IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7419 OF 2024
WITH
INTERIM APPLICATION NO. 7778 OF 2024
IN
WRIT PETITION NO. 7419 OF 2024

Raja Babulal Majethia **... Petitioner**

Versus

State of Maharashtra and Ors **... Respondents**

Mr. Pradeep Thorat *a/w Niesh Jadhav, Mr. Shailesh Porid & Mr. Prathmesh Ayare, Ms. Shubhangi Khandewal i/b Mr. Vivek P. Kakade for the Petitioner/Applicant.*

Mr. Mayur Khandeparkar *a/w Mr. Vikaram Singh G a/w Mr. Devansh Bheda i/b M/s. Purnanand & Co. for Respondent No.2.*

Ms. K. N. Solunke, *AGP for Respondent No.1, 3 and 4 to 6-State.*

CORAM : SANDEEP V. MARNE, J.

DATE : 8 JANUARY 2025.

P.C. :

1) The Petition challenges order dated 22 September 2021 passed by Hon'ble Revenue Minister, Department of Revenue and Forest, State of Maharashtra allowing the Revision preferred by Respondent No. 2 and setting aside the order dated 16 October 2019 passed by the Additional Commissioner, Konkan Division. By order dated 16 October 2019 the Additional Commissioner, Konkan Division had allowed the Revision Application preferred by the

Petitioner and had set aside the orders passed by the Deputy Collector (Appeals) dated 15 September 2017, as well as order passed by the Sub-Divisional Officer dated 12 July 2016. The Additional Commissioner accordingly set aside Mutation Entry No. 1076 directed to be certified by the Tahsildar vide order dated 15 October 2015.

2) I have heard Mr. Thorat, the learned counsel appearing for the Petitioner, Mr. Khandeparkar, the learned counsel appearing for Respondent No.2 and Ms. Solunke, the learned AGP appearing for Respondent Nos. 1, 3 and 4 to 6.

3) After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that there is dispute amongst the parties about the exact location of land, which is covered by registered Sale Deed dated 28 November 1962. By that Sale Deed land admeasuring 2752 sq. yards equivalent to 2301.02 sq. mtrs. was conveyed in the name of Krishnarani Bhatia. However the Schedule to the Sale Deed did not specify the Survey Number of land, which was conveyed. The Sale Deed merely made reference to 'unsurveyed Khoti land or ground known as NAVI UGHADI situate lying and being at Nahur village now in Greater Bombay".

4) It appears that vide a separate Sale Deed dated 2 May 1974, land admeasuring 5987 sq. mtrs. in Survey No. 62 (pt.) CTS No. 747, 748(Pt.) and 748/2 of village Nahur, was conveyed in the name of Krishnarani Bhatia by the erstwhile owners. This is how Krishnarani Bhatia claimed ownership in respect of land admeasuring 5987 sq. mtrs. conveyed vide Sale Deed dated 2 May

1974 and land admeasuring 2301.02 sq. mtrs. conveyed vide Sale Deed dated 28 November 1962. It appears that so far as the Sale Deed dated 2 May 1974 in respect of land admeasuring 5987 sq. mtrs. is concerned, the name of Krishnarani Bhatia was duly mutated in the revenue records by certifying Mutation Entry No. 684 on 1 April 1975. However based on the Sale Deed dated 28 November 1962, name of Krishnarani Bhatia was apparently not mutated to the revenue records in respect of land admeasuring 2301.02 sq. mtrs.

5) It is the case of Respondent No.2 that both the lands sold by Sale Deeds dated 28 November 1962 and 2 May 1974 are a continuous piece of land located next to each other.

6) On 24 November 2005 legal heirs of Krishnarani Bhatia executed two Sale Deeds in favour of Respondent No.2 conveying land admeasuring 3913.20 sq. mtrs. and 4905.90 sq.mtrs., the total of the two lands roughly comes to 8819 sq. mtrs. It appears that in respect of land admeasuring 5987 sq. mtrs. Respondent No. 2 got its name mutated to the revenue records vide Mutation Entry No. 992 certified in the year 2005.

