VRJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.892 OF 2024

Betala Agrotech Through Its Proprietor
Kamlesh Rajendra Betala … Petitioner

V/s.

The State of Maharashtra & Ors. … Respondents

WITH
WRIT PETITION NO.1072 OF 2024

Kamlesh Rajendra Betala … Petitioner

V/s.

The State of Maharashtra & Ors. … Respondents

Mr. P. B. Shah with Mr. Sandeep S. Patade, Ms. Vidhi Jain i//by Ms. Gunjan Shah for the petitioner.

Mr. Surel S. Shah with Mr. Sandeep R. Waghmare for respondent Nos.6 and 7.

Mr. Sanjay D. Rayrikar, AGP for the State/respondent Nos.1 to 5.

CORAM : AMIT BORKAR, J.

DATED : MARCH 18, 2024

P.C.:

1. **Rule**. Rule is made returnable forthwith.

2. Both the writ petitions challenge order passed by respondent No.1 thereby setting aside order passed by the Additional Commissioner dated 26th November 2018 arising out of proceedings under section 148 of the Maharashtra Land Revenue Code, 1966.

3. The petitioner in each petition claims to be purchaser of immovable property vide registered sale deed dated 5th March 2015 for consideration of amount of Rs.2,23,00,000/-. In Writ Petition No.1072 of 2024 the sale deed is dated 5th March 2015 executed for consideration of Rs.70,00,000/-. Based on such registration, the petitioner on 13th March 2015 applied for entering his name in revenue record. According to the contesting respondents, cheques issued for balance amount were dishonoured and in view of averments in the sale deed, the sale deed became void.

4. The Talathi rejected respondent's objection entering petitioner's name in the revenue record by observing that the rights of the parties shall be governed by the Civil Suit pending before the Civil Court.

5. The contesting respondent Nos.6 and 7 filed Special Civil Suit No.1193 of 2015 for cancellation of sale deed. In the said suit, the Civil Court directed petitioner not to create third party interest during pendency of suit.

6. Respondent Nos.6 and 7 challenged order of the Circle Officer by Appeal No.331 of 2015 before the Sub-Divisional Officer who dismissed the appeal. Aggrieved thereby, respondent Nos.6 and 7 filed an appeal before the Additional Collector.

7. During pendency of the appeal, petitioner mortgaged the property in favour of Central Bank of India.

8. The Additional Collector on 12th October 2017 allowed the RTS Appeal filed by respondent Nos.6 and 7 and cancelled the mutation entry.

9. Aggrieved thereby, the petitioner filed appeal before the Commissioner who allowed the appeal by observing that unless registered sale deed is cancelled by the competent Civil Court, mutation entry could not have been cancelled.

10. Respondent Nos.6 and 7 initiated criminal proceedings which are pending.

11. The respondent Nos.6 and 7 filed revision before the State Government under section 257 of the Maharashtra Land Revenue Code, 1966. The Minister by the impugned order dated 22nd September 2023 allowed the appeal. Hence, the petitioner has filed present writ petition.

12. Learned advocate for the petitioner submitted that considering the scope of power under section 149 of the Maharashtra Land Revenue Code, 1966, validity of the sale deed could not have been examined by the authorities under the Maharashtra Land Revenue Code, 1966, particularly when the issue of legality of sale deed was subject matter of civil suit.

13. Per contra, learned advocate for the respondent Nos.6 and 7 submitted that conduct of the petitioner in mortgaging the property despite subsisting order of injunction dis-entitles him from invoking extraordinary constitutional jurisdiction of this Court. According to him, there is recital in the sale deed which states that in case of dishonour of any cheque, the sale deed stands automatically cancelled. Therefore, the Additional Collector rightly allowed the appeal of respondent Nos.6 and 7. In support of his submission, he relied on judgment of Apex Court in **Narayan Laxman Patil vs. Gala Construction Company Private Limited & Ors.** reported in (2016) 14 SCC 388, and **Kewal Krishnan vs. Rajesh Kumar & Ors.** reported in 2021 SCC OnLine SC 1097.

