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(2003) 01 BOM CK 0123

Bombay High Court

Case No: Writ Petition No. 5817 of 2002

Shrikant R. Sankanwar and Others	APPELLANT
Vs	
Krishna Balu Naukudkar	RESPONDENT

Date of Decision: Jan. 16, 2003

Acts Referred:

- Bombay Tenancy and Agricultural Lands Act, 1948 - Section 32G
- Maharashtra Land Revenue Code, 1966 - Section 149, 150

Citation: (2003) 1 ALLMR 1161 : (2003) 3 BomCR 45 : (2003) 2 MhLj 276

Hon'ble Judges: R.M.S. Khandeparkar, J

Bench: Single Bench

Advocate: G.N. Salunke, for the Appellant; S.G. Karandikar and S.M. Sabrad, for the Respondent

Final Decision: Allowed

Judgement

R.M.S. Khandeparkar, J.
Heard the learned advocates for the parties. Perused the records. Rule. By consent, the rule made returnable forthwith.

2. The petitioners challenge order dated 6-8-2002 passed by the Additional Commissioner, Pune Division, Pune, allowing the Revision Application at the instance of the Respondent against the Order of Additional Collector Kolhapur dated 24-8-2001. Additional Collector, Kolhapur by the said order dated 24-8-2001 had set aside the order dated 19-2-2001 of the Sub-Divisional Officer, Gadhinglaj. The Sub-Divisional Officer, Gadhinglaj, in turn by his order dated 19-2-2002 while allowing the appeal of the Respondent had set aside the order dated 15-12-1998 passed by the Tahsildar, Chandgad in RTS No. 26 of 1998. The Tahsildar of Chandgad had allowed the application filed by the petitioners for necessary mutation of entry in favour of the

petitioners claiming right of occupation to the suit premises based on the registered Sale Deed dated 15-7-1998. The said Order was passed while exercising the powers under the provisions of law contained in Section 149 read with Section 150 of the Maharashtra Land Revenue Code, 1966 (hereinafter called "the said Code").

3. Though the impugned order is sought to be challenged on various grounds, it is not necessary to consider all those grounds and suffice to refer to the ground regarding the scope of powers of the Revenue Officers u/s 149 read with Section 150 of the said Code and the contention of the petitioners about patently illegal exercise of the powers by the Revenue authorities and more particularly by Sub-Divisional Officer Gadhinglaj while allowing the appeal against the order of the Tahsildar as well as by the Additional Commissioner, Pune, while confirming the said order of the Sub-Divisional Officer.

4. Section 149 of the said Code provides that any person acquiring by succession, Survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, land, Government lessee or tenant of the land situated in any part of the State or assignee of the rent or revenue thereof, shall report orally or in writing his acquisition of such right to the Talathi within three months from the date of such acquisition and the Talathi shall at once give a written acknowledgment of the receipt of such report to the person making it, provided that, where the person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall make the report to the Talathi. However, any person acquiring a right with the permission of the Collector or by virtue of a registered document is exempted from the obligation to make any such report to the Talathi. Apparently in case of any right being acquired in any immovable property, the person who has acquired such right has to report the said fact to the Talathi either orally or in writing and moment such report is made the Talathi is enjoined to acknowledge the receipt of such report to the person making it. Undoubtedly person acquiring the right by virtue of any registered document is exempted from the obligation of making such report to the Talathi. This is apparently on account of a duty cast upon the registering authority to intimate to the Talathi the fact of such acquisition of right in favour of any person in relation to a property by virtue of a registered document. The provision regarding such obligation of the registering authorities is to be found in Section 154 of the said Code.

