AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1332 OF 2025

Vision Realtors, through its partner … Petitioner
V/s.
Anil Ramrao Gogavale & Ors. … Respondents

WITH
WRIT PETITION (ST.) NO.4045 OF 2025

Shakuntala Waman Holkar … Petitioner
V/s.
Anil Ramrao Gogavale & Ors. … Respondents

Mr. Anil V. Anturkar, Senior Advocate with Mr. Vishwajit P. Sawant, Senior Advocate, Mr. Pradeep Nanajkar i/by Mr. Prabhakar M. Jadhav for the petitioner in WP/1332/2025.

Mr. S.S. Patwardhan i/by Mr. Satyajeet A. Rajeshirke for the petitioner in WPST/4045/2025.

Mr. Girish Godbole, Senior Advocate i/by Mr. Satyam Harshad Nimbalkar, Mr. Devashish Godbole, Mr. Prasad Nagargoje and Mr. Abhishek Arote for the respondents.

Mr. Bapusaheb Dahiphale, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 20, 2025

P.C.:

1. The present writ petitions, filed under Article 226 of the Constitution of India, challenge the judgment and subsequent order dated 14th October 2024, passed by the Minister (Revenue) of Maharashtra State in Appeal No.703 of 2008.

2. The facts giving rise to the present writ petition are recited herein for the sake of clarity and are aligned with the factual matrix as set out in Writ Petition No.1332 of 2025:

3. The subject matter pertains to 56-Are of land demarcated in Survey Nos. 211/4A and 211/11, located in Hadapsar, District Pune. This parcel, together with various other lands, was originally allotted to Mr. Baburao Rakhmaji Tupe pursuant to a partition dated 7th March 1938. On 4th June 1979, following the demise of Baburao Tupe—who left behind a widow, a son, and seven daughters—a mutation entry was effected on 30th April 1989, thereby entering the names of his legal heirs in the revenue records. During the years 1997-1998, two of the legal heirs, namely, Machindra Tupe and Laxmibai Tupe, alienated a portion measuring 53.9-Ares from their respective shares in the ancestral property in favor of third parties. On 26th December 2003, the Revenue Authorities prepared Mutation Entry No.30368, recording the names of the legal heirs of Baburao Tupe. Subsequently, following the death of Machindra Baburao Tupe on 23rd January 2004, another mutation entry bearing No.33284 was effected on 20th March 2006 for recording the names of Smt. Savitribai Shivram Gaikwad and six others.

4. In 29th March 2006, respondent No.3 submitted an application seeking the registration of names based on a Will dated 3rd March 2001, which is purported to have been executed by Machindra Tupe. In response, on the same day, Mutation Entry

No.33321 was prepared, recording the names on the basis of the said Will, subject to necessary confirmation. Furthermore, on 27th April 2006, another mutation entry, Mutation Entry No.33458, was prepared—also subject to confirmation—for recording the name of Hirabai Machindra Tupe. On 25th September 2006, after scrutinizing the respective records and submissions, the Tehsildar at Haveli, Pune, confirmed Mutation Entry No.33321, while concurrently rejecting Mutation Entries Nos.33284 and 33458. This decision formed the basis for the subsequent appeals.

5. In response to the Tehsildar's decision, in 2006, Smt. Shakuntala Waman Holkar along with other aggrieved parties filed Appeal No.306 of 2006 before the Sub-Divisional Officer, Pune. On 21st April 2007, the Sub-Divisional Officer allowed the RTS Appeal filed by Smt. Holkar, thereby setting aside the Tehsildar's confirmation of Mutation Entry No.33321. Dissatisfied with the decision of the Sub-Divisional Officer, respondent No.3 initiated RTS Appeal No.148 of 2007 before the Additional Collector, Pune. After due consideration, the Additional Collector, in his order dated 18th September 2007, allowed the appeal, reinstating the confirmation of Mutation Entry No.33321. Subsequently, in 2007, Smt. Shakuntala Waman Holkar and her co-petitioners filed Revision Application No.306 of 2007 before the Additional Commissioner. On 21st January 2008, the Additional Commissioner, after reviewing the entire record, allowed the revision, thereby restoring the decision of the Sub-Divisional Officer and annulling the order passed by the Additional Collector.

