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

WRIT PETITION NO. 270 OF 2024

M/s. Amex Developers Pvt. Ltd.

Petitioner /
.. Orig. Plaintiff

Versus

Shree Kutchi Dasha Oswal Jain Patshala and
Ors.

Respondents /
.. Orig. Defendants

-
- Mr. Ashok M. Saraogi, Advocate for Petitioner.
 - Mr. J.R. Mishra, Advocate for Respondent Nos.2 to 4.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 02, 2024.

P.C.:

1. Heard Mr. Saraogi, learned Advocate for Petitioner and Mr. Mishra, learned Advocate for Respondent Nos.2 to 4.

2. Present Writ Petition takes exception to the order dated 04.12.2023 passed by the learned Trial Court.

3. At the outset, learned Advocates appearing for the Petitioner / Plaintiff and the Respondents / Defendants would urge the Court that they have compromised their dispute and seek the *imprimatur* of the Court by taking the Consent Terms on record executed between the parties. They urge the Court to dispose of the pending Suit before the Trial Court as also the present Writ Petition in view of the Consent Terms executed between the parties.

4. I have heard both the learned Advocates, perused the impugned order dated 04.12.2023 and the Consent Terms executed between the parties.

5. Briefly stated, original Suit before the Trial Court is filed by the Plaintiff for seeking declaration to the Competent Authority i.e. Revenue Authority to replace the name of Defendant No.1 in the property register card pertaining to the Suit property.

6. Plaintiff claims to be the owner of Suit property bearing Survey Nos.1696 and 1697 ad-measuring area 922.24 and 90.67 square meters respectively. It is Plaintiff's case that an area ad-measuring 76.41 square meters out of the above property claimed to be belonging to the Plaintiff has been mistakenly shown to be standing in the name of Defendant No.1 in the property register card. Plaintiff approached the Collector for seeking correction of this mistake and insertion of its name in respect of area ad-measuring 76.41 square meters. The Collector replied to the Plaintiff vide letter dated 18.02.2021 that since name of Defendant No.1 is appearing in the property register card, request of the Plaintiff cannot be acceded to.

7. Being aggrieved, in 2023 Plaintiff filed Suit (st) No.13734 of 2023 in the Trial Court seeking the aforementioned declaration and a mandatory order to the Defendants i.e. private party to give No Objection Certificate (for short "NOC") for the purpose of correction of

name in respect of the aforementioned area ad-measuring 76.41 square meters to the Plaintiff.

8. It is the Plaintiff's case that Defendants are not concerned with the area of 76.41 square meters, therefore Plaintiff is entitled to that area and therefore the said area should be shown as belonging to the Plaintiff in the property register card. When the Suit was listed before the learned Trial Court, objection was raised by the Board Department of the Registry about the maintainability of the Suit as also in respect of payment of deficit Court fees.

9. The learned Trial Court has clearly observed that the subject Suit is filed by the Plaintiff on the refusal of the Collector to insert the name of the Plaintiff in the property register card *qua* the area ad-measuring 76.41 square meters and the refusal of Defendants to give NOC lead to filing of the Suit proceedings.

10. The learned Trial Court incidentally has observed and returned the finding that when the letter dated 18.02.2021 was issued by the Collector to the Plaintiff the office of the City Survey and Land Record called upon the Plaintiff to produce documentary evidence of its right, title and interest in respect of the Suit property claimed by the Plaintiff i.e. entire larger property bearing Survey Nos.1696 and 1697 and the disputed area ad-measuring 76.41 square meters.

11. It was informed to the Plaintiff that on producing the said documents, the procedure for getting the land measured would be carried out in consonance with the provisions of the Maharashtra Land Revenue Code, 1966 (for short “**MLR Code, 1966**”) and only thereafter steps shall be taken for correction of revenue record. There is no imminent refusal of the City Survey and Land Record office to enter the name of the Plaintiff which is the principal ground in the Suit proceedings. That apart, before the learned Trial Court the Plaintiff did not produce any evidence of refusal of the Defendants to give its NOC. Even if the Defendants would have given its NOC the procedure prescribed under the MLR Code, 1966 would still have to be carried out strictly in accordance with law. It is clearly seen and observed by the learned Trial Court that the disputed area ad-measuring 76.41 square meters stands in the legal ownership of Defendant No.1 as depicted in the property register card.