5. Section 150(1) of the said Code provides that the Talathi shall enter in a register of mutations every report made to him u/s 149 or any intimation or acquisition or transfer u/s 154 from any Collector or the registering authority. Sub-section (2) of Section 150 provides that whenever a Talathi makes an entry in the register of mutations, he shall at the same time post up a complete copy of the entry in a conspicuous place in the Chavdi, and shall give written intimation to all persons appearing from the record of rights or register of mutations to be interested in the mutation, and to any other person whom he has reason to believe to be interested therein. Sub-section (3) provides that when any objection to any entry under Sub-section (1) in the register of mutations is made either orally or in writing to the Talathi, it shall be the duty of the Talathi to enter the particulars

of such objection in a register of disputed cases and Talathi shall at once give a written acknowledgment for the objection to the person making it in the prescribed form. Sub-section (4) of Section 150 provides that the disputes entered in the register of disputed cases shall as far as possible be disposed of within one year by a revenue or survey officer not below the rank of an Aval Karkun and orders disposing of objections entered in such register shall be recorded in the register of mutations by such officer in such manner as may be prescribed by the rules made by the State Government in that behalf Sub-section (5) of Section 150 provides that the transfer of entries from the register of mutations to the record of rights shall be effected subject to such Rules as may be made by the State Government in that behalf, provided that entry in the register of mutations shall not be transferred to the record of rights until such entry has been duly certified. Sub-section (6) of Section 150 deals with the certification of the entries by the Revenue officer; and Sub-section (7) speaks of State Government''s power to direct for maintenance of register of tenancies in such a manner and under such procedure as may be prescribed by the rules.

6. Section 328 of the said Code empowers the Government to frame rules for the purpose of carrying into effect the provisions of the said Code. Accordingly, the Government has framed Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules 1971, hereinafter called as "the said rules" and the part D thereof deals with the rules relating to the maintenance of record of rights and register of Mutations. As per the rule 8 thereof, Tahsildar of the villages under his jurisdiction is responsible for updating and maintenance of the register of mutations and for timely and systematic compliance of the provisions of the said rules. Rule 9 provides that on receipt of report u/s 149, the same should be acknowledged in Form VII. The prescribed form requires mentioning of the document produced in support of report regarding acquisition of right in respect of the property relating to which mutation of entry is sought for. Rule 10 provides that the register of mutation shall be in Form VIII. The said form requires the register of mutation to contain the information relating to mutation in four columns, the first column disclosing the serial number of entry, the second column to disclose the nature of rights acquired, the third column to record the survey and sub-division numbers affected and the fourth column to bear the initial or remarks by testing officer. As soon as an intimation regarding registration of a document is received u/s 154 of the Code, the Talathi in terms of Rule 11 is required to make respective entries in the said register of mutation, in respect of the mutation effected by each such document. Under Rule 12, where rights in any land are acquired as a result of transfer of such land, and such transfer required the previous permission of the Collector, the Talathi shall require the person making report to him u/s 149, to produce before him such permission or such evidence of the order by which such permission is disclosed or proved and the Talathi shall record the said fact at the end of the entry in column No. 2 of the mutation register; in case the permission is obtained but not produced or such permission is not at all obtained, then the Talathi shall record the said fact in the register. Prior to Certification of entries in a register, the entries are required to be made in pencil as per Rule 13.

7. As per Rule 14 of the said rules, the intimation which a Talathi is required to give under Sub-section (2) of Section 150 of the Code should be in form IX, whereas the acknowledgment for objections received in respect of entries made under Sub-section (1) of Section 150 of the Code should be in form X. hi terms of form IX the intimation of entry in the register of mutation regarding acquisition of the right in land has to be specified in three columns of said form. The first column thereof to have serial number or date, of entry in the register, second column to disclose the nature of rights acquired and the third column to reveal survey numbers or sub-division number in which the rights have been acquired. The notice in the said form is to be issued to the persons interested or believed to be interested in the mutation. Form X is the format of acknowledgment of objections to mutation entry. Rule 16 specifies the Form III to be register of disputed cases referred to in Sub-section (3) of Section 150 of the Code. The said form is to comprise of six columns. The first column disclosing the serial numbers, second column to reveal the serial numbers in mutation register or rough copy of record of rights, the third column to refer to survey numbers and sub-division numbers, the fourth one to bear the date of receipt of objection, the fifth to contain the particulars of the dispute with names of disputing parties and the sixth column to transcribe the decision of Officer.

