

Gayatri

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4260 OF 2021**

Taibai Gamjya Bhoudhari

... Petitioner

Vs.

State of Maharashtra Thr. Minister

Revenue And Forest Dept. and Ors.

...Respondents

Mr. Balwant V. Salunkhe, Advocate for Petitioner.

Mrs. M. P. Thakur, AGP for the State.

CORAM : GAURI GODSE, J.

DATE : 5th FEBRUARY 2024

P.C.

1. This petition takes an exception to order dated 16th June 2021 passed by the learned Revenue Minister in Revision Application filed by respondent nos. 7 to 18. By the said order the judgment and order dated 24th June 2019 passed by the Additional Commissioner has been set aside and directions are issued to make inquiry regarding the heirship of the said respondents and accordingly Tahsildar is directed

to take appropriate steps. The said respondents had preferred Revision before the learned Minister for challenging the order passed by Additional Commissioner by which their Revision Application for challenging order dated 17th February 2018 passed by the Additional Collector was dismissed. Additional Collector had allowed two separate appeals filed by petitioner and respondent no. 19 for challenging Sub-Divisional Officer's ('SDO') order. Learned SDO had decided RTS Appeal No. 143 of 2013 filed by the aforesaid respondents for challenging Mutation Entry No. 665 in the name of the present petitioner. By the said order, SDO had cancelled Mutation Entry 665.

2. By order dated 13th July 2023 notice for final disposal at admission stage was issued. Office remark shows that all the respondents are served. However, none appears for the respondent nos. 7 to 19. Learned AGP appears for respondent nos. 1 to 6. In view of the aforesaid order, the petition is taken up for final disposal at admission stage.

3. The dispute between the parties is with respect to Mutation Entry No. 665 certified in favour of the petitioner on 14th August 1987. The said Mutation Entry was challenged by the respondent nos. 7 to 18 by filing an appeal before the SDO. SDO had allowed the appeal preferred by the said respondents and cancelled Mutation Entry No. 665. Hence the petitioner had preferred an appeal before Additional Collector. Respondent No. 19 who claims through the petitioner had also filed a separate appeal before the Additional Collector. The Additional Collector has allowed both the appeals, thus confirming the Mutation Entry in favour of the petitioner. The said order was challenged by aforesaid respondents by filing a Revision Application before the Additional Commissioner. The said Revision Application was dismissed, hence, they preferred second Revision before the State Government. By the impugned order, the said second Revision is allowed by the learned Minister and the earlier order passed by Additional Commissioner is set aside. However, by the impugned order, learned Tahsildar is directed to make enquiry on the heirship of the aforesaid respondents and take appropriate action. Hence, the

present petition.

4. Learned counsel for the petitioner submits that respondent no. 7 had filed Special Civil Suit No. 292 of 1998 for partition and separate possession claiming 1/4th share in the suit property. He submits that in the said suit, Mutation Entry No. 665 was also challenged. He further submits that respondent nos. 8 to 18 were parties to the said suit and are claiming their rights in the suit property. He submits that the said suit is dismissed on 29th August 2011. He further submits that the respondent no. 7 has preferred an appeal being Civil Appeal No. 16 of 2012 which is pending before the District Court, Kalyan.

5. He therefore submits that the claim of the said respondents claiming rights in the suit property is dismissed by the Civil Court. He thus submits that the claim of the said respondents is adjudicated. Hence, the said respondents have no right to claim share in the suit property and the Mutation Entry in favour of the petitioner requires to be confirmed.

6. I have perused the papers as well as all the aforesaid orders. So

far as the claim of partition and separate possession is concerned the suit filed by respondent no. 7 is dismissed, however, the appeal is still pending. Hence the claim of the said respondents with respect to the suit property is still subjudiced.

7. By the impugned order, the learned Minister has only issued directions to the Tahsildar to make enquiry with respect to the heirship of the said respondents and take necessary steps. Thus, the order of Additional Collector confirming the Mutation Entry No. 665 stands confirmed. So far as the claim of the said respondents qua the title is concerned, the same will be decided in the pending Civil Appeal before the District Court.

8. By the impugned order directions are issued to make inquiry, only regarding heirship of the said respondents. However, the respective claims qua the title to the suit property shall be adjudicated in the pending civil appeal. Hence, I do not see any reason to interfere with the impugned order. However, it is clarified that inquiry if any, on the heirship of the said respondents shall not affect the petitioner's right based on the Mutation Entry No. 665.

9. With the aforesaid clarification, writ petition is disposed of.

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[GAURI GODSE, J.]