7) Respondent No.2 thereafter filed an application before the Tahsildar for mutation of its name in respect of land covered by Sale Deed dated 28 November 1962 (admeasuring 2301.02 sq. mtrs.) in the year 2014. Based on the application preferred by Respondent No.2, Talathi, Nahur filed Mutation Entry No. 1076 dated 12 November 2014 in the office of Tahsildar, Kurla (Mulund) for its certification. The Tahsildar in turn issued notices under provisions

of sub-section (2) of Section 150 of the Maharashtra Land Revenue Code to the concerned persons. The notices were received *inter alia* by the Petitioner and his family members, who raised objection to the Mutation Entry initially by letter dated 18 November 2014 and subsequently by filing written notes of arguments before the Tahsildar. According to Mr. Thorat the main objection raised by the Petitioner to certification of Mutation Entry No. 1076 was that the land covered by Sale Deed dated 28 November 1962 is not situated within Survey No. 62 (Pt.) and that therefore the name of Respondent No.2 cannot be mutated in respect of any land covered by Survey No. 62 (Pt.). The Tahsildar rejected the objection raised by Petitioner and his family members and proceeded to certify Mutation Entry No. 1076 by directing mutation of name of Respondent No.2 in respect of land admeasuring 2301 sq. mtrs in Survey No. 62 (Pt.).

8) The order passed by the Tahsildar on 15 October 2015 came to be upheld by the Sub-Divisional Officer vide order dated 12 July 2016 and later by the Deputy Collector (Appeals) vide order dated 15 September 2017.

9) The Petitioner however succeeded before the Additional Commissioner, Konkan Division in the Revision filed by him in which the Additional Divisional Commissioner recorded a finding that the Sale Deed dated 28 November 1962 did not record Survey Number of the land and that in absence of proper description of the land in the Sale Deed, it was impermissible for the Revenue Authority to take its cognizance for certifying the mutation entry. The Additional Commissioner therefore set aside the orders passed

by the Deputy Collector, the Sub-Divisional Officer as well as the Tahsildar and directed the cancellation of Mutation Entry No. 1076.

10) The learned Minister has set aside the order passed by the Additional Commissioner by its order dated 22 September 2021 and has confirmed and maintained Mutation Entry No. 1076.

11) Considering the above factual background, the main dispute between the parties is about identification of land admeasuring 2301 sq. mtrs. covered by Sale Deed dated 28 November 1962. Petitioner contends that the Sale Deed dated 28 November 1962 was not executed in respect of any land covered by Survey No. 62 and that it was impermissible for Revenue Authorities to take cognizance of such Sale Deed after 52 long years for the purpose of certification of Mutation Entry No. 1076. On the other hand, it is the contention of Respondent No.2 that the lands covered by Sale Deeds dated 28 November 1962 and 2 May 1974 is a contiguous piece of land on which development is undertaken by Respondent No.2.

12) In the light of existence of the above dispute, one of the rival parties will have to seek a declaration from Civil Court as to whether Sale Deed dated 28 November 1962 would cover any portion of land in Survey No. 62. In my view, such a declaration will have to be sought by the Petitioner. This is because Respondent No.2 has already commenced development in respect of the entire land including the land admeasuring 2301.02 sq. mtrs. It appears that Respondent No.2 possesses land admeasuring 2301.02 sq. mtrs after its purchase in the year 2005. If possession of the Petitioner was

disturbed by Respondent No. 2 in any manner, Petitioner has not adopted any proceedings *qua* disturbance of the possession. Since Respondent No.2 already possesses the entire portion of land including area admeasuring 2301.02 sq. mtrs. and has already commenced construction thereon, Respondent No.2 cannot be driven to Court for seeking declaration about its ownership in respect of portion of land admeasuring 2301.02 sq. mtrs.

13) By now it is well settled position of law that mutation entry do not create any right in favour of any party. The revenue records maintained for fiscal purposes do not have the effect of recognition of title of any party in respect about the land in question. Therefore in the event Petitioner succeeds in securing the declaration from the Civil Court about his ownership in respect of land admeasuring 2301.02 sq. mtrs, Mutation Entry No. 1076 will have to be necessarily reversed by restoring the name of Petitioner in respect of that land.

14) In that view of the matter, I am not inclined to interfere in the order dated 22 September 2021 passed by the learned Minister. Keeping open all the contentions raised by rival parties with regard to ownership of land admeasuring 2301.02 sq. mtrs in Survey No. 62 (Pt.) as well as granting liberty to the Petitioner to file a declaratory Suit, the Writ Petition is **disposed of**.

15) In view of disposal of Writ Petition, Interim Application does not survive and same stands **disposed of**.

[SANDEEP V. MARNE, J.]