6. In furtherance of the order passed by the Additional Commissioner, respondent No.1 instituted Special Civil Suit No.878 of 2008 before the Civil Judge, Senior Division, Pune. The suit was predicated upon a Will purportedly executed by Machindra Tupe, and it sought a declaratory relief stating that respondent Nos.4 to 11 were devoid of any right, title, or interest in the disputed property. Additionally, the suit challenged the legality of the development agreement dated 27th June 2005 and the confirmation deed dated 17th June 2006, contending that both instruments were illegal, null, and void. The proceedings in this suit were subsequently dismissed for default by the Civil Judge, Senior Division, Pune, in an order dated 25th June 2014.

7. On 29th March 2008, respondent No.3, along with Ashok Shivram Pawar and Ganesh Eknath Khote, challenged the order dated 25th January 2008—passed by the Additional Commissioner —by way of Appeal No.703 of 2008 before the Minister (Revenue) of Maharashtra State.

8. On 21st November 2014, Hirabai Tupe instituted Special Civil Suit No.1595 of 2014, seeking both a declaratory judgment and an injunction. The relief sought by her was aimed at clarifying her rights and interests in the subject property. However, her application for a temporary injunction was rejected, as evidenced by the Judgment and Order dated 6th December 2018, which dismissed the relief sought on interim grounds.

9. According to Petitioner under a duly executed development agreement, they acquired the development rights not only in respect of the property in dispute but also for the adjoining property. Following the requisite approvals and sanctions from the Pune Municipal Corporation, the petitioner amalgamated the two properties. Subsequently, pursuant to the issuance of a commencement certificate dated 16th January 2022, and after obtaining environmental clearance on 31st March 2020, the petitioner undertook the construction of residential and commercial structures over both plots. The Pune Municipal Corporation granted occupation certificates for buildings A1 and A4 on 2nd September 2024, and for buildings A2 and A3 on 6th November 2024, respectively. It is further staed that possession of 238 tenements has been delivered to the purchasers, who now reside therein. Moreover, the purchasers of buildings A1 to A4 have consolidated their interests by forming the registered entity, Greenville CHS, on 22nd May 2024. The petitioner asserts that the project's development is nearly complete, with 90% of the flats/tenements already handed over, and that the remaining construction is expected to be concluded within a period of two months.

10. The impugned order passed by Minister for Revenue dated 14th October 2024 which confirmed the names of respondent Nos. 1 to 3 in the revenue records, is now the subject of the present writ petitions, which seek judicial intervention on the basis of alleged legal and procedural infirmities.

11. Mr. Anturkar, the learned Senior Advocate, relying on the precedent of the Supreme Court in *Jitendra Singh v. State of Madhya Pradesh, 2021 SCC OnLine SC 802,* submitted that a serious dispute persists between the parties regarding the title to the subject property. He further highlighted that the civil suit initiated by respondent No.1, based on the alleged Will, was dismissed for default and has yet to be restored. In his view, the Revenue Authorities erred in entering the names of the contesting respondents in the revenue records without first having their rights conclusively adjudicated by a competent Civil Court.

12. Drawing particular attention to paragraph 2 of the plaint filed in the civil suit, Mr. Anturkar elucidated that the crux of the dispute centered on the validity of the Will. He pointed to paragraph 12 of the plaint, which indicates that respondent No.1 contended that the cause of action for the suit arose when, in RTS No.306 of 2006, defendants Nos.1 to 6 and the mother of defendants Nos.7 to 11 opposed the certification of Mutation Entry No.33321, which was purportedly based on the Will dated 3rd February 2001 executed by the deceased Machindra Tupe. This dispute was further compounded when defendants Nos.1, 2, and 5 filed Regular Civil Suit No.1202 of 2006, denying the execution of the Will. Mr. Anturkar further noted that the cause of action was reinvigorated by the order dated 25th January 2008 in Revision Application No.306 of 2007, which set aside the order of the Additional Collector, Pune, and mandated that the plaintiff in Special Civil Suit No.878 of 2008 (Anil R. Gogawale) have his title determined by the Civil Court. Consequently, he argued that respondent Nos.1 to 3, by accepting the Additional Commissioner's order and subsequently initiating a civil suit to seek a declaration that the plaintiff had no right, title, or interest in the disputed land

