NARAYAN LAXMAN PATIL

v.

M/S GALA CONSTRUCTION COMPANY PRIVATE LIMITED & ORS.

Civil Appeal No.8399 of 2015

OCTOBER 08, 2015

[RANJAN GOGOI AND R.K. AGRAWAL, JJ.]

Mutation: Claim by appellant for entry in record of rights on the ground that he was in uninterrupted possession of the suit land since long along with six other persons and cultivating paddy crop on the said land – Held: While seeking entry in the record of rights, the appellant did not spell out his status or claim or his capacity in which he sought to get his name entered – Maharashtra Land Revenue Code – ss.2(12), 148, 149, 150.

Legislation: When the statute states that a duty has to be performed or an enquiry has to be conducted in a particular manner, it has to be done in that manner alone.

Dismissing the appeal, the Court

HELD: 1. To exercise the right under section 148 read with Sections 149 and 150 of the Maharashtra Land Revenue Code for entering one's name in the Record of Rights, the applicant has to be a holder, occupant, owner, mortgagee or tenant. Such a right is also available to a person acquiring interest in the property by succession, survivorship, inheritance, partition, purchase mortgage, gift, lease or otherwise. Merely a holder or occupant does not meet the requirements of law for exercising such a right. Section 2(12) of the Code, makes it clear that to be a "land holder" or "holder of land" means to be lawfully in possession of land, whether such possession is

A actual or not and as per Section 2(23) "occupant" means a holder in actual possession of unalienated land. It was, therefore, necessary for the appellant to prove that his possession or occupation over the suit land was lawful or he had come in possession by a legal conveyance/ B title or any other instrument like receipt etc. to which the Respondent No. 1 was a party or at its instance. [Paras 15, 18] [876-C;E-G]

2. Merely saying that Respondent No. 1 or the C original owner did not object at any time to the possession, does not make his possession lawful, even if it is accepted that he was in possession. The appellant has to prove his title of possession by pointing out that it was lawful and if such requirement could not be D proved, mutation entry is required to be cancelled. Unless the officer concerned was satisfied that the possession of the appellant was lawful such an entry could not have been made irrespective of whether the original owners appeared and contested the plea and E more so when the officer was performing a statutory duty. When the statute states that a duty has to be performed or an enquiry has to be conducted in a particular manner, it has to be done in that manner alone and it was necessary for the Tehsildar to ensure that the F requirements of the Code were satisfied by the petitioners' predecessor. Since appellant and others never claimed that they had any title to the land, entering their names in the 'Record of Rights' was not at all G justified and, therefore, the Mutation Entry could not have been made in the said record. Hence, the Mutation Entry has rightly been set aside. [Paras 19, 20] [877-A-D, F]

Bansrajidevi wd/o Bhuval Singh Ramniranjan Singh and Others v. M/s Byramjee Jeejeebhoy

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Pvt. Ltd. and Others **2006 (6) Mh.L.J. 95 – approved.** A

Case Law Reference

2006 (6) Mh.L.J. 95 approved Para 17 B

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8399 of 2015

From the Judgment and Order dated 22.06.2010 of the High Court of Judicature at Bombay in Appeal No. 245 of 2007 C

Abha R. Sharma for the Appellant.

Shekhar Naphade, Parimal Shroff, Ankur Saigal, Mahesh Agarwal, E. C. Agrawala, R. N. Keshwani, Ram Lal Roy for the Respondents. D

The Judgment of the Court was delivered by

R.K. AGRAWAL, J. 1. Leave granted

2. This appeal is directed against the final judgment and E order dated 22.06.2010 passed by the Division Bench of the High Court of Judicature at Bombay in Appeal No. 245 of 2007 in Writ Petition No. 2103 of 2003 whereby the High Court allowed the appeal filed by the respondents herein against the judgment and order dated 03.08.2006 passed by the F learned single Judge of the High Court in Writ Petition No. 2103 of 2003.

3. **Brief facts:**

(a) The land in question, admeasuring 11 acres out of G the land bearing Survey No. 221 of Village Eksar, Taluka Borivali, Maharashtra, originally belonged to one Kamlakar Narayan Samant. A portion of the said land was in the possession of Narayan Laxman Patil-the H

A appellant herein who along with six other persons used to cultivate paddy crop on the said land.

(b) On 12.09.1986, the appellant herein moved an application before the Tehsildar, Borivali that since he and 6 other persons were cultivating paddy and were in possession of the suit land for the last 15-20 years, their names be entered into the "other rights" column of the 7/12 extract in respect of 11 acres of land out of Survey No. 221 of Village Eksar.

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(c) Notice of the said application was issued to the landlord- Kamlakar Narayan Samant. On 06.03.1987, Mutation Entry No. 4601 was made recording the name of the appellant herein along with six other persons in "other rights" column of the Record of Rights mentioning that the notice of the said application was duly served upon the original owner but no objection received.

