

(2015) 08 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 3496 of 2002

Digambar Kalidash Salunke

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:

Citation : (2015) 08 BOM CK 0051

Hon'ble Judges : N.W. Sambre, J

Bench : Single Bench

Advocate : B.V. Wagh, for the Appellant; P.P. More, Asstt. Govt. Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

N.W. Sambre, J—The instant petition questions the order passed by the State Government in Case No. 304 of 2001 on 9th August, 2002 and the order passed by the Deputy Director of Land Records, in Case No. 63 of 1994, dated 29th August, 2000, whereby the property, which is subject-matter of the present proceedings, was answered to be not owned/possessed by the present petitioner, but was a Grampanchayat property.

2. Heard Mr. Wagh, learned Counsel appearing on behalf of the petitioner; Mr. A.K. Gawali, learned Counsel on behalf of respondents no.6-A, 6-B, 7 and 8 and learned Asstt. Government Pleader on behalf of the State.

3. The petitioner claims that by a sale deed dated 11th September, 1947, his grand-father Ganpat had purchased house property no.307 from one Kerubai Sakharam Shinde, which was subsequently given C.TS. Nos. 1842, 1843 and 1844.

4. The said property, as is apparent from sale deed Exh."A" to the petition, is located at Sutar Galli, Shrigonda, bearing Grampanchayat House No. 307, having measurement as under :-

Towards south : 6 ft. broad door and on the open area a platform (Ota);

On south-north side : length of 33 and east-west 13 hands

There is dwelling house on the said property of 16 bays (Khans), 5 being standing and remaining in collapsed condition, a well on north-east side, a common open space (Osari) on west side and remaining property independently owned by the concerned party.

5. The waste water and rain water flows to the east side. On the southern side, a platform of 8 hands and house of 27 hands having total length and breadth of 33 and 13 hands. The said property was bound by on east and south by road and the property of the present petitioner and on northern side, a lane.

6. The petitioner claims that having received the said property from his grandfather, while implementing the survey scheme, the Consolidation Officer, on 22nd May, 1970, held that the property was renumbered as C.T.S. No. 1842, 1843 and 1844. After the city survey, as stated herein above, since C.T.S. No. 1842 was not claimed or objected by the petitioner, it was entered into the revenue record as the "Government property". The petitioner, having noted that his property was mutated as "Government property", in 1992 initiated proceedings before the Consolidation Officer, raising an objection to the entry in the name of the State Government about C.T.S. No. 1842. In support of his claim over the said property, the petitioner had placed on record the copy of the sale deed and the city survey map. Before the City Survey Officer, the petitioner claimed that the properties C.T.S. Nos. 1842 to 1844, vide account No. 14, are owned by him and he has constructed house on C.T.S. Nos. 1843 and 1844. According to him, since C.T.S. No. 1842 is located on the southern side of C.T.S. Nos. 1843 and 1844, at the relevant time, the same was mutated in the name of the State Government. So as to substantiate his claim, the petitioner has produced on record the copy of the sale deed. It is further claimed by the petitioner that the said property in the Grampanchayat record is given property No. 557, which stood in his name and he is paying taxes for the same. The Consolidation Officer, based on the said complaint, noticed the Tahsildar, Talathi and Land Surveyor, Shrigonda and personally visited the spot. It is further claimed by the opponents to the said appeal that the entry taken is correct and cannot be objected at belated stage.

7. Based on the personal visit to the spot, and on perusal of the details of the sale deed and location of the property, the Consolidation Officer noted that the property in question is in possession of the petitioner and is mutated in the name of the petitioner in the Grampanchayat records. It is further noted by the Consolidation Officer that just because it was an open land, at the relevant time, by a wrong decision the same was mutated in the name of the State Government and as such, he has ordered correction of the record of C.T.S. No. 1842 so as to be in the name of the petitioner.

8. Pursuant to the order dated 3rd October, 1992, it appears that appropriate measurement was carried out on 22/03/1994 at the behest of the petitioner and

a map was drawn pursuant to the said measurement by the Maintenance Surveyor. The said map is placed on record page 23, which depicts that on the northern side of C.T.S. No. 1842, there exist C.T.S. Nos. 1843 and 1844 which are adjoining and there is no road passing in between C.T.S. Nos. 1843, 1844 and 1842. On the east and south side, there exist small lanes, whereas on the west side of all the above referred city survey numbers, property bearing C.T.S. No. 1841 is shown.