and that the development agreement in favor of the petitioner was void, should not have had their appeal allowed. This is particularly so in view of the fact that the civil suit was dismissed for default on 25th June 2014 and has not been restored. In support of his contentions, Mr. Anturkar referred to an unreported judgment of the Coordinate Bench in Writ Petition No.7194 of 2021 (*Rajiv S. Doddanavar & Anr. v. Madhuri Veerdhaval Chalukya & Ors.*, decided on 3rd April 2024), which, relying on *Jitendra Singh v. State of Madhya Pradesh, 2021 SCC OnLine SC 852*, held that in the face of a serious dispute regarding title, particularly where two conflicting Wills are in issue, the mutation entry should be maintained in abeyance. He further submitted that the said judgment was confirmed by the Supreme Court in Special Leave to Appeal (C) No.17405 of 2024.

13. In rebuttal, Mr. Godbole, the learned Senior Advocate representing respondent Nos.1 to 3, submitted that the inquiry under Section 150 of the Act does not vest the Revenue Authorities with the power to adjudicate upon the title or the rights of the parties in relation to immovable property. He maintained that the entries in the revenue records are intended solely for revenue administration and do not, in and of themselves, confer title upon any person. Consequently, he argued that, based on the registered Will executed in favor of the petitioner, the confirmation of Mutation Entry No.33321 in favor of the respondents was proper and in strict compliance with the Act. Mr. Godbole further contended that the judgment in *Jitendra Singh* was factually distinguishable in the present case, given that the application for mutation based on the Will was filed prior to the demise of the testator. In support of his submissions, he cited relevant precedents including *Shrikant R. Sankanwar & Ors. v. Krishna Balu Naukudkar, 2003 (2) Mh.L.J. 276*, *Balwant Singh & Anr. v. Daulat Singh (dead) by LRs & Ors. (1997) 7 SCC 137*, and *Bhimabai Mahadeo Kambekar (dead) through legal representatives v. Arthur Import and Export Co. & Ors. (2019) 3 SCC 191*, all of which reinforce the proposition that the Revenue Authorities acted within their jurisdiction in confirming the mutation entry.

14. The submissions and rival contentions advanced by the parties warrant thorough examination and deliberation.

15. A careful perusal of the record reveals that the Will, purportedly executed by Machindra Tupe in favour of respondent Nos.1 to 3 on 3rd February 2001, remains the principal bone of contention between the parties. It is undisputed that, by its order dated 25th January 2008, the Additional Commissioner allowed the revision filed by the petitioner and explicitly directed respondent No.1 to have his right, title, and interest established through the appropriate judicial forum. Moreover, it is equally uncontested that, in furtherance of this order, respondent Nos.1 to 3 instituted Special Civil Suit No.878 of 2008, asserting that respondent Nos.4 to 11 had no right, title, or interest in the disputed property, and contending that the development agreement dated 27th June 2005, the confirmation deed dated 17th June 2006, and the power of attorney dated 17th June 2006 were illegal, null, and void.

16. The cause of action, as pleaded by respondent Nos.1 to 3, is elucidated by the record. It is maintained that the controversy arose when defendant Nos.1 to 6, together with Smt. Savitribai (mother of defendant Nos.7 to 11), opposed the certification of Mutation Entry No.33321, which was to give effect to the Will allegedly executed by the deceased Machindra Tupe on 3rd March 2001. This dispute was further compounded when defendant Nos.1, 2, and 5 filed Regular Civil Suit No.1702 of 2006, wherein they denied the execution of the said Will, alleging that the cause of action had only recently arisen prior to the filing of the suit. Subsequently, the Additional Divisional Commissioner, by an order dated 25th January 2008, directed respondent Nos.1 to 3 to have their title conclusively determined by a competent Civil Court.

