



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10892 OF 2019

Mahadevrao Jaysing Bhagat
Decd Thru Legal Heirs and Ors.

... Petitioners.

Versus

Janardhan Jaysing Bhagat and Anr.

... Respondents.

Mr. Ranjeet Patil, for the Petitioners.
Mr. Ashutosh Kulkarni i/by Mr. Amol Suryawanshi, for Respondent No.1.
Ms. Savita Prabhune, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : October 14, 2024

P. C. :

1. By this Petition, the challenge is to the order dated 10th April, 2018 passed by the State Government through the Hon'ble Minister for Revenue dismissing the Revision Application filed by the Petitioners.

2. The facts of the case are that an Application came to be filed by the Respondent No.1 before the Talathi seeking removal of the name of the Petitioners from the record of rights in respect of Gat No.45. The said Application came to be allowed vide order dated 8th July, 2014 by the Talathi without giving any notice to the Petitioners. The order of 8th July, 2014 records that the Mutation Entry No.300 does not include Gat No.45 and therefore the name of the

Respondent No.1 alone was entered in the 7/12 extract and the names of the Petitioners came to be deleted in exercise of powers under Section 155 of the Maharashtra Land Revenue Code, 1966 (MLRC). The order of the Talathi came to be challenged before the Tahasildar. The Tahsildar dismissed the Application and confirmed Mutation Entry No.4478 certified in favour of the Petitioners. As against which the Application was filed before the Sub Divisional Officer which also came to be rejected. The Petitioners approached the Additional Collector and vide order dated 11th July, 2016, the Additional Collector noted that the order passed by the Tahsildar on 8th July, 2014 is without giving any notice to the Petitioners and a long standing entry of almost 30 years came to be deleted. It further held that in the year 1985, upon vardi application given by the Respondent No.1, Mutation Entry No.301 came to be certified and therefore it cannot be said that there was a defect in the record of rights. The Additional Collector allowed the Application as against which the Revision Application was filed before the Hon'ble Minister. Vide order dated 10th April, 2018, the Hon'ble Minister noted that as far as Mutation Entry No.301 is concerned, the same is in respect of Gat No.445 and Mutation Entry No.300 does not include Gat No.45 and based on the said finding, and after considering that the Civil Suit No.55 of 2014 is pending adjudication, dismissed the Revision Application.

3. Heard Mr. Patil, learned counsel for the Petitioners and

Mr.Kulkarni, learned counsel for the Respondent No.1.

4. Mr. Patil, learned counsel appearing for the Petitioners has taken this Court in detail through the various orders passed by the authorities. He would further point out Mutation Entry No.301 which is annexed to the affidavit-in-reply filed by the Respondent No.2 and would submit that the said Mutation Entry No.301 is in respect of Gat No.45. He submits that by way of an additional affidavit of July, 2024, the Tahsildar Khanapur, District Sangali has stated that Gat No.445 has nothing to do with the present Petitioners and their family and that there is an overwriting in the mutation book and Gat No.45 seems to be overwritten by prefixing "4". He would further point out the statement of Tahsildar that instead of reflecting Mutation Entry No.301 on Gat No.45, Mutation Entry No.300 is being reflected in Gat No.45 and the names of the Petitioners were added, whereas Mutation Entry No.300 does not support addition of names of the Petitioners. He submits that in the record of rights, the names came to be entered on the basis of Mutation Entry No.301 in respect of Gat No.45 and therefore the observations by the Hon'ble Minister that the Gat No.301 does not pertain to Gat No.45 and that Mutation Entry No.300 also does not pertain to Gat No.45 and therefore the Petitioners do not have any right in the property is clearly erroneous.

5. *Per contra*, Mr. Kulkarni, learned counsel appearing for the Respondents would point out page No.13 of the Petition which is the

record of rights in respect of Gat No.45 and would submit that the same reflects Mutation Entry No.300 by virtue of which the names of the Petitioners came to be entered. He submits that the said record of rights does not speak about Mutation Entry No.301 and the admitted position is that Mutation Entry No.300 is not in respect of Gat No.45. He submits that in view thereof as there was apparent mistake in recording the names of the Petitioners in the record of rights, an Application came to be filed for deleting their names. He submits that the subject matter was therefore the incorrect recording of names based on Mutation Entry No.300 which admittedly did not include Gat No.45. He submits that it is the Respondent No.1, who has setup the case of Mutation Entry No.301 and therefore the whole dispute of interpolation in Mutation Book has arisen. He points out that the Mutation Entry No.301 which is at page no.62 of the Petition refers to the partition between the parties based on an Application and the same does not reflect that any notices were issued to the concerned parties. He submits that in the year 1972 and 1974, the Respondent No.1 has purchased the property by virtue of sale-deed pursuant to which Mutation Entry Nos.16626 and 16853 were certified in the sole name of the Respondent No.1 which has not been challenged till date. He submits that considering that the civil suit has been filed, the issues cannot be adjudicated by the Revenue Authorities and the mutation entry in favour of the Respondent No.1 should be confirmed.