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(d) M/s Gala Construction Co. Pvt. Ltd.-Respondent No. 1 and the original owner-Kamlakar Narayan Samant entered into an agreement for sale dated 15.05.1978 with regard to the land situated at Village Eksar. Respondent No. 1 further filed a Short Cause Suit No. 1797 of 1981 before the High Court of Judicature at Bombay for a declaration that there is a valid, subsisting and binding contract between the parties.

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(e) By order dated 12.10.1989, learned single Judge of the High Court allowed the same in favour of Respondent No. 1 herein and on 19.10.1995, Respondent No. 1 obtained a decree on the basis of the settlement reached between the parties.

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(f) After the mutation entry, the owner-Kamlakar Narayan Samant wrote letters dated 13.08.1987 and 13.10.1987 to the Tehsildar, Taluka Borivali that certain persons have

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claimed themselves to be in possession of the said property as tenants by way of right of either agricultural activities or catching fish and their claim is fraudulent and bogus. It was also mentioned in the said letters that he has not given consent to anyone to give statement on his behalf and to receive notices of the proceedings.

(g) Against the entry in the register of 'Record of Rights", Respondent No. 1 herein filed a Revision Application being DRN/RTS/3/2000 before the Sub-Divisional Officer, Mumbai, Suburban District, Bandra (E). By order dated 30.12.2000, the Sub-Divisional Officer allowed the revision while cancelling the mutation entry dated 06.03.1987.

(h) Aggrieved by the order dated 30.12.2000, the appellant challenged the same by way of appeal being No. C/RTS/A-3/2001 before the Deputy Collector (Appeals), Mumbai Suburban District which got dismissed by judgment and order dated 31.07.2001.

(i) Feeling aggrieved, the appellant herein filed a Revision Application being No. Appeal/Desk/RTS/Revision/66/01 before the Additional Commissioner, Konkan Division, Mumbai. The Additional Commissioner, by order dated 14.03.2003, allowed the revision application.

(j) Respondent No. 1, aggrieved by allowing the revision petition, filed a Writ Petition being No. 2103 of 2003 before the High Court of Bombay. Learned single Judge of the High Court, by order dated 03.08.2006 dismissed the same.

(k) Being aggrieved by the aforesaid order, the Respondent No. 1 filed an appeal being No. 245 of 2007 in Writ Petition 2103 of 2003 before the High Court. The Division Bench of the High Court, by order dated

A 22.06.2010, allowed the appeal filed by the Respondent No. 1 herein and set aside the mutation entry No. 4601 dated 06.03.1987 in the "other rights" column.

(I) Against the said order, the appellant herein has
B preferred this appeal by way of special leave before this Court.

4. Heard Ms. Abha R. Sharma, learned counsel for the appellant and Mr. Shekhar Naphade, learned senior counsel
C for the respondents.

5. The only point for consideration in this appeal is whether the Mutation Entry No. 4601 dated 06.03.1987 in the "other rights" column of the 'Record of Rights' is valid or not.

D **Rival Submissions:**

6. Learned counsel for the appellant submitted that the appellant is in possession of the land in question for the last 15-20 years and used to cultivate crops and fishing on the
E same. The original landlord/owner-Kamlakar Narayan Samant was aware of the fact that the appellant was in possession of the said land but he never raised any objection whatsoever on such possession and use of land. Vide Mutation Entry dated 06.03.1987 being No. 4601, the name of the present appellant
F along with six other persons was entered in the "other rights" column of the 'Record of Rights' by the Tehsildar, Borivali following due process of law.

7. Learned counsel for the appellant further submitted
G that notices were sent to Kamlakar Narayan Samant as well as his constituted attorney-Laxman Anu Patil through Tehsil Office, Borivali, however, no reply was given by the owner though he received the same. She contended that the constituted attorney of original land owner remained present
H before the Talathi and had admitted the possession of the

appellant on the said land in his statement dated 22.01.1987. After carrying out site inspection of the said land and preparation of panchnama and recording the statements, the mutation entry had been recorded by adopting proper procedure. It is further contended that the appellant is an agricultural tenant in respect of the suit land, hence, the names have been rightly brought on record by the mutation entry. Since the name of the appellant along with six other persons has been brought on record by following due process of law, they are in settled un-interrupted possession of the above property for more than 40 years.

8. Learned counsel further submitted that even though the original owner was aware of the fact that the name of the appellant along with others is being recorded in the other rights column, he did not take any steps. Further, when it was informed to the owner that he had the remedy of appeal, the fact remains that he had not availed the same against the mutation entry rather he filed a revision. Also, the revision, which was filed by the owner after a long time from the date of the mutation entry, cannot be regarded as being instituted within a reasonable period of time. Finally, she submitted that an entry in the record of rights in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

9. In reply, learned senior counsel for the respondents submitted that proper procedure was not adopted before the Tehsildar in respect of sanction of mutation entry. There is no mention as regards the status or nature of acquisition of any right or interest or nature of alleged possession and proportion or share therein. The notices were issued to the constituted attorney instead of issuing it to the original owner. The procedure of formal enquiry was not followed which shows that there was collusion between the parties. The original owner, vide letter dated 10.02.1987, stated that he has given power

