rrpillai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1332 OF 2015

1. Dr. Kirtikumar Vinodchandra Mehta
Age : Major, Occ : Doctor
(since deceased through Lrs)

1-A Smt. Mita Kirtikumar Mehta
Age : 63 years, Occ . Household

1-B Bhavin Kirtikumar Mehta
Age : 36 years, Occ. Service

1-C Jatin Kirtikumar Mehta
Age : 41 years, Occ. Service

1-D Chetan Kirtikumar Mehta
42 years, Occ. Business
All residing at 133, Guruwar Peth Karad,
District Satara
Applicant Nos. 1-A, 1-C and 1-D through
their Power of Attorney holder) Bhavin
Kirtikumar Mehta, Applicant 1-B

2. Shri Bharatkumar @ Bhupendrakumar
Vinodchandra Mehta
Age : Major, Occ : Business

Both R/at. 133, Guruwar Peth
At post : Karad, Tal. Karad 415110
Dist. Satara … Petitioners

Versus

1. Smt. Jamnabai Shivpratap Bang
(Deceased through legal heirs)

1A. Shri Rajgopal Shivpratap Bang
Age : 53 years, Occ : Business
R/at. 134, Guruwar Peth, At Post : Karad
Tal : Karad – 415110, Dist. Satara

1B Sau. Pramila Subhashchandra Marda
Age : 65 years, Occ : Household
Residing at : Balaji Nagar, At and Post
Pandahrpur, Dist – Solapur

1C Sau Padma Jagdish Kasar
Age : 55 years, Occ : Household
Residing at : Bhavani Peth
At. Post Satara, Dist : Satara

1D Sau Lalita Sanjay Zavar
Age : 47 years, Occ : Household
Residing at : Laxminagar, At andost –
Koregaon, Dist – Satara

2. Deputy Director of Land and Records
Pune Region, Pune
Govt. Bangalow No. 8, Jail Road
Yerawada, Pune – 6

3. The Collector
Collector Office Satara

4. The Superintendent Land and Records,
Satara

5. Mr. Balasaheb Thorat (Revenue Minister)
Maharashtra State
Mantralaya Mumbai 400 032 (deleted)

6 State of Maharashtra

7. Mrs. Shkuntala Rajgopal Bang
Age : Adult, Occ : Household
Flat No. 134, Guruwar Peth Karad ….. Respondents
Dist . Satara 415110

Mr. Shriram S. Kulkarni for the Petitioners.
Mr. Prasad Dani, Senior Advocate a/w. Mr. Nikhil Wadikar i/b. Mr. Nandu Pawar for Respondent Nos. 1A to 1D and 7.
Mr. Kamlesh Mali for Respondent No. 5.
Ms. M. P. Thakur, AGP for the Respondent - State.

CORAM : GAURI GODSE, J.

DATE : 26th MARCH 2024

ORAL JUDGMENT

1. This petition takes exception to the order passed by the learned Minister in Revision Application filed under Section 257 of the Maharashtra Land Revenue Code, 1966 (“MLRC”) for challenging the order dated 7th May 2007 passed by the Deputy Director, Land Records. The original holder of land, i.e., Jamnabai Shivpratap Bang – deceased respondent no. 1 (“Jamnabai”) filed the revision application before the learned Minister.

2. In view of the impugned order, the decision of the Deputy Director, Land Records, passed on 7th May 2007, is set aside. The said order was passed in appeal filed by the petitioners for challenging the order dated 10th July 2000 passed by the Superintendent of Land Records. By order dated 10th July 2000, a revision application filed by Jamnabai was allowed, thereby setting aside the order dated 9th March 1999 passed by the Taluka Inspector of Land Records (“TILR”) for entering easementary rights claimed by the petitioners on the property card.

3. The present petitioners are heirs and legal representatives of the original applicant who had filed an application for entering easementary rights in the revenue records.

4. Initially, by the first order dated 9th March 1999 passed by the TILR, the application was allowed and issued directions to make entry in the property card regarding easementary rights claimed by the petitioners from Jamnabai's property for light and air with regard to ground, first and second floor of the petitioners' property. Thus, in view of the impugned order, the order passed by the TILR issuing directions for recording easementary rights is set aside.