8. The procedure to be followed for the purpose of certifying the entry in the register of mutation as well as for deciding the objections to mutations has been prescribed under Rules 17, 18 and 19 of the said Rules. Accordingly before proceeding to decide disputes entered in the register of disputed cases as provided in Sub-section (4) of Section 150 and certifying the entries in the register of mutations, the certifying officer has to inform the Talathi to that effect in Form XI. On receipt of such information, and at least fifteen days before the date fixed for deciding disputes entered in the register of disputed cases, and for certifying entries made in the register of mutations, the Talathi is required to issue notices in Form XII to all persons likely to be interested in such disputes or entries and call upon them to be present at the place (along with their Khate-pustika) on the date and at the time fixed for deciding disputes and for certifying entries. The notice to be issued in Form XII shall disclose the entry which has been included in the register of mutations regarding the acquisition of rights in the land, specifying the serial number of such entry, nature of rights and survey number and sub-division number effected and should reveal the place, date and time of the camp of certifying officer for the purpose of certifying the said entry or for deciding the disputes entered in the register of disputed cases in respect of such entry and certifying the said entry, as the case may be and further that as the person being intimated appears to be interested the said entry should appear before the certifying officer at the said camp on the specified day and time for placing his objections to the said entry before the certifying officer, and that in case of failure to appear, it would be presumed that such person has nothing to say in the matter and the dispute about entry would be decided and entry would be certified in his absence. On the date and the place and time fixed for deciding disputes about the entry or entries, as the case may be, the certifying officer is expected to read out the mutation entries which are undisputed in the presence of the persons present. If the correctness of such entries is admitted by all

the persons present, the certifying officer should record such admission in the register of mutations, and add an endorsement under his signature that the entries have been duly certified. If any error in respect of any entry entered in the register of mutations is noticed by the certifying officer, and such error is admitted by the persons interested in the entry who may be present, the certifying officer may correct that entry and certify the corrected entry as aforesaid. The certifying officer shall then hold a summary enquiry and decide each dispute entered in the register of disputed cases on the basis of possession, that is to say if a person actually holds possession under a claim of title, he shall be recorded as Occupant Class I, Occupant Class II or, as the case may be, Government lessee in the register of disputed cases. If there is a doubt as to the actual possession, the person with the strongest title shall be so recorded. He shall also record in the register of mutations, the order passed by him in respect of the mutation entry disputed, and make an endorsement under his signature to the effect that the mutation entry as modified by his order is certified by him. The order shall contain the names of the parties and witnesses and a brief summary of the evidence produced by either side, together with his findings thereon. Immediately after an entry in the register of mutations is confirmed, under Rule 17, the Talathi shall record it in ink in the record of rights and simultaneously copy out the relevant entry in the Khate-pustika also. It shall be the duty of the Circle Inspector to visit every village in his Circle and check whether the Talathi has prepared and maintained the mutation register in accordance with the provisions of the said Code and the said rules; and if it has not been so prepared or maintained, cause it to be so prepared and maintained.

9. Bare reading of sections 149 and 150 of the said Code and the said Rules would therefore disclose that the powers which are to be exercised by the Revenue Officers in relation to the mutation of entries in the revenue records pertaining to the immovable properties in the villages are for the purpose of updating such revenue records in respect of rights acquired by the parties in different modes specified under the said Section 149. Such right might have been acquired by way of any document executed by the parties and duly registered or on account of pronouncement of decision by the Courts or authorities competent to deal with the matters pertaining to the rights and interests of the parties in relation to the immovable properties. Neither Section 149 nor Section 150 empowers the revenue authorities acting thereunder and according to the procedure prescribed under the said Rules to adjudicate upon the rights of the parties or their title to the immovable properties. The said provisions of law only deal with the revenue records being updated in relation to the immovable properties for the purpose of assessment of revenue and collection thereof.