17. It is not in dispute that Special Civil Suit No.878 of 2008 was dismissed for default by the Civil Judge, Senior Division, Pune, by an order dated 25th June 2014, and that this suit has not been restored. Consequently, on the date on which the impugned order was passed, the suit filed by respondent Nos.1 to 3, which sought to establish their rights based on the Will, remained dismissed.

18. The facts before the Court clearly indicate that respondent Nos.1 to 3, by virtue of their filed suit, have raised a serious dispute regarding the title to the property. The Additional Commissioner’s direction to seek adjudication from a Civil Court further underscores this point.

19. In this context, it is appropriate to draw reference to the pertinent observations of this Court in the matter of *Jitendra Singh* where, in paragraph 6, the Supreme Court stated:

> *"As per the settled proposition of law, if there is any dispute with respect to the title and more particularly when the mutation entry is sought to be made on the basis of the will, the party who is claiming title/right on the basis of the will has to approach the appropriate civil court and get his rights crystallised and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made."*

20. In the decision of *Jitendra Singh*, the Supreme Court held that when a mutation entry is sought on the basis of a will, and where a serious dispute exists as to the title or the validity of the will, the claimant must first seek a determination of his rights from a competent civil court. The Court observed that revenue records, by their very nature, are administrative tools primarily meant for revenue collection and do not vest conclusive ownership or title. In essence, the claimant's right to be recorded in the revenue records is contingent upon the crystallization of his title through judicial proceedings.

21. Applying the *Jitendra Singh* dictum to the present case, it is clear that the controversy centers on the will purportedly executed by Machindra Tupe in favour of respondent Nos.1 to 3. As detailed in the record, the Additional Commissioner, in his order dated 25th January 2008, expressly directed respondent No.1 to approach the Civil Court to have his title established. This direction was necessitated by the unresolved dispute over the will's validity, which is further evidenced by the fact that the subsequent Special Civil Suit No.878 of 2008, intended to resolve the matter, was dismissed for default and has not been restored.

22. In the absence of a judicial determination crystallizing the rights of respondent Nos.1 to 3, any action by the Revenue Authorities—such as confirming the mutation entry in their favour—cannot be accorded the status of a conclusive adjudication of title. As held in *Jitendra Singh*, where there exists any dispute with respect to title, particularly in cases involving a will, the revenue entry cannot be made until the matter is resolved by a competent court. Therefore, by permitting the mutation entry in the present case, the impugned order runs counter to the legal position and undermines the judicial requirement of adjudicating contested rights in a proper forum.

23. In light of these considerations, the principle laid down in *Jitendra Singh* mandates that in the current controversy—where the validity of the will remains disputed and the requisite civil suit has not provided a definitive resolution—the confirmation of the mutation entry is premature and legally unsustainable.

24. In concurrence with the submissions of Mr. Godbole, learned Senior Advocate, it is pertinent to note that mutation entries in the revenue records are made only for fiscal purpose. Such entries neither create nor extinguish title or any legal rights in immovable property; they merely serve revenue collection purposes. Accordingly, by permitting respondent Nos.1 to 3 to initiate a civil suit—which they did, and which was ultimately dismissed for default—respondent No.13, in allowing the impugned order, erred in interfering with the revenue entry.

25. In view of the foregoing findings and the serious dispute regarding title as well as the clear mandate for judicial crystallization of rights as emphasized by the Supreme Court, it is held that the impugned order dated 14th October 2024, passed by respondent No.3 in Appeal No.703 of 2008, is unsustainable. Consequently, the said order is hereby quashed and set aside.

26. Accordingly, rule is made absolute in terms of prayer clauses (a) and (b) in both the writ petitions.

27. No costs.

28. At this stage, the learned Advocate for respondent No.1 prayed for stay of the matter. However, the petition arises out of entries in revenue record, which do not create or extinguish rights; hence, the request for stay is, therefore, rejected.

(AMIT BORKAR, J.)