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

WRIT PETITION NO. 4393 OF 2024

Shrikant R. Dhere
Through POA Ninad N. Ingawale .. Petitioner
Versus
The State of Maharashtra
Through Revenue and Forest Dept. and Ors. .. Respondents

**WITH
WRIT PETITION NO. 4047 OF 2024**

Shrikant R. Dhere
Through POA Ninad N. Ingawale .. Petitioner
Versus
The State of Maharashtra
Through Revenue and Forest Dept. and Ors. .. Respondents

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- Mr. Pandit Kasar, Advocate for Petitioner.
 - Ms. V.R. Raje, AGP for Respondent – State.
 - Mr. N.V. Walawalkar, Senior Advocate a/w. Mr. Suresh Sabrad, Mr. Amey Sawant, Mr. Pratik Sabrad and Ms. Gracy Saldanha, Advocates for Respondent No.6.

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CORAM : MILIND N. JADHAV, J.
DATE : APRIL 10, 2024.

P.C.:

- 1.** Heard Mr. Kasar, learned Advocate for Petitioner; Ms. Raje, learned AGP for Respondent – State and Mr. Walawalkar, learned Senior Advocate for Respondent No.6 – Society.
- 2.** Writ Petition No.4047 of 2024 is filed by Petitioner Shrikant R. Dhere (Constituted Attorney of Mr. Ninad N. Ingawale) seeking to

challenge the proceedings filed by Respondent No.6 – Adinath Gruh Nirman Sanstha *nee* Punya Shrushti Sahakari Gruhnirman Sanstha Ltd., Kolhapur for conversion of occupancy status from Class – II to Class – I of property bearing Plot No.61/A, 62/A, 56/A and 56/A/1 (hereinafter referred to as “**said property**”). This Writ Petition is filed on 09.02.2024. It is moved before this Court on 22.02.2024, on which date, Writ Petitioner expressed his apprehension that the proceedings for conversion of occupancy status before the Collector may become absolute and hence stay on the proceedings was requested. This Court passed order on 22.02.2024 on *prima facie* submissions, directing that proceedings before the Collector regarding conversion of occupancy status be stayed in the meanwhile.

3. However, this Court was informed on the next adjourned date i.e. on 02.04.2024 that the proceedings for conversion of occupancy status before the Collector had already become absolute and the Collector had passed judgment dated 12.02.2024 enabling conversion of occupancy status of the said property prior to the passing of the order on 22.02.2024 by this Court.

4. The second Writ Petition namely Writ Petition No.4393 of 2024, now maintains a fresh challenge to the judgment dated 12.02.2024 passed by the Collector. Both Petitions are in respect of the same cause of action and same property.

5. Though the learned Advocates have made their submissions on the legality and validity of the judgment and order dated 12.02.2024, the present controversy between the parties can be resolved by passing appropriate directions for implementation of the judgment and order dated 31.07.2013 passed by the District Inspector of Land Records (for short “**DILR**”) in Appeal No.1431 of 2013.

6. It is seen that the bone of contention between the parties is the judgment and order dated 31.07.2013 passed by the DILR in Appeal No.1431 of 2013. Both learned Advocates appearing for the respective parties are *ad idem* that as per possession receipt, area admeasuring 4273 square meters i.e. 42.73 R out of Revision Survey No.512 has been allotted and handed over to Respondent No.6 – Society. It is stated in the order that as per revenue records, Revision Survey No.512 totally admeasures 45.83 R out of which area admeasuring 42.73 R is allotted to Respondent No.6 – Society and belongs to the Society and the balance area of 3.10 R belongs to the Ingawale family. By virtue of the said order, it is confirmed that the right of Ingawale family to the extent of 3.10 R is also certified from the revenue record. This order is passed by the DILR in statutory Appeal proceedings filed by the Writ Petitioner before the Competent Authority. The name of Writ Petitioner is Mr. Shrikant R. Dhere and the name of Appellant in the proceedings before the DILR is Mr. Ninad Namdev Ingawale.

7. It is stated in the order that land admeasuring 42.73 R has been allotted to the Respondent No.6 – Society by the Government and possession of the said property has been handed over to the Respondent No. 6 – Society and therefore to the extent of the area of 42.73 R, the Appellant i.e. Ingawale family has no right in the said property. Possession receipt to that effect has also been referred to in that order.

8. By the impugned order, Application filed by Respondent No.6 – Society seeking conversion of the said property from occupancy Class - II to Class - I stands allowed. Petitioner intervened in that Application, seeking a stay on the ground that Respondent No.6 – Society was holding additional area in excess of 42.73 R out of Revision Survey No.512. Though the order of conversion has been passed, the learned Collector has in view of this Court's order dated 22.02.2024, kept further proceedings on hold.