10. The Sub-section (3) of Section 150 of the said Code clearly speaks of "any objection to any entry made under Sub-section (1) in the register of mutations." Sub-section (6) thereof deals with the powers of the revenue authorities to test "Entries in the register of mutations" and "if found correct or after correction" the same to "be certified ..... in such manner as may be prescribed". Thus, the objections which are to be entertained

and to be dealt with u/s 150 of the said Code by such Revenue officers are in relation to the entries proposed to be made pursuant to acquisition of rights by the parties intimated under the report made by the parties or by the registering authorities to the Talathi and not in relation to the right itself of the parties in or to the immovable properties. The enquiry pursuant to such reports to the Revenue Officers, has to be restricted to the matters pertaining to the mutation of the entries in the revenue records. Such enquiry cannot travel beyond the power given to the authorities under the said provision of law. Such power being restricted to ascertain the veracity of the proposed entry, based on the document produced by the parties, the authorities cannot adjudicate upon the rights acquired by the parties to such properties in respect of which the mutation of entry is requested for. In other words the Authorities in such enquiry will have to ascertain as to whether documents produced before such authorities apparently disclose acquisition of right in favour of the applicant in a manner and of the nature claimed by him or her and not whether the applicant is in fact entitled to claim such right in or to the property. The power to adjudicate regarding such issue pertaining to right of the parties to the immovable properties vests in the Courts and the Authorities duly empowered to enquire and adjudicate about the same and not with the revenue officers acting under sections 149 and 150 of the Code and the provisions of the said Rules. In brief, therefore, the enquiry contemplated u/s 150 in relation to application for mutation of entries is to ascertain whether the document produced reveal acquisition of right stated to have been acquired in the land in respect of which mutation of entry is sought for, and does not empower such Authorities to adjudicate upon the title and rights of the parties to the immovable proprieties. In fact the entire proceedings prescribed under sections 149 and 150 of the said Code and the procedure prescribed for the same under the said Rules relate to the dispute pertaining to the mutation and certification of entries in the register depending upon the documents which are produced by the parties and not to decide about the rights of the parties to such properties.

11. Undoubtedly in case of difficulty in ascertaining the right of the parties based on the document produced or on account of failure to produce documents, the revenue officers acting u/s 150 of the said Code can certainly decide about the issue of possession of the property and modify the entries accordingly in the register of mutations. However, in cases where the person discloses the title better than the other, from the documents produced by him, certainly such person will have edge over the other in relation to the decision pertaining to the possession of property. Every such decision would be also final subject to the adjudication about the same by the civil court. Nevertheless, while considering the issue of actual possession, the revenue authorities u/s 150 of the said Code cannot decide about title to the property or other right to the property of the parties to such dispute. In fact, Rule 17 of the said Rules deals with and clearly speak of certification of entries in the register of mutation and deciding disputes relating to the mutation in the entries, and not of decision relating to the rights of the parties in or to the properties. It further speaks of fixing the matter for hearing consequent to the objections raised to the entries, in order to decide the dispute for the purpose of certifying the entries

and not to decide the rights of parties to the properties. Only other issue which can be dealt with by the revenue authorities under the said provisions of law is the issue of actual possession of the properties. In that respect also, the Revenue Officer acting under Sections 149 and 150 of the said Code while deciding the issue of possession has to give due credence to the documentary evidence and the person having documentary proof of title to the property either in the form of valid and lawful registered deed or a decree of the court, then such person shall be held to be in actual possession. This conclusion is inevitable in view of the provisions of law contained in part D of the said rules and particularly Rule 17 thereof which provides that "The certifying officer shall then hold a summary enquiry and decide each dispute entered in the register of disputed cases on the basis of possession" and further "if a person actually holds properties under a claim of title, he shall be recorded as occupant" and then that "if there is a doubt as to the actual possession, the persons with the strongest title shall be so recorded."

12. This Court in Nalini Patil Vs. Girdhar Kashinath Patil and Others, , after taking note of various provisions of law contained in the said Code as well as the said rules has already held that the intimation regarding the acquisition of rights in respect of immovable property worth Rs. 100/- or above must be accompanied by an appropriate document in support of such claim of acquisition of right in the property. It has been further observed therein that "It is, therefore clear that while exercising powers for mutation of entry pursuant to the request in that regard either orally or in writing by a person claiming to have acquired right as specified u/s 149 of the Code, the Talathi is required to insist and to consider the documentary evidence in support of such claim before effecting any mutation of entry when the property apparently appears to be worth Rs. 100/- or above."

