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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6184 OF 2017**

Shri Prashant Sakharam Jadhav
R/o. Jadhav Lane, Islampur, Taluka Walwa,
District Sangli. ... Petitioner

vs.

1. Sangli District Primary Teachers
Co-operative Bank Ltd., Sangli
Having office at Miraj, Taluka Miraj
District: Sangli.
2. Smt. Ujawala Gajanan Redekar
3. Miss. Rutuja Gajanan Redekar
4. Miss. Pooja Gajanan Redekar
5. Mr. Raviraj Gajanan Redekar
6. Pankaj Gajanan Redekar
Nos. 2 to 6 r/o. Sambhai Chowk,
Islampur, tal.Walwa, District Sangli.
7. Shri Bharat Bhagwan Walase
Walase Galli, Shivaji Chowk,
Islampur, Tal Walwa, District Sangli.
8. The Sub Divisional Officer,
Walwa, Division Islampur, Dist: Sangli.
9. The Collector, Sangli.

10. The Commissioner, Pune Division, Pune.

11. The State of Maharashtra. ... Respondents

Mr. Sanjay Kulkarni, for Petitioner.

Mr. A.P. Vanarse, AGP for Respondent-State.

CORAM : GAURI GODSE, J.

DATED : 5th JANUARY, 2024

ORAL ORDER. :-

1. The office remark shows that notice is served to the respondents. In spite of the notice, none appeared for the private respondents.

2. Heard learned counsel for the petitioner and learned AGP for respondent nos. 8 to 11.

3. Respondent no.1 had filed pursis in the proceedings before the Additional Commissioner on 4th August 2014, stating that the bank's claim was already satisfied by respondent nos. 2 to 6. Hence, they had no further interest in the proceeding. Learned counsel for the petitioner states that so far as respondent nos. 2 to 6 are concerned, they are heirs and legal representatives of the power of attorney holder who had executed the sale deed in favour of the petitioner. So far as respondent no.7 is concerned, he states that

respondent nos. 2 to 6, without any authority executed sale-deed in favour of respondent no.7. Hence, he has made him party respondent. Though notice is served on them, none appears for them.

4. Learned counsel for the petitioner states that on the basis of the sale deed executed in favour of the petitioner, mutation entry no. 15410 was effected; however, subsequently, the same was cancelled on the ground that the copy of the power of attorney was not produced on record. He further states that at the time of cancelling the mutation entry, there was a remark on record to get the mutation entry effected on production of a power of attorney. The said order cancelling the mutation entry was set aside by the Sub Divisional Officer on 30th May 2011, and there was a direction that based on the sale deed, mutation entry may be certified. The said order was challenged by the respondent no.1-bank on the ground that the charge was created in favour of the bank in respect of the subject property. Hence, the Additional Collector allowed the appeal of the bank and the order passed by the sub-divisional officer was set aside. Hence, the petitioner approached the Additional Commissioner. However, the Additional Commissioner also confirmed the order of the Additional Collector, setting aside the

order passed by the Sub Divisional Officer.

5. Learned counsel for the petitioner submitted that since the respondent nos. 2 to 6 had executed the sale deed in favour of respondent no.7, he has filed Regular Civil Suit No. 167 of 2014, and there is an interim relief granted in favour of the petitioner. The said suit is still pending.

6. In view of the aforesaid, the learned counsel for the petitioner submitted that the petitioner may be permitted to produce the power of attorney before the concerned Tahsildar/Circle Officer/Talathi and in view of the remarks made on mutation entry no. 15410, the concerned authorities may examine the documents produced by the petitioner for examining the mutation entry.

7. Learned AGP states that if the petitioner produces the relevant documents, the same can be directed to be examined by the concerned authorities.

8. I have perused the papers. The record indicates that the mutation entry was cancelled only due to the non-production of the power of attorney. The sale deed in favour of the petitioner is executed by the constituted attorney of the owner. Learned counsel for the petitioner has placed on record the photocopy of the

concerned power of attorney; the same is taken on record.

9. Perusal of the impugned orders indicates that mutation entry no. 20927 was effected for recording the charge of respondent no.1-bank on the subject property. It appears that there was another mutation entry no. 11341 regarding the attachment of the subject property by the bank. The Sub Divisional Officer, by order dated 30th May 2011, allowed the revision application filed by the petitioner and cancelled mutation entry no. 20972 and confirmed mutation entry no.15410. Mutation entry no. 15410 is the mutation entry entered in favour of the petitioner initially effected for recording sale-deed in favour of the petitioner, however, subsequently was cancelled for non production of the power of attorney. The order dated 30th May 2011 was challenged by the respondent no.1-bank before the Additional Collector. By order dated 29th May 2013, the Additional Collector allowed the appeal and quashed and set aside the order dated 30th May 2011 passed by the Sub Divisional Officer. Thus, the mutation entry in favour of the petitioner was cancelled. The said order of the Additional Collector was challenged by the petitioner before the Additional Commissioner, who by judgment and order dated 17th August 2015 confirmed the order of the Additional Collector. Hence, the petitioner filed the present petition.