14. I have heard learned advocates for the parties and perused the record in the form of judgments of authorities under the Maharashtra Land Revenue Code, 1966. The scope of power of revenue authorities under sections 149 and 150 of the Maharashtra Land Revenue Code, 1966 is no longer *res integra* in view of judgment of Co-ordinate Bench of this Court in **Shrikant R. Sankanwar and Ors. vs. Krishna Balu Naukudkar** reported in (2003) Mh.L.J. 276. This Court has held that the inquiry contemplated under section 150 of the Maharashtra Land Revenue Code, 1966, in relation to application for mutation of entry is to ascertain whether the document produced in support of acquisition of rights stated to have been acquired in the land in respect of which mutation of entry is sought for and it does not empower such authority to adjudicate upon right, title and interest of the parties in immovable properties. In the light of law laid down by the Co-ordinate Bench of this Court, it is evident that the Circle Officer while making entry of petitioner’s name could not have inquired as to what is the effect of dishonour of cheque as mentioned in the sale deed. All these issues are subjudice before the Civil Court and it is for the Civil Court to consider the issue of validity of sale deed on its own merits. The Revenue Authority could not have consider merits of the matter to record a finding that such sale deed for want of compliance of conditions stated there was void.

15. In so far as, the submission on behalf of respondent Nos.6 and 7 that the conduct of the petitioner in creating third party rights in breach of order passed by the Competent Court dis-entitles him from invoking extraordinary constitutional jurisdiction of this Court is concerned, in the facts of the case, the petition arises out of exercise of power under sections 149 and 150 of the Maharashtra Land Revenue Code, 1966. The order allegedly breached by the petitioner is of the Civil Court. Said contention is relevant for adjudicating grievance arising out of orders or decree passed in the Civil Court in the same proceeding. The essential question which this Court is called upon to adjudicate is whether the authorities under the Maharashtra Land Revenue Code, 1966 were within their powers to adjudicate validity of registered document based on recitals contained therein. As held earlier, only scope of proceedings under sections 149 and 150 of the Maharashtra Land Revenue Code, 1966 is to adjudicate whether the document of title produced on record reveals acquisition of right is stated to have been acquired in the document. Therefore, in my opinion, the conduct in the facts of the case is not relevant for dis-entitling the petitioner from invoking the writ petition as the error committed by the authorities below is in relation to jurisdictional error.

16. In so far as the judgment in the case of **Narayan Laxman Patil** (supra) is concerned, the issue which arose for consideration before the Apex Court was in relation to lawful possession of the person applying to enter his name in other rights column. For entering names of person in other rights column in relation to possession, the independent inquiry in the form of Rule 31 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971, is contemplated and based on such inquiry, the Revenue Officer came to the conclusion regarding lawful possession. However, in the facts of the case, the right sought to be enforced is based on registered instrument which states to have acquired right over immovable property. Therefore, the judgment in the case of **Narayan Laxman Patil** (supra) is distinguishable on facts.

17. In the facts of the case of **Kewal Krishnan** (supra), the Apex Court was considering a decree passed by Civil Court. Therefore, the scope of inquiry in the proceedings which gave rise to the Special Leave Petition arose out of Civil Court and, therefore, the Apex Court was considering merits and validity of rights created in favour of purpose to the civil suit and in that context, the Court observed in favour of the appellant. In the fact of the case, as stated earlier the application was based on registered sale deed stated to have acquired right in immovable property. Therefore, the authorities under the Maharashtra Land Revenue Code, 1966 could not have adjudicated upon the validity of the sale deed.

18. Moreover, it is well settled that the entries made in revenue record are only for fiscal purposes which neither create nor extinguish rights of person in immovable property. Therefore, proceedings under the provisions of the Maharashtra Land Revenue Code, 1966 cannot be equated with the proceedings arising out of judgment and decree passed by the Civil Court. Hence, the impugned order cannot be sustained.

19. Rule is made absolute in terms of prayer clause (b).

20. Both the writ petitions stand disposed of. No costs.

(AMIT BORKAR, J.)