13. It is well settled law that the entries in the revenue records are basically for revenue purposes and do not by themselves constitute title to the property in favour of any person. Such entries can, undoubtedly, be corroborative piece of evidence to establish the certain rights of the parties in relation to property but they themselves cannot create any title in favour of any person in relation to any immovable property.

14. It is also to be noted that while exercising the powers under the said Code and the rules made thereunder the Authorities under the Code, cannot assume jurisdiction under different statutes to investigate into the rights of the parties in relation to properties which are referred to in the applications for mutation of the entries. I am fortified in this view by the decision of the learned Single Judge of the Gujarat High Court in the matter of Evergreen Apartment Co-operative Housing Society Ltd. Vs. Special Secretary (Appeals), Revenue Department, Gujarat State, , wherein while dealing with the scope of powers of the Revenue Authorities in the matter of the application for mutation of entries under Bombay Land Revenue Code has observed that:

"So far as the proceedings under Rule 108 of the Rules, popularly known as RTS proceedings, are concerned, it is well settled that the entries made in the revenue records have primarily a fiscal value and they do not create any title. Such mutations have to

follow either the documents of title or the orders passed by competent authorities under special enactments. Independently the Revenue Authorities, as mentioned in Rule 108 of the Rules, cannot pass orders of cancelling the entries on an assumption that the transaction recorded in the entry are against the provisions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by followings the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed."

15. In the case in hand it is not in dispute that the petitioners had produced a registered sale deed dated 15-7-1998 while requesting for entry in their favour in mutation register. The Talathi based on the said document had allowed the application filed by the petitioners and had carried out necessary mutation in the register. The Sub-Divisional Officer while dealing with the appeal against the decision on mutation of entry, assuming illegally, the jurisdiction of the authorities under the Tenancy Act sought to deal with the controversy pertaining to the tenancy claim and right under the provisions of The Bombay Agricultural Tenancy Act, 1948, sought to set aside the said decision of Tahsildar allowing the application for mutation of entry, and thereby clearly transgressed the jurisdiction of the revenue authorities available under the provisions of the said Code and the said rules in relation to disputes pertaining to the mutation of entries. Additional Divisional Commissioner by confirming the said order of the said Divisional Officer reiterated the same illegality. Apparently both the authorities have acted illegally and beyond the powers vested in them in relation to the proceedings pertaining to mutation of entries under the said Code and the said rules, and therefore the orders passed by them cannot be sustained and are liable to be quashed and set aside. At the same time it is also to be noted that in case there is any application by the respondents for mutation of entries in their favour based on any valid and lawfully registered document or any decision pronounced by any court or judicial or quasi-judicial authority competent to pronounce such decision, certainly the Authorities acting under sections 149 and 150 of the said Code cannot ignore such application nor can refuse to carry out the mutation in accordance with the declaration of right in favour of the party by virtue of such decision of the Court or the competent Authority. In case of any conflict between such entries, the parties have to settle the dispute by taking resort to the regular remedy available under appropriate statutes but the revenue authorities acting under Sections 149 and 150 of the Code cannot assume jurisdiction to decide about the rights of the parties in relation to properties, while acting under those provisions for the purpose of mutations. Albeit, the revenue authorities can certainly decide in such cases, the issue of actual possession. However, such decision would be final, subject to the decision of the civil court in that regard.

16. Needless to say that the proceedings stated to have been commenced u/s 32G of the Bombay Agricultural Tenancy Act could not have been subject matter of adjudication while the application filed for mutation of entries was being considered and therefore the

stay granted to the said proceeding during the pendency of the present petition needs to be vacated and hence accordingly hereby vacated without expressing any opinion regarding any of the claims by the parties in the said proceedings.

17. The petition therefore succeeds and Rule is made absolute in the above terms with no order as to costs.

All concerned to act on the copy of this order duly authenticated by the Sheristedar of this Court as a true copy.