and for parade ground. The petitioners submits that the said entry is of the year 1984 but on what basis the said entry in P.R. card is taken is not explained. The stand taken in the written statement is only on the basis of entry in the P.R. card in the absence of any document to show that the land from survey no.1 belonging

to the petitioners is purchased or acquired by the State Government.

E. The petitioners submit that the learned Civil Judge Senior Division after considering the records as well as pleadings of the parties allowed the application for temporary injunction i.e. below Exh.5 by order dated 21.08.2023 restraining the defendants or their agents or any other persons on their behalf from causing obstruction and interference in the possession of the plaintiffs over the suit property till the disposal of the suit. The learned counsel for the petitioner submits that the learned Civil Judge Senior Division has rightly observed that the petitioners have proved that they are owner of the suit property and revenue record supports the same. It is further observed by the trial court that the defendants have failed to prove that the property is allotted to defendant no.5 and hence mere entry in CTS record does not established the ownership and possession of the State Government over the suit property. It is rightly observed that the name of the State Government is appearing as owner in survey no.7 only and survey no.1 is different than the survey no. 7. The trial court has also relied

on the letter of Sub Divisional Officer, stating that the suit property is not allotted to the State Government or acquired by the State Government. Hence the learned trial court considering the prima facie case and balance of convenience in favour of the petitioner and considering the fact that, the defendants have started construction on the suit property has allowed application below Exh. 5.

F. The defendants i.e. particularly defendant no.4 and 5 being aggrieved by order dated 21.08.2023 passed below Exh.5 in R.C.S. No.12 of 2023 filed Miscellaneous Civil Appeal No.35 of 2023 before the District Judge, Vaijapur. The District Judge Vaijapur has allowed the appeal and set aside the order dated 21.08.2023 passed below Exh.5 in R.C.S. No.12 of 2023. The learned counsel for the petitioners submits that the order dated 29.11.2023 passed by the District Judge-1, Vaijapur is contrary to law and good conscience and without verifying the record in proper manner and hence need to be quashed and set aside.

4. The learned counsel for the petitioners submits that the trial court has rightly observed that mere entry in the P.R. card in the name of defendant does not confer title and in the absence of record on the basis

of which entry of defendant is taken in P.R. card or in the absence of any proof that suit land is acquired by the defendants, the prima facie case and balance of convenience is in faovur of the plaintiffs i.e. petitioners and hence the trial court allowed application below Exh.5 considering the irreparable loss to be caused to the petitioners, but the appellate court has not considered this aspect in the proper manner.

5. The learned counsel for the petitioners further submits that the appeal is allowed only on the ground that, in CTS NO.467 the area of survey no.1 to be extent of 2809.60 sq. mts. Is shown i.e. 28 Are land and not entire survey no.1, but the appellate court has failed to consider the fact that the defendants have failed to show the right of ownership and possession to the extent of 28 Are land in survey no.1 in the absence of any acquisition or sale deed in their favour.

6. The learned counsel for the petitioners further submits that the appellate court has failed to consider the fact that the letter of S.D.O. clearly shows that the land from survey no.1 is not acquired for the State Government or State Government has not allotted land from survey no.1 to the defendant no.5.

7. The learned counsel for the petitioners further submits that the appellate court has relied on the statement of defendants and allowed

the appeal by observing that in the interest of public the appeal needs to be allowed. The said observation is without any basis and the land of citizen cannot be encroached or grabbed by the State authority without following due process of law. Even the defendants have failed to prove that the compound wall is constructed by them on the contrary the wall compound is constructed by the petitioners to protect their land. Hence the order passed by the learned District Judge dated 29.11.2023 needs to be quashed and set aside.

8. The learned counsel for the petitioners further submits that the appellate court has erred in observing that the plaintiff has suppressed the fact that the entire land of survey no.1 is not shown in the CTS No.467 but part of same is shown in CTS NO.467. It ought to have been considered that, the land in survey no.1 is never acquired or purchased by the defendants and hence they are not concerned with the property in survey no.1 and hence there is no question of showing part or entire survey no.1 in CTS No.467. Hence the impugned order is passed without considering the record in the proper manner and need to be quashed and set aside.

Submissions of Respondents

9. Per contra, Ms. P. R. Bharaswadkar, learned AGP appearing for the Respondents / State Authorities has filed the affidavit-in-reply and

submits that the total land of survey no.1 is admeasuring 73 Are situated at Vaijapur, Dist. Chhatrapati Sambhajanagar. Part of survey no.1, the land has been mutated in possession of Police Department and which is in the name of State Government. There is 73 Are land situated in survey no.1, out of that, land admeasuring 2809.60 sq. meter is in possession of police department. The said land is allotted to the Police Department for Police Quarters and parade ground and the entry to that effect is mutated in Property Card. On the said land the police department has erected the wall compound by using cement polls.