6. Considered the submissions and perused the record.

7. The Application which give rise to the present litigation is filed by the Respondent No.1 for deleting the name of the Petitioners from the record of rights. It is an admitted position that without giving any notice to the present Petitioners, by order dated 8th July, 2014 the names came to be deleted from 7/12 extract. The 7/12 extract in respect of Gat No.45 which is annexed at page No.13 of the Petition would indicate that the names of the Petitioners were included in the 7/12 extract reflecting Mutation Entry No.300. Considering that the rights of the Petitioners were bound to be affected by removing their names from the 7/12 extracts, it was incumbent upon the Tahsildar to give notice to the Petitioners. If such an exercise would have been carried out by the Tahsildar, the Petitioners would have been in a position to place Mutation Entry No.301 on record which according to them, was certified based on an Application given by the Respondent No.1 himself. In that event, the Tahsildar would have been in a better position to adjudicate the Application which was filed based solely on the Mutation Entry No.300. Even otherwise, considering the Application made, the Tahsildar was expected to peruse the records and proceedings in order to ascertain whether there exists mutation entry by virtue of which the names of the Petitioners came to be recorded in the 7/12 extracts.

8. Considering the affidavit which has now come on record, the

Tahsildar has made specific statement that as far as Mutation Entry No.301 is concerned, there appears to be an interpolation by prefixing "4" in respect of Gat No.45. This is indeed a serious matter and it is expected that the proper inquiry will be carried out by the Tahsildar to fix responsibility and appropriate action in accordance with law will be taken by the concerned authorities.

9. The order impugned is the order of the Hon'ble Minister which is based on the finding that there is no right to the Petitioners to challenge the orders of the Tahsildar for the reason that Mutation Entry No.300 does not include the Gat No.45 and Mutation Entry No.301 is not in respect of Gat No.45. The whole basis of the impugned order is on the factum that the Mutation Entry No.301 is not in respect of Gat No.45. This position now stands clarified by the affidavit of the Tahsildar stating that instead of reflecting Mutation Entry No.301 on Gat No.45, Mutation Entry No.300 is being reflected on Gat No.45 and the names of the Petitioners were added. It appears that error has been committed by authorities while recording the names of the Petitioners in the 7/12 extracts based on wrong mutation entry. The Respondent No.1 cannot be permitted to take advantage of the error committed by the authorities by showing Mutation Entry No.300 instead of Mutation Entry No.301. As of today, the admitted position is that there is Mutation Entry No.301 in respect of which, the affidavit of the Tahsildar, states that there is an interpolation and that Mutation Entry No.301 is in respect of Gat

No.45. There is no challenge to the said Mutation Entry No.301. Admittedly, there is no issue as far as Mutation Entry No.300 is concerned and the dispute arises by virtue of Mutation Entry No.301 which is not challenged till date and according to the affidavit of the State the same is in respect of Gat No.45. The finding of the Hon'ble Minister rejecting the Revision Application is therefore clearly erroneous.

10. Considering that the authorities under the MLRC cannot go into the disputed questions as far as right, title and interest in the property is concerned and the specific case of the Respondent No.1 is that by virtue of the sale-deed in the year 1972 and 1974, the Gat No.45 has been purchased by the Petitioners a title dispute is raised. Even otherwise, there could not have been any adjudication on the title dispute by the Revenue Authorities.

11. As a civil suit is stated to have been filed by the Petitioners seeking partition in respect of the property which includes Gat No.45 as joint family property the claim of Respondent No.1 that Gat No.45 is the sole and exclusive property of the Respondent No.1 will be an issue which will be decided by the Civil Court.

12. Although, it is well settled that the mutation entry do not create or distinguish title in the property, the fact remains that mutation entry carry presumptive value and the ownership rights are

invariably linked to the entries which is found in the record of rights. In that view of the matter the appropriate course in the present case will be to keep all the mutation entries in respect of Gat No.45 in abeyance subject to the outcome of the Regular Civil Suit No.55 of 2014 by the Civil Court.

13. Consequently, the impugned order dated 10th April, 2018 is hereby quashed and set aside. All the mutation entries in respect of Gat No.45 is directed to be kept in abeyance till the final determination of the right, title and interest of the parties in Gat No.45 by the Civil Court in the pending civil suit.

14. Petition stands disposed of in the above terms.

[Sharmila U. Deshmukh, J.]