5. Learned counsel for the petitioners submitted that Jamnabai challenged the order passed by the TILR before the Superintendent of Land Records, who allowed the revision application on 10th July 2000. Hence, the petitioners preferred an appeal before the Deputy Director of Land Records who allowed the petitioners' appeal on 7th May 2007 and set aside the order passed by the Superintendent of Land Records. Thus, the order passed for entering easementary rights in the revenue records stood confirmed as of 7th May 2007. He submits that the said order dated 7th May 2007 is set aside in a revision

application filed by the respondents before the learned Minister. He submits that the revision application was belatedly filed in 2012; hence, the revision application was time barred.

6. He submitted that in a time barred revision application, the learned Minister had set aside the orders passed in favour of the petitioners. To support his submissions, learned counsel for the petitioners relied upon the copy of written submissions filed by the petitioners opposing the said revision application. He submitted that the perusal of the impugned order, as well as an order passed by the learned Minister on an application for interim relief records that Jamnabai filed a revision application on 6th November 2012. He thus submits that the revision application was time barred.

7. Learned counsel for the petitioners further submitted that respondent nos.1-A to 1-D are heirs and legal representatives of Jamnabai. However, respondent no. 7, i.e., the daughter-in-law of Jamnabai, claimed to be Jamnabai's legal representative based on a will. However, the claim of respondent no. 7 was disallowed in a civil proceeding where she had made an application to bring her on record as heir and legal representative in the suit filed by Jamnabhai. He

submits that the application filed by respondent no. 7 was dismissed, and dismissal was confirmed by this Court in Writ Petition filed by respondent no. 7. He submits that the record indicates that the revision application filed before the learned Minister was prosecuted by respondent no. 7. However, she had no legal right to prosecute revision application on behalf of Jamnabai.

8. In support of his submissions, learned counsel relied upon the affidavit filed on behalf of respondent no. 4, which also refers to the date of filing of the revision application as 6th November 2012. He submits that the respondent nos. 1-A to 1-D have filed an additional affidavit to support their contention that the revision was, in fact, filed by Jamnabai in the year 2007; however, due to a fire in the Mantralaya, the original record was burnt; hence, the revision proceedings were reconstructed. The learned counsel for the petitioners submits that there is no order shown by the said respondents to support their contention that the revision application was filed on 28th July 2007 and that in 2012, the said revision application was reconstructed. He submits that the impugned order does not indicate that the proceedings were reconstructed in 2012. He

thus submits that the impugned order is passed in a time barred revision application and, on behalf of respondent no. 7, who had no authority to prosecute the revision application, claiming to be the heir and legal representative of the original holder, Jamnabai. In support of his contention that the revision application was time barred, the learned counsel for petitioners relied upon the decision of the Hon'ble Supreme Court in the case of ***Santoshkumar Shivgonda Patil and Others Vs Balasaheb Tukaram Shevale and Others*** [1]. He submitted that the limitation period was not prescribed before the amendment to Section 257 of MLRC. However, the Hon'ble Supreme Court has taken the view that it has to be filed within a reasonable time, and the said reasonable time is three years from the date of the order.

9. To support the application filed on behalf of the petitioners for recording easementary rights in the revenue records, learned counsel for the petitioners relied upon provisions of the Maharashtra Land Revenue (Village, Town and City Survey) Rules, 1969. He submits that Rule 6 provides the procedure for inquiry, and the authorities

1 2009 AIR SCW 6305

have thus, after making the necessary inquiry, directed to make an entry in the revenue record regarding the easementary rights of the petitioners. He, therefore, submits that after making an essential inquiry as contemplated under Rule 6 of the aforesaid Rules, an application filed by the petitioners was allowed and directions were issued to make an entry of the easementary rights of the petitioners in the revenue records. Thus, he submits that this petition would require consideration as the impugned order passed by the learned Minister needs to be set aside on the aforesaid grounds.

10. Learned senior counsel appearing for respondent nos. 1-A to 1-D and 7 supports the impugned order. He submitted that there is no substance in the grounds of the challenge raised on behalf of the petitioners that the revision application was time barred. He submitted that the revision application was filed on 20th July 2007. He submitted that as the entire record was burnt due to a fire that had taken place in Mantralaya in the year 2012, aforesaid respondents were required to reconstruct the file, and hence, a copy of the revision memo filed in the year 2007 was resubmitted on 27th November 2012. Along with the revision memo, a vakalatnama signed by Jamnabai's son was also

filed. By way of an additional affidavit dated 18th March 2024, the said respondents have annexed a copy of the revision memo re-filed on 27th November 2012 and vakalatnama signed by the son of Jamnabai.