12. Today before me Defendant No.1 – Trust is represented by its Trustees and it is contended that they have no objection if the disputed area of 76.41 square meters is transferred and shown in the ownership of the Plaintiff. Plaintiff is the Developer whereas Defendant No.1 is a Trust. Certain questions arise in the mind of the Court. Substantial property of the Trust is sought to be transferred and alienated by virtue of the Trustees of the Trust giving their NOC. This property has structures also. Whether such NOC for alienation of the

Trust property would require the sanction of the Charity Commissioner / Joint Charity Commissioner in compliance with the provisions of the Maharashtra Public Trusts Act, 1950 is the question that arises. Nothing is placed on record either by the Plaintiff or the Respondent No.1 – Trust in that regard.

13. The next most important question before the Court is that whether in the facts of the present case, can the Consent Terms be taken on record and given the *imprimatur* of the Court. The answer is a clear 'No' in my opinion. The reason being that the property card of Defendant No.1 depicts the disputed area ad-measuring 76.41 square meters as belonging to Defendant No.1. Defendant No.1 is a Trust and has effected a compromise with the Plaintiff - Developer. This compromise would lead to alienation of the property of the Trust to the Plaintiff. Though it is the Plaintiff's case that there is an inadvertent mistake in showing the said property of 76.41 square meters to be standing in the name of Defendant No.1 – Trust, the revenue record does not show the same. It is to the contrary. The question therefore arises is how can the above mistake be rectified. It can only be rectified by making an appropriate Application by both the parties to the Revenue Authority seeking correction of their name and area in respect of the aforementioned disputed property and not merely by giving their respective consent for the same. It has to be done by placing on record the documents / evidence pertaining to their respective right,

title and interest in respect of their respective holdings so as to enable the Revenue Authority to determine whether there has indeed been a mistake while mutating the name and area of Defendant No.1 – Trust in respect of the contentions area ad-measuring 76.41 square meters and only thereafter by following the due process of law as contemplated under the MLR Code, 1966, such rectification is possible.

14. Mr. Saraogi, learned Advocate for Petitioner in his usual fairness would submit that this Court be pleased to pass appropriate directions if it is not inclined to take the Consent Terms on record and allow the Suit before the learned Trial Court to be disposed of in terms of the Consent Terms.

15. In view of the above observations and findings, I have impressed upon Mr. Saraogi that this Court cannot give its *imprimatur* to such Consent Terms. This is in view of the fact that the Plaintiff would have to approach the appropriate Revenue Department for seeking rectification and/or correction of its land record and follow the due process of law. Mr. Saraogi has shown his affirmative inclination to approach the concerned Revenue Department, but seeks some directions from this Court for expeditious disposal. Undoubtedly at his request, such directions can be given by the Court.

16. In view of the above, the following directions are passed:-

- (i) The impugned order dated 04.12.2023 is upheld and

sustained;

- (ii) If the Petitioner / Plaintiff applies to the concerned Revenue Department for seeking correction and rectification of its land record i.e. property registered card in respect of the disputed area ad-measuring 76.41 square meters, such Application alongwith all appropriate enclosures and documents / evidence thereto, it shall be disposed by the concerned Revenue Department within a period of 12 weeks from the date of making of such Application by carrying out all procedure of measurement etc. after giving due notice to all concerned parties and strictly in accordance with law;
- (iii) The Revenue Department shall also be consider whether the permission of the Joint Charity Commissioner is necessary since the aforementioned exercise would involve transfer of property from a registered Trust to the Plaintiff in the Revenue record and if so required call for the same from the Defendant No.1 – Trust;
- (iv) All contentions and questions as also the issues of the Plaintiff and Defendant No.1 – Trust are expressly kept open in respect of the aforementioned issue of correction;

(v) This Court has not expressed any opinion on the merits in respect of the Plaintiff's case and/or the Defendant No.1's – Trust case and the Competent Authority / Revenue Department seized with such action shall proceed strictly in accordance with law and follow the due process of law in determining the Plaintiff's Application seeking correction and rectification.

17. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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