

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3659 OF 2024

Samir Tufel Taheer and Anr. ... Petitioners

V/s.

Shripati Ganpat Padwal Through POA
Prashant Prakash Jori and Ors. ... Respondents

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Mr. Kishor Patil a/w Mr. Yatin Yeole i/b Mr. Sidheshwar
Biradar, for the Petitioner.

Mr. Hamid D. Mulla AGP for State-Respondent Nos. 2
and 3.

Mr. Hitesh Vyas i/b Mr. Chandrashekhar Yadav a/w
Mr. Rasik Raut for the Respondents.

CORAM : AMIT BORKAR, J.

DATED : APRIL 1, 2024

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- 2.** Challenge in this petition is to the order passed by the Sub-divisional Officer in an appeal filed by respondent No.1 challenging the mutation entry based on registered sale deed effected in favour of the petitioners in the year 1995-1996.
- 3.** The facts on record indicates that the respondent No.1 had earlier filed an Appeal No.1189 of 2023. There was delay of 27 years and three months in filing the appeal. The application for the

condonation of delay was also filed. However, during the pendency of the such appeal. The appellant filed an Application No.186 of 2024 seeking injunction against the petitioners from constructing over the properties in dispute. The Sub-divisional Officer by the impugned order has directed parties to maintain status quo. This order is subject matter of the present writ petition.

4. Learned counsel for the petitioners submitted that the impugned order is ex-facie without jurisdiction as it travels way beyond the powers conferred on Authorities under the provisions of conferred under Sections 149 and 150 of the Maharashtra Land Revenue Code, 1966 (“Code” for short).

5. Learned counsel for the respondent No.1 submitted that the petitioners have remedy by way of revision under Section 257 of the Code and the petition need not be entertained. He submitted that during the pendency of the appeal, the petitioners tried to make construction over the property in dispute which prompted them to file such application and, therefore, this Court need not interfere with such discretionary order.

6. I have heard the parties. For the purpose of adjudicating the point raised, it is necessary to consider the scheme of the Section 149 and 150 of the Code which reads as under:

“149. Acquisition of rights to be reported.

Any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any rights as holder, occupant, owner, mortgagee, landlord, Government lessee or tenant of the land situated in any part of the State or assignee of the rent or revenue

thereof, shall report orally or in writing his acquisition of such right to the *Talathi* within three months from the date of such acquisition, and the said *Talathi* shall at once give a written acknowledgement of the receipt of such report to the person making it.

150. Registration of Mutation and register of disputed cases

1) The *Talathi* shall enter in a register of mutations every report made to him under section 149 or any intimation of acquisition or transfer under section 154 or from any Collector.

(2) Whenever a *Talathi* makes an entry in the register of mutations, he shall at the same time post up a complete copy of the entry in a conspicuous place in the Chavdi, and shall give written intimation to all persons appearing from the record of rights or register of mutations to be interested in the mutation, and to any other person whom he has reason to believe to be interested therein.”

7. On reading of the aforesaid provisions, it appears that the Authorities under the Code are empowered to enter name of a person claiming acquisition of right by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or other aids. It is well settled that the limited enquiry which the Circle Officer or Talathi is empowered is to ascertain acquisition of right under the document claimed by the person applying for entry of his name. Since the Talathi or the Circle Officer are creature of statute, they cannot exercise more power than the power conferred under the provisions of statute.

8. In the facts of the case it is undisputed that the petitioners' names were entered in revenue record based on registered instrument in the year 1995-1996. Such entry was challenge in the year 2023 after an lapse of period of 27 years. The appeal was accompanied by an application for condonation of delay. Considering the scheme of the Code and settled interpretation of Section 149 of the Code that such entries can not create or extinguish substantive rights over immovable property, the Appellate Authority while exercising power under Section 247 of the Code have no power to grant interim relief during the pendency of the application of condonation of delay. Such power is available only if the order impugned affects substantive rights of the parties like the appeal arising out of decree passed by Civil Court wherein provisions of Order 41 Rule 3(A) are interpreted to confer power on Appellate Court to grant interim relief during the pendency of the application for condonation of delay.

9. However, considering the scheme of the Code and the mutation entries have no effect on substantive rights over immovable property, in my opinion, the Appellate Authority could not have granted any interim relief in favour of the appellant during the pendency of the application for condonation of delay.

10. On reading of the application for interim relief, it indicates that the respondent No.1 was seeking relief of injunction against the petitioners. Such injunction in absence of source of power could not have been granted by the Appellate Authority. It needs to be noted that only power which inheres in Appellate Authority is to grant stay to the order impugned. In absence of conferment or

specific power under a statute, the Appellate Authority under the Code has no power in an appeal arising out of challenge to mutation entry under Section 149 of the Code to grant relief of injunction.

11. It is well settled that the order of grant of stay is directed against the effect and operation of the order passed by the Sub-ordinate Authority. However, the order of injunction is directed against the respondents as a person. Therefore, it is necessary that the Appellate Authority need to pass such order only in a case where statute confers such Authority with power of injunction. Considering the scheme of Section 149 and 150 of the Code, it cannot be said that such power of injunction is incidental or necessary for the purpose of exercise of power conferred under a statute.

12. Therefore, I am of the considered view that the Appellate Authority under Section 247 of the Code has no power to grant injunction against the respondent in relation to property in question.

13. The objection raised on behalf of the respondent No.1, is of availability of alternative statutory remedy. The said question is no longer *res-integra* in view of the judgment in the case of **Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai** reported in (1998) 8 SCC 1, the Apex Court in the said judgment held that non-interference in an order passed by Statutory Authority is self-imposed restriction by the High Court. It is policy of prudence adopted by the High Court however such

rule of availability of alternative statutory remedy is subject to well recognized inceptions such as:

- a)** Breach of principles of natural justice;
- b)** The order impugned is without jurisdiction;
- c)** The order has effect of affecting fundamental rights of the litigants.

14. Since I have already recorded a finding that order is without jurisdiction. The objection regarding availability of alternative statutory remedy need not detain this Court from setting aside the impugned order.

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

16. The writ petition is disposed of. No costs.

(AMIT BORKAR, J.)