10. The learned AGP submits that the plaintiffs have been trying to misuse the false entry effected in 7/12 extract. In fact, after implementation of consolidation scheme since and record of rights 1984 the land PR. card No.467 is owned by the State. Total area of land survey no.1 is 73 Are, out of 73 Are admeasuring 2809.60 meter is in possession of present respondent accordingly respondent office is in continuous peaceful possession of the land PR. Card no.467 and same is being used for flag hosting, police parade and to keep the seized vehicles and since 1984 the name of State is recorded in the revenue record. The said land has been reserved for police quarters and parade ground under the ownership of Government and there is entry to that effect in revenue record.

11. The learned AGP further submits that the petitioners are trying to challenge the consolidation scheme which is not permissible in the law. The learned appellate court while deciding the Miscellaneous Civil Appeal No. 35 of 2023 has rightly observed in para no.9 that the entire pleadings of the plaintiff clearly shows that the plaintiffs were very well aware of the property in CTS no.467 which consist of land survey no.1 and 7.

12. The learned AGP further submits that once survey number converted into C.T.S. number, issuance of 7/12 extract by the Talathi is questionable. The present petitioners have failed to prove that how they have affected the mutation entry in the year 2019. The petitioners before the lower court also failed to prove that how they effected the mutation entry when the consolidation scheme was effected and the property now bears PR. CTS No.467.

13. The learned AGP further submits that the necessary permission is accorded to Police by the revenue authorities after scrutinizing the documents for the work of construction which is undertaken by the police department. After getting permission from the competent authority the respondents started construction on the land.

14. The learned AGP further submits that the petitioners are very well aware about property P.R. card no.467 and the same consist of land survey no.1 and 7.

15. The learned AGP further submits that the learned appellate court has rightly observed that entire survey no.1 is not incorporated in land property no.467. Only the area of 2809.60 sq. meters from survey no.1 is incorporation in land property no.467. The total area if survey no.1 is 73 Are out of that land admeasuring 2809.60 sq. meter is in PR No.467 and there is no specific pleading of the plaintiffs about remaining portion of land. The 7/12 extract shown by plaintiffs / petitioners is not about the land admeasuring 2809.60 sq. meters which is in P. R. card entry no.467.

Consideration:

16. Considering the rival submissions, the issue falls for consideration is whether the appellate court was justified in setting aside the order of injunction passed by the trial court in favour of the petitioners.

17. The trial court had granted injunction by order dated 21.08.2023, below Exhibit – 5 and at paras 7, 8 and 9 observed as under:-

“7. So far as the argued advance by the learned counsel for the defendant is concerned that during the course of CTS of Vaijapur the suit property was given or mutated in the name of State Government and thereafter it was allotted to defendant No. 5 for the purpose of Police quarters and Police Parade ground is concerned, there is no documentary evidence on record to show that the State Government allotted the suit property to defendant No. 5 for purpose of Police quarters and Police Parade ground. Mere mutating name of the state Government during the CTS by the concerned authority do not establish the ownership and possession of the State Government over the suit property.

8. The documentary evidence produced on behalf of the plaintiffs clearly disclose this fact that the suit property was re-grant to Shaikh Chandshah Shaikh Jamalshah and on basis of it it was mutated in his name. Later on he leased the suit property to Yadav Kisan Gaikwad for 51 years. The said period expired in 2011. Furthermore after demise of Shaikh Chandshah Shaikh Jamalshah the suit property was mutated in the name of his legal heirs i.e. the plaintiffs vide mutation entry bearing No. 2629. The long standing possession of Shaikh Chandshah Jamalshah and his legal heirs i.e. the plaintiffs clearly disclose this fact that the plaintiffs are in possession of the suit property.

9. Record further disclose that survey No. 7 was only allotted to the State Government and the same is 3 Acre 13 R. Survey No. 7 is different from survey No. 1. Both these properties are different. It cannot be treated as one and the same property. Survey No. 1 belongs to the plaintiffs and survey No. 7 belongs to the State Government. Even though presume argument of the learned counsel for the defendant if taken as it is. The same cannot be considered because one cannot become the owner of the suit property on the basis of taking entry in the city survey record, in the absence of legal document of granting or allotting the suit property to defendant No. 1 or 5. Furthermore there is document to

record at list Exh. 3/4 issued by the Sub Divisional Officer, Vaijapur wherein it disclose the suit property was not allotted to the State Government nor it was acquired by it. This shows the State Government or defendant No. 5 are not the owner and possessor of the suit property.”

