

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12494 OF 2024

Madhav Dattatraya Bhatkhande

.. Petitioner

Versus

The State of Maharashtra and Ors.

.. Respondents

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- Mr. P.S.Dani, Senior Advocate a/w Mr. Ashish A. Chavan i/by Mr. Abhijit B. Kadam, for Petitioner.
- Mr. Amardev J. Uniyal a/w Mr. B.L.Mangale, Advocates for Respondent Nos.6 to 8.
- Ms. Snehal Jadhav, AGP for Respondent – State.

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 17, 2025

P. C.:

1. Heard Mr.Dani, learned Senior Advocate for Petitioner; Mr.Uniyal, learned Advocate for Respondent Nos.6 to 8 and Ms.Jadhav, learned AGP for Respondent – State.

2. Dispute in the present Writ Petition emanates from a mutation entry bearing No.668 in respect of subject land and rights of parties governing entitlement to subject land through execution of will dated 27.11.1935 by one Mr.Hari Narayan Bhatkhande. Parties before me are successors-in-title of the original holder of the subject land and testator.

3. Mr. Dani in his usual fairness has been candid enough to admit the fact that despite turn of events pursuant to execution of the will by the testator the Executor's right in the subject property is

claimed by his successors-in-title. Resultantly however as on date the subject property is in the possession of Respondent No.8. This is admitted by Mr. Dani for the Petitioner.

4. Mr. Uniyal represents Respondent No.8. He would submit that Respondent No.8 is developing the said property under SRA since it is inundated with a slum in accordance with law.

5. Mr. Dani on instructions and on a specific question put by this Court agrees that physical possession of the said property is with Respondent No.8. Considering the fact that in the present Writ Petition substantial disputed questions of facts are argued before me, I have impressed upon both the learned Advocates that the Writ Petition cannot determine the same unless their substantive rights are agitated and decided by the Civil Court having original civil jurisdiction. Mr.Uniyal would submit that pursuant to Respondent No.8 being in possession of the subject property further development has taken place and the slum scheme is implemented. He would submit that if any order is passed in present Writ petition it will undoubtedly affect the substantive right of Respondent No.8 in carrying out further development and jeopardise the rights of the slum dwellers and lead to a stalemate. To that extent Mr.Uniyal is right.

6. In view of above and in view of several disputed questions of facts relating to title, entitlement and rights in the said property having arisen and agitated before me, such questions cannot be decided in a writ pertaining to mutation entry in a Writ Petition. Hence I direct that the Petitioner before me shall be at liberty to file appropriate Civil Suit in the Civil Court of original civil jurisdiction, if so desired by him alongwith interim application for seeking interim / interlocutory relief therein with respect to his entitlement of the said property on the basis of the subject mutation entry and with respect to all subsequent developments and events which have been taken place thereafter. If any such suit is filed by the Petitioner in the Civil Court, it is directed that the concerned Civil Court seized of the matter shall determine the interim application as expeditiously as possible and in any event within a period of four weeks from the date of institution of the Civil Suit and Application below Exhibit-5.

7. Needless to state that Civil Suit shall be determined by the concerned Civil Court seized of the matter after hearing both the parties and strictly in accordance with law. Orders passed by the statutory authorities which are the subject matter of present Writ Petition shall all be subject to the decision in the Civil Suit which shall be passed by the Civil Court and all parties shall be entitled to refer to and rely upon them before the Civil Court in accordance with law.

8. Mr. Dani on instructions informs the Court that Petitioner shall file the Civil Suit before the Civil Court within a period of eight weeks from today alongwith Application below Exhibit-5 seeking interim relief therein. If any such Civil Suit is filed by the Petitioner, the Civil Court seized of the matter shall determine Application below Exhibit-5 within a period of four weeks from the date of institution of the said Civil Suit alongwith said Application strictly in accordance with law after having the defendants therein.

9. Impugned orders are upheld. However, it is directed that no further steps shall be taken in furtherance of the impugned orders which are the subject matter of the Writ Petition for a further period of eight weeks only from today to enable the Petitioners to obtain orders from the Civil Court in accordance with law if so desired.

10. All contentions of both the parties before me are expressly kept open without this Court giving any imprimatur on the substantive rights of the parties in the subject property in this Writ Petition.

11. It is clarified that the aforesaid period of eight weeks will be read as eight weeks only and the other party i.e. Respondent No.8 shall be able to take all appropriate further steps as available to it in law after the period of eight weeks is over if there is no order of the Civil Court precluding it from doing so.

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

PR. Rajput

[MILIND N. JADHAV, J.]