IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2801 OF 2024

Navnath Sahebrao Gaikwad **... Petitioner**

Versus

Bhausaheb Dnyanoba Gaikwad and Ors **... Respondents**

Mr. Vaibhav R. Gargade *for the Petitioner.*

Mr. Chaitanya Nikte *a/w Prajit Sahane, Ms. Sakshi Thombre, Mr. R. Kate & Mr. Swapnil Sangale for Respondent No.1.*

Mr. P.G. Sawant, *AGP for Respondent-State.*

CORAM : SANDEEP V. MARNE, J.

DATE : 11 MARCH 2025.

ORAL JUDGMENT:

1) ***Rule***. Rule made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken for hearing and disposal.

2) The Petition challenges Order dated 4 October 2023 passed by the Hon'ble Minister (Revenue) allowing the Revision Application filed by Respondent No.1 and setting aside the order dated 13 November 2019 passed by the Additional Commissioner, Pune Division. The Additional Commissioner had dismissed the Revision Application preferred by Respondent No.1 by order dated

13 November 2019 and had confirmed the order passed by the Additional Collector, Pune on 16 January 2019. The Additional Collector, in turn had partly allowed the Appeal preferred by Respondent No.1, but had refused to set aside the order passed by Sub Divisional Officer (**SDO**) dated 5 March 2018, by which Mutation Entry No. 10384 was directed to be modified and name of Petitioner was directed to be mutated in respect of land admeasuring 0H 11.5 R.

3) Facts of the case, in brief, are that Bala Gaikwad had two sons Rama and Goma. Goma's wife was Anusaya and it is claim of Anusaya that she had one half share in land bearing Gat No. 1294. Land bearing Gat No.1294 admeasured 23 R. and Anusaya claimed 50% share therein equivalent to 11.5 R. On the other hand, the heirs of Rama believed that Anusaya had already filed a suit for partition and had secured her share in various other lands, which did not include land bearing Gat No. 1294 and accordingly claimed 100% share in respect of land bearing Gat No. 1294. Under her belief that she is the owner land admeasuring 11.5 R., Anusaya executed sale deed dated 22 September 1999 in favour of the Petitioner. It appears that based on the sale deed dated 22 September 1999, Mutation Entry No. 4555 was attempted to be effected on 5 January 2000 recording the name of Petitioner in respect of land admeasuring 11.5 R. purchased vide sale deed dated 22 September 1999. It appears that Circle Officer refused to certify the said entry by order dated 5 August 2000 on the ground that name of Anusaya was never mutated to the concerned land. It appears that cancellation of Mutation Entry No. 4555 was never questioned by the Petitioner. However, the Petitioner got his name mutated once again to land admeasuring 11.5 R. on 15 January

2015 vide Mutation Entry No. 10329. Despite existence of sale deed dated 22 September 1999 by which Petitioner had purchased land admeasuring 11.5 R. and despite certification of Mutation Entry No. 10329 on 15 January 2015, Respondent No. 1 took the risk of entering into sale deed dated 6 April 2015 from the heirs of Rama by which Respondent No.1 purchased entire Gat No. 1294 admeasuring 23 R. Without canceling Mutation Entry No. 10329, first Mutation Entry No. 10384 was certified on 7 April 2015 mutating the name of Respondent No.1 in respect of entire are admeasuring 23 R. of Gat No. 1294. After mutation of the name of Respondent No.1 vide Mutation Entry No. 10384 on 7 April 2015, the Circle Officer proceeded to cancel Mutation Entry No. 10329 in respect of the Petitioner vide order dated 29 June 2015. Petitioner got aggrieved by certification of Mutation Entry No. 10384 and filed appeal before the Sub Divisional Officer under provisions of Section 247 of the Maharashtra Land Revenue Code, 1966. The SDO proceeded to allow the Appeal and directed modification of Mutation Entry No. 10384 by directing mutation of name of the Petitioner in respect of land admeasuring 11.5 R. Though Respondent No. 1 partly succeeded in his appeal before the Additional Collector vide order dated 16 January 2019, the Additional Collector did not direct deletion of name of Petitioner in respect of land bearing Gat No. 1294 but directed Mutation of name of the Petitioner only as a joint holder. This Divisional Commissioner confirmed the order of the Additional Collector on 13 November 2019. However, the Hon'ble Minister has allowed the Revision filed by Respondent No.1 and by impugned order dated 4 October 2023, has set aside the order passed by the Divisional Commissioner dated 13 November 2019 and has confirmed the Mutation Entry No. 10384. The order passed by the Hon'ble Minister on 4 October 2023 is subject matter of challenge in the present Petition.

4) I have heard Mr. Gargade, the learned counsel appearing for the Petitioner and Mr. Nikte the learned counsel appearing for Respondent No.1. I have gone through the orders passed by the SDO, Additional Collector, Divisional Commissioner and the Hon'ble Minister. I have also gone through relevant records of the case filed alongwith the Petition as well as through the compilation of documents tendered by Mr. Nikte.