11. It is submitted that perusal of the revision memo would itself indicate that the same was filed in 2007, and only the copy of the revision memo, which was initially filed in 2007, was resubmitted in 2012. He relies upon noting on revision memo on page 3, which specifically records that the revision application was filed within 20 days from the date of the impugned order.

12. It is further submitted on behalf of respondent nos. 1A to 1D and 7 that the petitioners never raised the objection with regard to the limitation before the learned Minister. The revision application was decided on merits. He thus submitted that there is no substance in the ground of challenge raised that the revision application was time barred. With regard to the objection raised that respondent no. 7 had no authority to prosecute the revision on behalf of Jamnabai; it is submitted that heirs and legal representatives of Jamnabai, i.e. respondent nos. 1-A to 1-D have never raised any objection regarding the right of respondent no.7 to prosecute the revision application

before the learned Minister. He submitted that even otherwise even respondent nos.7 and 1A had filed vakalatnama at the time of reconstruction of the revision application in the year 2012. He, therefore, submits that respondent no. 7, as well as respondent no. 1A had rightly prosecuted the revision application after the death of Jamnabai. He, therefore submits that there is no substance in the second ground of challenge raised on behalf of the petitioners.

13. It is further submitted that any provisions under the MLRC do not support the application filed by the petitioners. Jamnabai objected to the application filed by the petitioners. The documents relied upon by the petitioners claiming easementary rights have also been objected to by Jamnabai. Hence, once the rights claimed by the petitioners based on documents were objected to by Jamnabai, the authorities were not entitled to permit the recording of entry of easementary rights as claimed by the petitioners. The learned Minister in the impugned order has thus rightly considered the disputes raised regarding the claim of easementary rights contended by the petitioners and, hence, has rightly allowed the revision application and set aside the orders directing to record the easementary rights of the petitioners regarding

light and air as claimed in the application. He thus submits that there is no merit in the petition and the petition deserves to be dismissed.

14. I have considered the submissions. Perused the record. A perusal of the memo of revision application relied upon by respondent nos. 1A to 1D and 7 filed on record by way of an additional affidavit indicates that the same was of the year 2007, and it appears that it was re-filed in 2012. The arguments made on behalf of the petitioners indicate that the petitioners had raised the objection that since Jamnabai had expired on 12th August 2009, the appeal had abated, and hence, it should be dismissed as abated. Thus, the contentions raised by the petitioners are inconsistent. If the petitioners contended that the revision had abated because of Jamnabai's death on 12th August 2009, then it is obvious that Jamnabai had already filed the revision. If the revision was never filed during the lifetime of Jamnabai there is no question of abatement of revision application due to the death of Jamnabai.

15. A perusal of the written arguments, as well as the impugned order does not indicate that the objection regarding the revision being time barred was anytime argued before the learned Minister. I do not

find any substance in the grounds raised that the revision application was time barred. I do not see any valid reason to entertain such an objection as the records indicate that the revision application was filed in 2007, and the same appears to have been reconstructed and renumbered in 2012.

16. With regard to the objection raised that respondent no. 7 had no authority to prosecute the revision application; I do not find any substance in the said argument. The heirs and legal representatives of deceased Jamnabai are brought on record in this petition as respondent nos. 1A to 1D. Respondent no. 7 has also subsequently been added as party respondent no. 7. None of the heirs and legal representatives have raised any objection to respondent no. 7's right to prosecute revision before the learned Minister.

17. An additional affidavit was filed on behalf of the said respondents, indicating that respondent no. 1-A, i.e. the son of Jamnabai, had filed vakalatnama in the revision application, and thus it appears that all the heirs and legal representatives of the deceased Jamnabai, including respondent no. 7 have prosecuted the revision filed before the learned Minister by Jamnabai. Hence, I do not see any

substance in the said objection regarding the revision not being prosecuted by a person not authorised to claim on behalf of Jamnabai.

18. So far as the merits of the application filed by the petitioners for entering easementary rights are concerned, a memo of the application is annexed to the petition. The application indicates that the petitioners have relied upon a survey carried out on 31st January 1999. Based on the said survey they have requested to make an entry of easementary rights to the petitioners with regard to the construction of survey no. 134, 134/1 owned by Jamnabai. A perusal of the order passed by the TILR indicates that the petitioners' application is allowed based on the survey document, and TILR has referred to the document of gift deed.