9. The adjoining owners, feeling aggrieved thereby, appear to have preferred an appeal before the Deputy Director of Land Records, Nashik Region, Nashik, who, upon considering the submissions, by order dated 29th August, 2000, noted that the Consolidation Officer has entertained the appeal of the present petitioner after twenty two years, for no good reasons. He further noted that, the property in question was mutated in the name of the petitioner in the Grampanchayat record in the year 1985-86 as the open ground of house No. 557, as is apparent from the extract No. 8. It is further observed by the said authority that C.T.S. No. 1842, to the extent of area of 151.2 Sq. Mtrs. was recorded as the "Government property". The Deputy Director has allowed the appeal, by observing that the Consolidation Officer had not issued notices to the Tahsildar, Talathi and Municipal Council. It is further noted by the Deputy Director that the properties C.T.S. Nos. 1842, 1843 and 1844 are shown to be owned by the petitioner herein.

10. It is also noted by the Deputy Director that C.T.S. No. 1841 is shown to be owned by one Ganpat Digambar Salunke and as such, the same is no way concerned with the petitioner and respondents 5 to 8 herein. Based on the same, the Deputy Director set aside the order dated 3rd October, 1992 passed by the Consolidation Officer and restored the one rendered by the Enquiry Officer in 1970, mutating C.T.S. No. 1842 as the "Government property".

11. In the Revision before the State Government at the behest of the present petitioner, the petitioner with the above referred history has sought restoration of the order passed by the Consolidation Officer in his favour. The State Government, while dealing with the contentions of the parties to the present petition, has noted under order dated 9th August, 2002 that once the property was mutated in the name of the State Government, the respondents herein lacked locus to prefer an appeal before the Deputy Director of Land Records, however, proceeded to observe that C.T.S. No. 1842 appears to be an open land, which has no connection with C.T.S. Nos. 1843 and 1844. It is further noted that on the southern side of C.T.S. No. 1843 and 1844, there exists a lane and then open space having C.T.S. No. 1842 and rejected the appeal on merits. As such, present petition.

12. Mr. Wagh, learned Counsel appearing on behalf of the petitioner, while questioning the legality and validity of the order passed by the State Government and that of the order passed by the Deputy Director of Land Records, Nashik Region, Nashik, would urge that both the authorities have given findings contrary to the title of the present petitioner, which according to him, was very much

established vide sale deed dated 11th September, 1947. He would further urge that the dimension of the property, which was purchased by the grand-father of the petitioner exactly matches with that of dimensions of C.T.S. Nos. 1842, 1843 and 1844. He would further urge that even after the order of the Consolidation Officer dated 3rd October, 1992 in his favour, the measurement that was carried out on 22nd March, 1994 reflects that C.T.S. Nos. 1843 and 1844 are located on the northern side of C.T.S. No. 1842 and on the southern side of C.T.S. No. 1842 there exists a small lane. He would further urge that once it is noticed that C.T.S. Nos. 1841, 1843 and 1844 are the properties of the petitioner, there is hardly anything on record, so as to draw an inference that C.T.S. No. 1842 is not owned by the petitioner, particularly when specific measurement about the said survey number was pointed out. He would further urge that both the authorities, without taking into account the merits of the matter, have proceeded to decide that property C.T.S. No. 1842 is the Government property and the petitioner is not entitled to the said property on bare position that in the year 1970 the same was recorded as the property of the Government.

13. Learned Counsel appearing on behalf of respondents No. 6-A, 6-B, 7 and 8 would urge that the present petition is not tenable in view of the fact that the orders which are questioned in the present petition were passed almost after a lapse of twenty two years, as the entry about C.T.S. No. 1842, in the revenue record, was taken as "Government property", as no claim was established by the petitioner at that point of time. He would urge that the petitioner's claim being belated is liable to be rejected. Apart from above, according to the learned Counsel, except the title deed, the matching of the property mentioned in the title deed bearing house No. 307 and open space as mentioned therein with the dimensions, was not shown to have matched with that of the existing C.T.S. Nos. 1843, 1844 and 1842. According to him, the writ petition, therefore, deserves to be dismissed.

