

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

WRIT PETITION NO. 858 OF 2025

Dr. Prakash Malhotra and Ors

... Petitioners

Versus

The State of Maharashtra

Through The Revenue Dept. and Ors

... Respondents

Mr. Pradeep J. Thorat *a/w Mr. A. Jadhav, Mr. C. Keswani & Ms. Smera Nathani i/b Economic Laws Practice for the Petitioners.*

Ms. A. A. Nadkarni, *AGP for Respondent Nos.1 to 4/State.*

Mr. Shanay Shah *a/w Mr. Dipesh Yadav i/b Mr. Narayanan & Narayanan for Respondent No.5.*

CORAM : SANDEEP V. MARNE, J.

DATE : 22 JANUARY 2025.

P.C. :

1) The Petition challenges order dated 14 October 2024 passed by the Minister (Revenue) allowing the Revision preferred by Respondent No.5 and setting aside the order dated 16 January 2024 passed by the Deputy Director of Land Records, Konkan and order dated 1 August 2022 passed by District Superintendent of Land Records, Mumbai Suburbs District. The learned Minister has directed the City Survey Officer, Vile Parle to verify whether name of Respondent No.5 has been mutated in respect of area admeasuring 836.13 sq. mtrs. in respect of the land bearing CTS No. 1066 and to

mutate the same in the event the same has not already been mutated.

2) I have heard Mr. Thorat, the learned counsel appearing for the Petitioner, Mr. Shah, the learned counsel appearing for Respondent No.5 and Ms. Nadkarni, the learned AGP appearing for Respondent No.1 to 4.

3) After having considered the submissions canvassed by the learned counsel appearing for parties, it appears that a Consent Decree was passed on 21 May 1982 in favour of Vishwanath Purshottam Kedia and Nitinkumar S. Kedia under which it was *inter alia* agreed that the Defendants in Suit No.663 of 1982 (Kedias) shall be entitled to redevelop the suit plot of land to the extent of area admeasuring 1,000/- sq. yards equivalent to 836.13 sq. mtrs. It appears that though the right of Kedias in respect of land admeasuring 836.13 sq. mtrs. was expressly recognized by Petitioner's mother-Veena D. Malhotra, names of Kedias were not mutated to the revenue records in respect of area admeasuring 836.13 sq. mtrs. Upon death of Petitioner's mother-Veena D. Malhotra, application was made for mutation of names of legal heirs (Petitioners) in respect of the entire land admeasuring 2295.50 sq. mtrs. at CTS No. 1066, ignoring the fact that Kedias are owners in respect of portion admeasuring 836.13 sq. mtrs. By Mutation Entry No. 386 certified on 30 December 2006, name of Veena D. Malhotra was deleted and names of her children (Petitioners) were entered in the record of rights of the entire land admeasuring 2295.50 sq. mtrs. at CTS No. 1066. It appears that even at this stage, Kedias did not take any steps for mutating their names in respect of land admeasuring 836.13 sq. mtrs.

4) It appears that the Consent Decree dated 21 May 1982 came to be registered in the office of Sub-Registrar of Assurances on 23 August 2021. In the meantime, disputes arose between Malhotras (Petitioners) and Kedias with regard to construction carried out at the site and Malhotras complained that Kedia's were constructing in excess of the entitlement agreed in Consent Terms dated 21 May 1982. Therefore, Malhotras have filed Suit No. 3852 of 2000 in this Court *inter alia* to restrain Kedia's from carrying of construction in excess of the entitlement under the Consent Decree dated 21 May 1982. It appears that in that Suit, an order of temporary injunction is passed on 5 October 2000 by this Court thereby restraining Kedias from carrying out any further construction or development in the land as well as restraining the Municipal Corporation from issuing any completion of Occupation Certificate in respect of construction exceeding 1,000 sq. yards of FSI.

5) Perusal of the prayers in Suit No. 3852 of 2000 as well as the interim order passed by this Court on 5 October 2000 would show that Malhotras have not disputed entitlement of Kedias to carry out construction *qua* land admeasuring 1,000/- sq. yards (836.13 sq mtrs.)

6) After registration of the Consent Decree, Kedias finally thought of getting their name mutated to the revenue records in respect of land admeasuring 836.13 sq. mtrs. However instead of making a plain application for recording their names in respect of portion of land admeasuring 836.13 sq. mtrs, Kedias were advised to challenge Mutation Entry No. 386 dated 30 December 2006, which

had merely recorded the names of heirs of Veena Malhotra (Petitioners) after her death. Kedias possibly believed that for adding their names in respect of land admeasuring 836.13 sq. mtrs., it was necessary to delete the names of Malhotras *qua* that portion of land. It appears that the Mutation Entry No. 386 was challenged only to the limited extent of deletion of names of Malhotra's *qua* land admeasuring 836.13 sq. mtrs. and for mutating names of Kedias thereat.

7) In my view, the District Superintendent of Land Records as well as the Deputy Director of Land Records committed glaring error in relying on interim order dated 5 October 2000 passed by this Court in Suit No. 3852 of 2000 without appreciating the fact that neither the Suit nor the interim order is in respect of land admeasuring 836.13 sq. mtrs. Malhotras themselves have never disputed entitlement of Kedias in respect of land admeasuring 836.13 sq. mtrs. Therefore, neither Suit nor interim order passed therein presented any fetter on revenue authorities from mutating names of Kedias in respect of portion of land admeasuring 836.13 sq. mtrs. The learned Minister has rightly appreciated this factual position and has directed mutation of names of Kedias in respect of land admeasuring 836.13 sq. mtrs. by order dated 14 October 2024.

8) It appears that the learned Minister's orders dated 14 October 2024 has already been implemented by certifying Mutation Entry No. 1354 on 4 December 2024, by which name of Vishwanath Purshottam Kedia was mutated in respect of land admeasuring 836.13 sq. mtrs. only. Since Vishwanath Purshottam Kedia has passed away on 11 October 2015, further Mutation Entry No. 1366 is certified on 14 January 2025 recording name of

Nitinkumar S. Kedia in respect of land admeasuring 836.13 sq. mtrs. Thus, so far as Petitioners are concerned, their rights *qua* the balance portion of land except the area admeasuring 836.13 sq. mtrs. in respect of CTS No. 1066 remains undisturbed. Their names would also continue to be reflected in the city survey records in respect of CTS No. 1066, excepting the land admeasuring 836.13 sq. mtrs., in respect of which name of Nitinkumar S. Kedia has now been mutated.

9) I do not find any patent error in the order passed by the learned Minister or in the Mutation Entry certified while giving effect to the order of the learned Minister. The Petition is devoid of merits. It is however expressly clarified that the right of Nitinkumar S. Kedia shall remain restricted only in respect of land admeasuring 836.13 sq. mtrs. in CTS No. 1066 and order passed by the learned Minister or Mutation Entry Nos. 1354 or 1366 cannot be read to mean as if the rights of the Petitioners *qua* balance portion of land in CTS No. 1066 is affected in any manner.

10) With the above clarification, the Writ Petition is **disposed of**.

[SANDEEP V. MARNE, J.]