10. It appears that the Additional Collector and the Additional Commissioner referred to a Revision Application No. 61 of 2008, which was filed by the petitioner for challenging the mutation entry no. 11341, effected in favour of the respondent no.1-bank and cancellation of mutation entry no. 15410 in favour of the petitioner. It appears that the said Revision Application no. 61 of 2008 was dismissed and the order cancelling mutation entry no. 15410 and effecting mutation entry no. 11341 was confirmed. The Additional Collector and the Additional Commissioner has observed that once there was already an order passed in Revision Application No. 61 of 2008, the Sub Divisional Officer should not have entertained the Revision Application No. 201 of 2009, filed by the petitioner. Hence, it appears that the Additional Collector set aside the order passed by the Sub Divisional Officer on 30th May 2011 in favour of the petitioner. The said order of the Additional Collector was confirmed by the Additional Commissioner on 17th August 2015. Mutation entry no. 11341 and mutation entry no. 20972 appears to be in favour of respondent no.1 with respect to the charge created by respondent no.1 on the subject property regarding it's dues. However, respondent no.1-bank had filed pursis before the Additional Commissioner on 4th August 2014, stating that the bank's claim has been satisfied by respondent nos. 2 to 6, and hence the bank is not

interested in the proceedings. Thus, it appears that respondent no.1 has no claim with respect to the subject property.

11. So far as respondent nos. 2 to 6 are concerned, they appear to be heirs and legal representatives of the constituted attorney who had executed sale-deed in favour of the petitioner. Respondent no.7 is added as party respondent in the petition as respondent nos. 2 to 6 had executed the sale-deed in favour of respondent no.7. With respect to the sale-deed in favour of respondent no.7, petitioner has already filed Regular Civil Suit No. 167 of 2014 and the same is pending.

12. As stated hereinabove, though served respondent nos. 1 to 7, have not appeared before this Court.

13. In view of the aforesaid, it is clear that the claim of respondent no.1 was only pertaining to their dues and the charge created by them on the subject property. Even otherwise, respondent no.1 has already filed pursis before the Additional Commissioner that they are not interested in the proceedings as their dues have been settled.

14. Thus, the controversy revolves around the mutation entry no. 15410 effected in favour of the petitioner on the basis of sale-deed dated 4th September 1997 and the cancellation of the said mutation

entry for non-production of the power of attorney, pursuant to which the sale-deed was executed. Thus, in such circumstances, the Additional Commissioner ought to have taken into consideration the pursis filed by respondent no.1 and the respective claims of the parties. However, the Additional Commissioner has confirmed the order of the Additional Collector by relying upon the reasons recorded by the Additional Collector.

15. Thus, in view of the statement made on behalf of the petitioner that he shall produce power of attorney before the concerned authorities in support of his claim for recording mutation entry in his favour on the basis of the sale-deed requires to be considered by the concerned authorities. So far as, the claim if any of respondent nos. 2 to 7 are concerned, it is always open for the concerned authorities to issue notice to all the interested parties before effecting mutation entry as per the claim of the petitioner. Hence, I do not see any impediment in disposing of the petition.

16. Accordingly, the petition is disposed of by passing the following order:

- I) The order dated 17th August 2015 passed in RTS Revision No. 653/2013, and the order dated 29th May 2013 passed in RTS Appeal No. 313 of 2012 as well as the order dated 30th

May 2011 in RTS Revision No. 201 of 2009 is quashed and set aside.

II) Petitioner shall file an appropriate application before the concerned Tahasildar/Circle Officer/Talathi and produce the power of attorney along with relevant documents in support of mutation entry no. 15410 within a period of four weeks from today, failing which the petition will stand dismissed without further reference to the court.

III) In the event, such an application as stated in clause (II) above is filed the concerned authorities to examine the same and decide the application in accordance with law.

IV) It will be open for the concerned authorities to issue notice to the interested parties, including respondent nos. 1 to 7 herein.

V) Writ petition stands disposed of in the above terms.

All parties to act on the authenticated copy of this order.

(GAURI GODSE, J.)