14. Upon considering rival contentions of the parties, the first and foremost aspect of the matter which this Court is required to take note of is that the sale deed dated 11th September, 1947, executed in favour of the grand-father of the petitioner, namely, Ganpat Digambar Salunke by one Kerubai Sakharam Shinde, is not disputed. The said sale deed in unequivocal terms speaks of entire details alongwith the adjoining properties, the use of the open space on the sides of the said properties, existence of a well, an old wooden staircase and food grains storage (Kothar). It also speaks of the flow of waste water and rain water to the east side. It specifically speaks of the measurement of the property which was sold in favour of the grand-father of the present petitioner.

15. Subsequent to purchase, it appears that the property stood mutated in the name of the grand-father of the present petitioner, however, while implementing the consolidation/survey scheme in 1970, C.T.S. No. 1842 was shown to be an open land as nobody was able to show any right to the said property.

16. It appears that, based on the above referred details, as narrated in the sale

deed, the Consolidation Officer has proceeded to pass an order in favour of the petitioner, may be almost after a period of twenty two years, however, when it was put to the learned Assistant Government Pleader, appearing on behalf of respondent No. 1, to demonstrate the limitation, if any, prescribed for the purpose of carrying out correction in the revenue record, no provision to that effect was pointed out, particularly in the background of the title being in favour of the petitioner.

17. Apart from above, it is required to be noted that the authorities whose orders are impugned in the present petition, principally appear to have proceeded on the ground that the property stood mutated in the name of the Government and the proceedings are taken out after belated stage i.e. after twenty two years. It is required to be noted that the details of the property owned by the present petitioner, in fact, were sought to be matched by the Consolidation Officer with that of sale deed dated 11th September, 1987 while passing the order in favour of petitioner, which was upset by the orders impugned in the present petition. The Consolidation Officer was alive to the details of the property owned by the petitioner, so also revenue entry No. 557 to that effect. It is required to be noted here that in 1986 the property in question appears to have been shown to be mutated in the name of petitioner in Grampanchayat record, as is apparent from the observations made by the Deputy Director in his order. He speaks that the petitioner's house number was 555 and the open space was shown to be given said house number in 1985-86, as is shown in the Grampanchayat record.

18. The State Government, while dealing with the petitioner's claim, gave solitary reason that the property in question, i.e. C.T.S. No. 1842 is located on the southern side of property C.T.S. Nos. 1843 and 1844 and there passes a lane in between. On perusal of the measurement map, which was placed on record at page 23 alongwith Exh. "C" to the petition, it is noted that there does not exist any such lane in between C.T.S. Nos. 1842, 1843 and 1844. As such, the said considerations that the property C.T.S. No. 1842 is no way concerned with the petitioner and the respondents, are the findings recorded without appreciating documentary evidence in its true perspective, particularly having regard the record brought before it.

19. At this stage, it is worth to mention that even though in the year 1970 the open space was shown to have been marked in the name of the State Government, one cannot lose sight of the fact that prior to the said entry, it must have stood in the name of the present petitioner. Nothing is brought on record to demonstrate that before deleting the name of the petitioner, any notice was given to him.

20. Having perused the order carefully, of which restoration is sought by the petitioner, i.e. order dated 3rd October, 1992, passed by the Consolidation Officer, it is noted that the said order was passed after taking into account the entire details of the property owned by the petitioner.

21. In view of above, in my opinion, present writ petition deserves to be allowed. Thus, the following order :

The order dated 29th August, 2000, passed by the Deputy Director of Land Records, Nashik Region, Nashik, in Appeal No. S.R. 63/Nagar/94 and the order dated 9th August, 2002, passed by the State Government in case No. City Survey-3301/254/case No. 47/L-1/Case No. 304/2001/AWP, are hereby quashed and set aside and the order dated 3rd October, 1992, passed by the Consolidation Officer, stands restored.

Writ Petition stands allowed. Rule made absolute in above terms with no order as to costs.