9. Grievance raised by Petitioner is that Respondent No.6 – Society is holding area in excess of 42.73 R in Revision Survey No.512. In the first instance, nothing prevented the Petitioner from seeking measurement, survey and demarcation of his holding namely 3.10 R retained by the Ingawale family on whose behalf the Petitioner represents or the area occupied by Respondent No.6 – Society, after allotment was made and possession given to Respondent No.6 –

Society as far back in the year 2008. Petitioner nor the Ingawale family did not choose to do so and it is only when Respondent No.6 – Society applied for change of occupancy status, Petitioner raised the bogey that Respondent No.6 – Society is holding excess area which belongs to the Ingawale family. In fact, raising of such a grievance by the Petitioner is nothing but a sheer abuse of the due process of law.

10. After hearing Mr. Walavalkar, learned Senior Advocate alongwith Mr. Sabrad, learned Advocate for Respondent No.6 – Society, the aforesaid controversy raised by the Writ Petitioner can be addressed by carrying out measurement of the holding of Respondent No.6 – Society and the Ingawale family as per the revenue record of Revision Survey No.512. Admittedly, Respondent No.6 – Society is entitled to 42.73 R out of Revision Survey No.512 and hence the area of holding of Respondent No.6 – Society shall be measured and holding of Respondent No.6 – Society shall be confirmed to the extent of 42.73 R out of Revision Survey No.512. Any balance area left thereafter in Revision Survey No.512 shall be confirmed to be holding of the Ingawale family strictly as per revenue record and the order dated 31.07.2013 passed by DILR.

11. Measurement of the area of holding of Respondent No.6 – Society and the balance area (of Ingawale family), both out of Revision Survey No.512 shall be measured and mapped certifying their

respective holdings. This will put to rest the grievance raised by the Petitioner. This exercise will also confirm the implementation of the order dated 31.07.2013 passed by the DILR. After this exercise is carried out, Respondent No.6 – Society shall be entitled to 4273 square meters i.e. 42.73 R area out of Revision Survey No.512. The balance area in the said Revision Survey No.512 shall be entitled to the Ingawale family. Whether the balance area is 3.10 R or more or less will be confirmed by the aforesaid exercise. This exercise shall be carried out by the DILR / TILR, Kolhapur in the presence of both parties expressly within a period of 8 weeks from today.

12. It is clarified that, first and foremost area admeasuring 4273 square meters i.e. 42.73 R out of Revision Survey No.512 shall be carved out by the DILR / TILR as the holding of Respondent No.6 – Society. Once that is done, the balance area out of the said Revision Survey No.512 shall also be measured by the DILR / TILR and such balance area shall be certified to be holding of the Ingawale family as per the order dated 31.07.2013 passed by the DILR.

13. Both parties are directed to co-operate with the DILR / TILR in carrying out the above exercise.

14. On completing the measurement of the said property and the implementation of the order dated 31.07.2013, the record of the said property shall be suitably amended, if so needed.

15. The order of the Collector for conversion of the said property from occupancy Class - II to occupancy Class - I dated 12.02.2024 bearing No.86 of 2024 annexed as Exhibit – “G” at page No.89 of the Writ Petition shall be implemented for all purposes within a period of one week from completion of the measurement as directed hereinabove and the respective areas being certified.

16. If the Petitioner has any claim to any land beyond 310 square meters i.e. 3.10 R out of the said property i.e. Revision Survey No.512, except the land admeasuring 4273 square meters i.e. 42.73 R allotted to Respondent No.6 – Society on 28.08.2008, he will be free to agitate the same by way of an appropriate legal action and shall not object to the implementation of the order of conversion in favour of Respondent No.6 – Society on that ground.

17. It is clarified that, the area admeasuring 4273 square meters belonging to Respondent No.6 – Society is out of Revision Survey No.512. It is therefore directed that measurement of only Revision Survey No.512 shall be undertaken and not any other Revision Survey Number. Record indicates that area held by the Respondent No.6 – Society is 11852 square meters. In this view of matter, the DILR / TILR shall take adequate care to ensure that the exercise directed by this order is for the implementation of order dated 31.07.2013 passed by the DILR only and therefore in respect of the said property being

Revision Survey No.512 only.

18. In that view of the matter, any other area held by Respondent No.6 – Society out of any other Revision Survey Numbers namely Revision Survey No.508/1 and 509/1 shall not be merged with the area of Revision Survey No.512 (pt.) at the time of carrying out the aforesaid exercise of measurement.

19. Both parties shall approach the DILR / TILR, Kolhapur with a server copy of this order on 12.04.2024 at 10.30 am and pay the costs for carrying out the aforesaid exercise for measurement of Revision Survey No.512 (pt.) in equal proportion. The concerned Competent Authority shall accept the fees for carrying out the above exercise from both the parties equally and determine the schedule as per its convenience and discretion and complete the exercise within 8 weeks as directed in paragraph No.11 hereinabove.

20. Parties are directed to co-operate with the Competent Authority.

21. Final measurement Report and demarcation map shall be handed over to both parties and it shall be accordingly implemented in the revenue record of the concerned property maintained by the Revenue Authorities.

- 22.** All contentions of the parties are expressly kept open.
- 23.** With the above directions, both Writ Petition No.4047 of 2024 and Writ Petition No.4393 of 2024 are disposed.

[MILIND N. JADHAV, J.]

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