5) In the present case, there appears to be serious dispute between Anusaya and legal heirs of Rama with regard to share in land bearing Gat No. 1294. While Anusaya believed that she became owner of 50% share (11.5 R.) in Gat No.1294, it is the contention of children of Rama that Anusaya had filed a suit for partition and had secured shares in other lands, which did not include land bearing Gat No. 1294. The children of Rama believed that they are the sole owners in respect of the entire land admeasuring 23 R. at Gat No.1294. On the basis of her belief of being 50% owner in respect of land bearing Gat No. 1294, Anusaya executed sale deed dated 22 September 1999 in favour of the Petitioner in respect of land admeasuring 11.5 R. The children of Rama did not challenge sale deed dated 22 September 1999 though they firmly believed that Anusaya did not have any right to execute sale deed dated 22 September 1999. True it is that Petitioner made unsuccessful attempt of mutation of his name in respect of land admeasuring 11.5 R. through Mutation Entry No. 4555, which was prepared on 5 January 2000, but the Circular Officer refused to certify it vide decision dated 5 August 2000 on the ground that name of Anusaya never figured in respect of land bearing Gat No. 1294. Petitioner

ought to have challenged non-certification of Mutation Entry No. 4555 contemporaneously, which he failed to do. For 15 long years there was a hiatus, where none of the parties took any steps with regard to the revenue entries. It is only on 15 January 2015 that the Petitioner thought of having his name mutated to the revenue records and accordingly Mutation Entry No. 10329 came to be certified mutating the name of the Petitioner on the basis of sale deed dated 22 September 1999 in respect of land admeasuring 11.5 R. in Gat No. 1294.

6) Despite being fully aware of the position that sale deed dated 22 September 1999 was executed in favour of the Petitioner in respect of land admeasuring 11.5 R. and that name of the Petitioner was mutated to the revenue records vide Mutation Entry No. 10329, Respondent No.1 took a calculated risk of executing sale deed dated 6 April 2015 with the children of Rama, whereby he purchased *inter alia* the entire Gat No. 1294 admeasuring 23 R. Respondent No.1 was fully aware that Petitioner had already purchased half portion of Gat No. 1294 on 22 September 1999 and that his name was mutated on 15 January 2015 in respect of area of 11.5 R., but still the Respondent No.1 thought of taking a chance and executed sale deed in his favour on 6 April 2015, which included *inter alia* the land purchased by the Petitioner. Without cancellation of Mutation Entry No. 10329, the Respondent No. 1 persuaded the Revenue Authorities to certify Mutation Entry No. 10384 on 7 April 2015 by which name of the Respondent No.1 was mutated in respect of entire area of 23 R. of Gat No. 1294. Thus two contradictory mutation entries continued to survive as on 7 April 2015 whereby name of Petitioner remained on Revenue records in respect of land admeasuring 11.5 R. through Mutation Entry No. 10329 whereas

name of Respondent No.1 also mutated to the very same land admeasuring 11.5 R. through Mutation Entry No. 10384. This incongruous situation was sought to be cleared by the Sub Divisional Officer by canceling Mutation Entry No.10329 vide order dated 29 June 2015.

7) It is contention of Mr. Nikte that Petitioner never questioned the decision of the Circle Officer dated 29 June 2015 in his appeal preferred before the Sub Divisional Officer. However, it is seen that cancellation of Mutation Entry No. 10329 was nothing but direct consequence of certification of contradictory Mutation Entry No. 10384. In the peculiar facts of the present case, I am not inclined to accept technical objection sought to be raised by Mr. Nikte that failure to challenge decision dated 29 June 2015 would come in the way of the Petitioner challenging Mutation Entry No. 10384.

8) In my view, the Hon'ble Minister has completely misdirected himself while reversing concurrent findings recorded by the Sub Divisional Officer, Additional Collector and the Divisional Commissioner. The Hon'ble Minister has assumed jurisdiction of the Civil Court by entering into the title dispute by recording of finding that Anusaya did not have title in respect of land admeasuring 11.5 R. This finding relating to title is recorded by the Hon'ble Minister by considering the decree passed in partition suit and orders passed in the execution application filed by Anusaya. In my view, the Hon'ble Minister could not have gone into the issue of title of Anusaya which got transferred in Petitioner's favour vide sale deed dated 22 September 1999. While deciding validity of mutation entries made for fiscal purposes, it was beyond the jurisdiction of the Hon'ble Minister to enter into title dispute between the parties.

There is serious jurisdictional error committed by the Hon'ble Minister warranting exercise of extraordinary jurisdiction by this Court under Article 227 of the Constitution of India.

9) Respondent No.1 has taken a calculated risk of entering into sale deed dated 6 April 2015 in his favour with his eyes vide open to the fact that Petitioner had already purchased land bearing 11.5 R. on 22 September 1999. Without seeking cancellation of sale deed dated 22 September 1999, it is highly questionable whether Respondent No. 1 could have executed second sale dated 6 April 2015 in respect of the very same land in his favour. If the Respondent No. 1 believes that Anusaya did not have title in respect of land admeasuring 11.5 R. for execution of sale deed dated 22 September 1999 in Petitioner's favour, he will have to file Civil Suit challenging sale deed dated 22 September 1999. What is essentially done by Respondent No.1 is to circumvent the requirement of filing a Civil Suit and he has secured a title in his favour through the order passed by the Hon'ble Minister. In my view, therefore the order passed by the Hon'ble Minister is clearly unsustainable and liable to be set aside. It would however be open for Respondent No.1 to institute a Civil Suit to challenge the sale deed dated 22 September 1999 and seek declaration of title in respect of land admeasuring 11.5 R. purchased by the Petitioner. Such suit shall be decided on its own merits, without being influenced, in any manner, by any of the observations made by this Court in the present order.

10) The Petition succeeds accordingly. Order dated 4 October 2023 passed by the Hon'ble Minister (Revenue) is set aside and the order passed by the Sub Divisional Officer, Additional

Collector and the Divisional Commissioner are confirmed. Writ Petition is **allowed** in above terms. Rule is made absolute. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]