19. A perusal of the order dated 9th March 1999 does not record as to which provisions under MLRC were invoked by the TILR for making the said inquiry and directing to make entry of easementary rights claimed by the petitioners. I do not find any substance in the reliance placed on behalf of the petitioners on the said Rules of 1969. The aforesaid Rules of 1969 and in particular Rule No. 6 provides for a procedure of inquiry. Rule 3 of the Rules of 1969 provides for issuing

notice by the Collector for a survey of lands in any village, town or city as directed to be made by the State Government under Section 126 of the MLRC.

20. Section 126 of the MLRC provides for the procedure to be followed for the survey of land in village sites. Section 126 provides that when the State Government deems it fit to carry out a survey of land other than those used ordinarily for the purpose of agriculture within the site in a village, town or city under Section 79 or a fresh survey thereof under provisions of Section 83. Such survey shall be conducted, and its operation shall be regulated according to the provisions of Chapters V and IX of the MLRC.

21. Thus, the Rules of 1969 are with regard to the procedure to be followed for the survey as required under Section 126 of MLRC. Therefore, in the present case, the application filed by the petitioners cannot be termed an application filed under Section 126. Prayers in the application filed by the petitioners are specifically for entering easementary rights claimed by the petitioners in the property records. The relevant provisions for making an entry in the revenue record are provided under Sections 149 and 150 read with 154 of the MLRC. The

said provision of Section 149 requires entering names after following due procedure with regard to any persons acquiring right by way of succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise or any right as holder, occupant, owner, mortgagee, landlord, Government lessee or tenant. For invoking the provision of Section 149, it is also necessary to note the Explanation I of Section 149, which provides that the rights mentioned above, i.e. under the provisions of Section 149, includes a mortgage without possession but does not include an easement. Thus, under Section 149, adjudication for making any entry of easementary rights cannot be done.

22. Section 150 of the MLRC provides that the Talathi shall enter in a register of mutations, every report made under Section 149 or any intimation of acquisition or transfer under Section 154. As per Section 154, when any document purporting to create or assign or extinguish any title is registered under the Indian Registration Act, the registering officer shall send an intimation to the Talathi. Thus, even Section 150 does not provide for any adjudication of any easementary rights.

23. It is not disputed that easementary rights claimed by the

petitioners are not adjudicated by any civil court. From the perusal the order passed by TILR on 9th March 1999, it appears that to claim easementary rights from Jamnabai's property, the petitioners have referred to an adoption document and gift deed. However, the deceased Jamnabai, the affected party, has not admitted any easementary rights claimed by the petitioners. The concerned revenue authorities are not empowered to adjudicate upon the documents and interpret the terms of the document relied upon to claim the easementary rights in the proceeding initiated under the MLRC for making a revenue entry. The application made by the petitioners is for entering easementary rights with regard to the property of Jamnabai. The TILR has adjudicated on the petitioners' claim of easement by interpreting the terms of the documents relied upon by the petitioners. Such adjudication is not permissible under the provisions of MLRC. The petitioners' claim of easement, is required to be adjudicated in civil proceedings.

24. A perusal of the provisions of the MLRC does not provide for any such adjudication by the revenue authorities. Learned counsel for the petitioners was unable to point out any provision under the MLRC,

empowering the revenue authorities to make such adjudication. Hence, the application filed by the petitioners itself does not find any support under any of the provisions of the MLRC.

25. So far as the decision relied upon by the learned counsel for the petitioners in support of the contention that the revision application was time barred is of no assistance in the facts of the present case. I have already recorded reasons to hold that the revision application was filed in 2007; hence, there is no merit in the grounds that the revision application is time barred.

26. There is no manifest error or any illegality in the reasons recorded in the impugned orders warranting any interference by this Court. Thus, I do not see any reason to invoke powers under Articles 226 or 227 of the Constitution of India. The petition is devoid of any merits. For the reasons recorded above, writ petition is dismissed.

27. At this stage, learned counsel for the petitioners request for extension of ad-interim relief already granted by this court. Learned counsel for the respondents opposes the said request on the ground that the effect of the ad-interim relief that this court granted is already

explained by an order dated 12th March 2024. However, since the ad-interim relief was already granted on 11th March 2015, the same shall continue for four weeks from the date of uploading this order, subject to the observations I recorded in my order dated 12th March 2024.

[GAURI GODSE, J.]

RAJESHWARI RAMESH PILLAI Digitally signed by RAJESHWARI RAMESH PILLAI Date: 2024.04.25 16:18:43 +0530