

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2821 OF 2023

Sudhakar Dattatray Damle & Ors.

.. Petitioners

Versus

Yashwant Dattatray Rane & Ors.

.. Respondents

.....

- Mr. Drupad S. Patil a/w Mr. Namitkumar S. Pansare for Petitioners
- Mr. Rahul More for Respondent Nos. 1 to 7
- Mr. Y.D. Patil, AGP for Respondent No. 8 - State

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 19, 2024

P. C.:

1. Heard Mr. Drupad Patil, learned Advocate for Petitioners; Mr. More, learned Advocate for Respondent Nos. 1 to 7 and Mr. Y.D. Patil, learned AGP for Respondent No. 8 – State.

2. Suit is filed in the year 2016 seeking removal of encroachment. Petitioners (Org. Plaintiffs) filed Application in the year 2019 seeking appointment of Court Commissioner. DILR was appointed as Court Commissioner by the Court pursuant to the order passed in that Application. However, the said Court Commissioner filed a failure report dated 19.05.2021 assigning the reason that he was unable to carry out the work of commission i.e. measurement of the suit land alongwith encroachment thereon since the maps of the old Survey Numbers were in a torn condition. Plaintiffs thereafter preferred

Application below Exh. 22 before the learned Trial Court for seeking direction to DILR for production of Commissioner's report and for further directions. While considering the Application, after narrating the facts learned Trial Court has held that since the maps of Gat numbers i.e. old survey numbers were in a torn condition and the record was dilapidated, no further directions can be given to DILR to once again carry out the same exercise which he was unable to carry out in the first place. Learned Trial Court has observed that DILR has not refused to measure the land but after measurement on the basis of the available old survey maps, he has stated that he is unable to match the map of the concerned Gat numbers i.e. Gat No. 119 and Gat No. 94. According to him, there is difference shown in both the maps since records available with him are in a dilapidated condition and original documents are not found. In that view of the matter, the learned Trial Court has rejected the Application filed below Exh. 22 by order dated 09.12.2022 which is impugned before me.

3. On 28.06.2023 after hearing learned Advocates appearing for the parties, this Court passed the following order:-

1. *Heard.*
2. *In spite of the order of the Trial Court directing the Deputy Inspector Land Records to carryout the measurement, inability has been expressed on the ground that the documents are in dilapidated condition.*
3. *Mr. Patil, learned counsel appearing for the petitioners has pointed out the relevant pages which provides the digitization of records. He submits that the permanent record is maintained of the survey maps and*

the same has been obtained by the petitioners under the RTI Act, copies whereof are annexed at page nos.63 to 67 of the petition.

3. *Learned AGP seeks time of two weeks to file affidavit-in-reply. The affidavit-in-reply to be sworn by the Deputy Inspector Land Records, who has refused to comply with the order of the Civil Court directing the measurement to be carried out.*

4. *Let the affidavit-in-reply be filed within a period of two weeks.*

5. *Stand over to 12th July, 2023."*

4. In compliance of the above order, affidavit-in-reply dated 04.07.2023 is filed on behalf of Respondent No. 8 by Mr. Bholashankar Govind Kokane, Deputy Superintendent of Land Record, Alibaug, Dist. Raigad. Paragraph No. 6 of the said affidavit is relevant. For reference and convenience, same is reproduced below:-

"6. After implementation of Consolidation Scheme, the lands have been assigned Gut/Block numbers. The maps of said Gat numbers are available. However, the maps of old survey numbers are in torn condition. Hence, it is not possible to carry out measurement as per said old maps. However, the measurement as per Gut / block maps is possible. I say that if allowed, by the Hon'ble Court, the office can carry out measurement of lands bearing Gut Nos. 94 and 119 and demarcate the boundaries as per the Gut Nakasha. I say that it will be possible to fix the boundary as per Gut Nakasha."

5. From the above, it is seen that it is stated therein that after implementation of the Consolidation Scheme, the suit land has been assigned Gut / Block numbers and map of said Gat numbers are available. It is further stated that it is not possible to carry out measurement as per the old maps which are in a torn condition but measurement on the basis of the Gut / Block maps is possible. The affidavit further states that if Court permits, the office of DILR can carry out measurement of lands bearing Gat Nos. 94 and 119 and

demarcate the boundaries as per the Gut Nakasha. If the aforementioned exercise is carried out, there is a possibility that the dispute in the Suit proceedings also coming to an end.

6. *PER CONTRA*, Mr. More appearing for the Respondents would submit that the present Petition is not maintainable in view of the joinder of Respondent No. 8 as a party Respondent to the Writ Petition since Respondent No. 8 is not a party before the learned Trial Court. He would submit that the affidavit-in-reply filed by the Government clearly records that record of old survey numbers, *inter alia*, pertaining to the suit land from which removal of encroachment is sought is in a torn and dilapidated condition. Hence, he would submit that the learned Court Commissioner will have to consider fresh material that is now available for the purpose of carrying out measurement which is the Gut Nakasha on the basis of new Gat numbers.

7. In that view of the matter, the impugned order dated 09.12.2022 is set aside with a direction that the Application filed below Exh. 22 shall be re-heard by the learned Trial Court in the light of the affidavit-in-reply dated 04.07.2023 filed by Respondent No. 8 in the present Writ Petition. It is seen that the present Gat Nakashas are prepared on the basis of old survey maps only and therefore the learned Trial Court shall keep this in mind while determining the

Application filed below Exh. 22 filed by Plaintiffs and give appropriate directions to the Court Commissioner and consider the affidavit-in-reply filed by Respondent No. 8 herein as directed and give further directions for measurement of the suit property. Needless to state that both the parties shall remain present before the learned Trial Court at the time of hearing of the Application filed below Exh. 22.

8. Copy of the said affidavit-in-reply dated 04.07.2023 shall be placed before the learned Trial Court by the learned Advocate for Petitioners so as to enable the learned Trial Court to consider the same in its entirety. Learned Trial Court shall re-hear the Application filed below Exh. 22 and after hearing both the parties i.e. Plaintiffs as well as Defendants pass appropriate orders for carrying out measurement of the suit land strictly in accordance with law and after considering the affidavit dated 04.07.2023 filed by the Deputy Superintendent of Land Record, Alibaug, Dist. Raigad within a period of eight weeks from today. Needless to state that this Court has not opined on any merits of the matter. All contentions of Plaintiffs and Defendants are expressly kept open.

9. With the above direction, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
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