Thus, the trial court has granted injunction on the basis of earlier ownership of the plaintiffs of survey no.1 and, unless the land is acquired, the ownership cannot be transferred to the State.

18. The appellate court by order dated on 29.11.2023 passed in Miscellaneous Civil Appeal No.35 of 2023, has reversed the Judgment of the trial court as above and the appellate court observed at para nos. 14 and 15, as under:-

“14. ...In this case, plaintiffs seeks assistance of the court to make alteration in the consolidation scheme. In another words plaintiffs wants to challenged implementation of consolidation scheme which is implemented in the year 1984. As discussed above, there is specific mechanism provided under the provisions of the Maharashtra Land Revenue Code. Having due regard to the nature of relief claim by the plaintiffs in view of section 20(5) of the Maharashtra Land Revenue Code said controversy ought to be decided by the appellate authority. If the plaintiff succeed he is having remedy to claim compensation accordingly from the state.

15. To claim injunction first of all, plaintiffs ought to show possession. Needless to mention here that land in question is measured accordingly measurement map is prepared. Letter issued by Deputy Superintendent land record Dt. 21.06.2021 to the P.S.O., Vaijapur along with measurement map corresponding to that effect. Plaintiffs wants to show his

possession on the basis of mutation entry no.26410. Said land was mortgage as a security for the loan. By said mutation entry encumbrances of loan was removed. So far as encumbrances of loan is concern, it is entirely different matter. Area of total land survey no.1 is 73 Are. As discussed above only 2809.60 Square meters is incorporated in land property no.467. Prima facie plaintiffs failed to established possession over suit property....”

19. The basic undisputed facts that are required to be noted is that the consolidation scheme is implemented qua the whole village including survey nos.1 and 7. When a consolidation scheme is implemented the boundaries, so also, area of properties undergo change. The survey numbers are converted into gut numbers / CTS numbers and the boundaries are re-drawn. It is required to be noted that the State also owns adjacent survey no.7 and has old police quarters constructed thereon. In pursuance of the consolidation scheme the property of 2809.60 sq. meter in survey no. 1 and part of survey no.7 is recorded in the PR. card no.467 and the possession of the same is also with the State as can be seen from the construction of boundary wall. If there is any error in the scheme or in implementation of the scheme then the same has to be challenged within time frame before the authorities constituted under the Fragmentation and Consolidation Act. In the instant case, the scheme is implemented and the mutation entries are carried out in the year 1984. The basic error the trial court committed is at para 9 of the Judgment that it misread the mutation document and observed that only

survey no.7 is allotted to the State, whereas the mutation entry shows that survey no.7 and part of survey no.1 is included in the mutation entry recorded in favour of the State. Thus, the record indicates that the ownership and possession of the property in pursuance of the consolidation scheme stands with the respondent no.5 to the extent of 2809.60 sq. meter of survey no.1 and, 8108.50 sq. meter of survey no.7.

20. Since, the part of survey no.1 to the extent of 2809.60 sq. meter is in possession of the State in implementation of the consolidation scheme, the trial court erred to observe that unless the State shows that they have acquired the land, the State cannot become owner of the property. The property is not received by the State under acquisition. The State is also the owner of the adjacent land of survey no.7 and in the re-drawing of the boundaries after implementation of the consolidation scheme the State has become the owner of the land to the extent of 2809.60 square meter in survey no.1 and part of survey no.7 to the extent of 8108.50 sq. meter.

21. In the event the petitioners are able to demonstrate their title over the suit property, they would be entitled to claim reliefs as is available in law. But, prima facie, the State is the owner in possession of the property to the extent of 2809.60 sq. meter in survey no.1, in view of

the consolidation scheme being implemented and the scheme is not challenged by the petitioners, if, they were aggrieved by the same.

22. To claim injunction, the plaintiffs ought to have shown prima facie ownership and possession. After consolidation scheme is implemented the ownership of land to the extent of 2809.60 Square Meters in Survey No.1 is shown in the name of the defendant. To the extent of 2809.60 Square Meters of land, the petitioners have not shown possession, as the defendant has constructed a compound wall over the suit property and has been using the same for parade, parking and other activities. Thus, no case is made out to interfere with the impugned Judgment of the appellate court.

23. The writ petition stands dismissed.

[ARUN R. PEDNEKER, J.]

24. After pronouncement of the Judgment, on the prayer made by the learned counsel for the petitioners, the interim order passed by this court to continue for four (04) weeks from today.

[ARUN R. PEDNEKER, J.]

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