

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5446 OF 2024

Vasant Dhau Gaikar

...Petitioner

V/s.

The State of Maharashtra and Ors.

...Respondents

Mr. Kishor Patil *i/b. Mr. Sidheshwar N. Biradar for the*
Petitioner.

Ms. Vaishali Nimbalkar, *AGP for Respondent Nos.1 to 5.*

Sumedh S. Modak *for Respondent No.6.*

CORAM: SANDEEP V. MARNE, J.

Dated: 23 April 2025.

P.C.:

1) Petition challenges order dated 20 March 2024 passed by the Principal Secretary and Special Executive Officer, State of Maharashtra allowing the revision application preferred by Respondent Nos.6 and 7 and setting aside the order dated 24 July 2023 passed by the Additional Commissioner, Konkan Division. By the impugned order dated 20 March 2024, the State Government has directed entering the names of Respondent Nos.6 and 7 to all the lands covered by Mutation Entry No.541 (including survey numbers covered by Mutation Entry No.1165).

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2) I have heard Mr. Patil, the learned counsel appearing for the Petitioner, Mr. Modak, the learned counsel appearing for Respondent No.6 and 7 and Ms. Nimbalkar, the learned AGP appearing for Respondent Nos.1 to 5- State.

3) Having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that lands at several survey numbers were owned by Waman Malu Gaikar. On 1 April 1976, Waman Malu Gaikar gave an intimation to the Talathi for mutation of name of his minor son- Balu Waman Gaikar in respect of the lands indicated in the Mutation Entry No.541. Mutation Entry No.541 was certified by Tehsildar on 6 October 1975 and accordingly, name of Balu was mutated in respect of the several lands whose survey numbers are reflected in the said mutation entry.

4) By registered Sale Deed dated 9 November 2015, Petitioner purchased land bearing Survey No.17/4, 18, 20/2, 21/2 from Balu and his mother Kashibai. Taking note of registered Sale Deed dated 9 November 2015, name of Petitioner came to be mutated to the said four survey numbers by Mutation Entry No.1165 certified on 4 December 2015. Respondent Nos.6 and 7 challenged Mutation Entry No.541 certified on 6 October 1975 by filing appeal before the SDO in the year 2016. The delay in filing of the appeal was condoned by the SDO but he finally rejected the appeal by order dated 13 December 2019. Additional

Collector allowed the appeal by order dated 16 July 2021 and set aside order passed by the SDO. The Additional Collector directed mutation of name of legal heirs of Waman Gaikar to the land in question.

5) Interestingly, in appeals preferred before the SDO and Additional Collector, Respondent Nos.6 and 7 did not implead Petitioner, who had already purchased the land under four survey numbers on 9 November 2015 and whose names were already mutated vide Mutation Entry No.1165 certified on 4 December 2015.

6) Petitioner got aggrieved by order passed by the Additional Collector on 16 July 2021 and filed revision before the Additional Commissioner. The revision came to be allowed by Additional Commissioner on 24 July 2023 by setting aside the order passed by the Additional Collector. The Divisional Commissioner confirmed Mutation Entry No.1165. The State Government has however, reversed the decision of the Additional Commissioner and has directed that names of Respondent Nos.6 and 7 be mutated to the lands indicated in Mutation Entry No.541.

7) There was inherent defect in the proceedings initiated by Respondent Nos.6 and 7 before the SDO. Despite knowledge of Mutation Entry No.1165, they did not challenge the same but clandestinely sought to remove name of the Petitioner

and to include their names in four Survey Nos.17/4, 18, 20/2, 21/2 by challenging only Mutation Entry No.541. Despite knowing that Petitioner would be affected by mutation of name of Respondent Nos.6 and 7 in the said four survey numbers purchased by him, they failed to implead him to such proceedings. Petitioner was required to participate in the proceedings only after realising that Additional Collector had set aside order of the SDO and directed mutation of names of Respondent Nos.6 and 7 even in respect of the four survey numbers purchased by him.

8) There is thus absence of any challenge to Mutation Entry No.1165 and without challenging the said mutation entry, name of the Petitioner can neither be removed from revenue records in respect of the four survey numbers purchased by him nor names of Respondent Nos.6 and 7 can be entered in the revenue records *qua* the said four survey numbers. State Government has grossly erred in directing mutation of names of Respondent Nos.6 and 7 to all survey numbers including Survey No.17/4, 18, 20/2, 21/2, which are purchased by the Petitioner.

9) The impugned order passed by the State Government, *qua* Survey No.17/4, 18, 20/2, 21/2 purchased by Petitioner is clearly erroneous and liable to be set aside. It appears that Respondent Nos.6 and 7 have already instituted Regular Civil Suit No.14 of 2024 challenging the Sale Deed executed in favour of the Petitioner. The revenue entry made in

favour of Petitioner in the form of Mutation Entry No.1165 would obviously be subject to outcome of Regular Civil Suit No.14 of 2024. In that view of the matter, there is no question of mutating the names of Respondent Nos.6 and 7 in respect of the four survey numbers purchased by the Petitioner. This is yet another reason why order passed by the State Government *qua* Survey No.17/4, 18, 20/2, 21/2 purchased by Petitioner is liable to be set aside.

- 10) I accordingly proceed to pass the following order:-
- a) Petition accordingly succeeds.
 - b) Order dated 20 March 2024 is set aside.
 - c) Mutation Entry No.1165 shall continue to operate in respect of the land bearing Survey No.17/4, 18, 20/2, 21/2.
 - d) Mutation Entry No.1165 shall however be subject to the decree that will be passed in Regular Civil Suit No.14 of 2024.
- 11) All contentions of parties on title are expressly kept open to be agitated in Regular Civil Suit No.14 of 2024.
- 12) With the above directions Writ Petition is allowed. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]