A to Laxman Anu Patil for recovery of rents only and any transfer of 'Record' on the basis of the statements made by him would be illegal. Further, on 13.10.1987, Kamlakar Narayan Samant informed the Tahasildar, Borivali that Laxman Anu Patil is his employee and had been given power to recover the rent in
B respect of the court decree and to protect the property from encroachment. As far as the suit land is concerned, Respondent No. 1 has exclusive possession of the same and the claim of the appellant that he along with six others was cultivating or fishing therein and were in possession of the suit
C property is fraudulent. The procedure of formal enquiry was not followed. From this conduct, it appears that he has collusion with the appellant. In the Mutation Entry No. 4601, there is no mention as regards the status or nature of acquisition of any right or interest or nature of alleged possession and proportion
D or share therein.

10. The land is 'khajan (marshy)' land and is not fit for cultivation at any time. Therefore, the claim of the appellant for entering names in the record of rights pertaining to the said
E land does not arise at all. The claim of the appellant that they were cultivating saline lands is baseless and liable to be rejected. It was also contended before the court that the sub-Divisional Officer is competent to take decision on the revision application under Section 257 of the Maharashtra Land
F Revenue Code, 1966.

Discussion:

11. From the rival submissions, it is undisputed that the
G appellant along with others was in uninterrupted possession of the suit land since long. The appellant herein moved an application before the Tehsildar, Borivali that since he and 6 other persons were cultivating paddy and were in possession of the suit land for the last 15-20 years, their names be entered
H into the "other rights" column of the 7/12 extract in respect of

11 acres of land out of Survey No. 221 of Village Eksar. Due notices were said to be served to the landlord- Kamlakar Narayan Samant and on 06.03.1987, Mutation Entry No. 4601 was made recording the name of the appellant herein along with six other persons in "other rights" column of the Record of Rights.

12. It is also relevant to mention that M/s Gala Construction Co. Pvt. Ltd.-Respondent No. 1 and the original owner-Kamlakar Narayan Samant entered into an agreement for sale dated 15.05.1978 with regard to the land situated at Village Eksar and Respondent No. 1 filed a Short Cause Suit No. 1797 of 1981 before the High Court for a declaration that there is a valid, subsisting and binding contract between the parties which was granted on 12.10.1989 and in pursuance of the same, on 19.10.1995 a decree was obtained by Respondent No. 1.

13. Vide Mutation Entry being No. 4601 dated 06.03.1987, the name of the present appellant along with six other persons was entered in the "other rights" column of the 'Record of Rights'. Respondent No. 1 herein challenged the same in revision before the Sub-Divisional Officer, Mumbai, Suburban District, Bandra (E). By order dated 30.12.2000, the Sub-Divisional Officer allowed the revision while cancelling the mutation entry dated 06.03.1987. Further, the appellant challenged the same in an appeal before the Deputy Collector (Appeals), Mumbai Suburban District which got dismissed by judgment and order dated 31.07.2001. The appellant herein further filed a revision before the Additional Commissioner, Konkan Division, Mumbai which was allowed on 14.03.2003.

14. In view of the claim of the appellant herein that the mutation entry was recorded after following the due process of law, it was submitted that the notices were served to the original owner, however, he did not reply the same or objected

A to it. The Extra Awal Karkun, Borivali, carried out the inspection of the suit land on 06.05.1987 and drawn the site inspection note in the presence of panchas on 11.05.1987 and certified the mutation entry. On 13.10.1987, the original owner informed the Tehsildar, Borivali that Shri Laxman Anu Patil is his B employee and had been given power to recover rent in respect of the court decree and to protect the property from encroachment. It was further informed that so far as suit land is concerned, the original owner has exclusive possession of the said land. It was also submitted that the constituted attorney C of original land owner remained present before the Talathi and had admitted the possession of the appellant on the said land in his statement dated 22.01.1987. On a plain reading of the Power of Attorney, it can easily be seen that Laxman Anu Patil has no right to give any statement on behalf of the original D owner in respect of the suit land. Therefore, the claim of the appellant claiming tenancy over the suit land is baseless and the tenancy is created without any evidence. The mutation entry has been recorded keeping in view the statement of power E of attorney holder-Laxman Anu Patil.

15. The Tehsildar, Borivali, failed to appreciate that while seeking to enter the name of the appellant in 'Record of Rights' and granting such request, the appellant had not spelt out his status or claim or his capacity in which he sought to get his F name entered and while entering their names in the relevant column, the provisions of Maharashtra Land Revenue Code and the Rules were ignored.

16. In this context, it is relevant to note the following G provisions of the Maharashtra Land Revenue Code, 1966 which are as under:-

"**2. Definitions.**-In this Code, unless the context otherwise requires –

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(12) "to hold land" or "to be a landholder" or "holder of land" means to be lawfully in possession of land, whether such possession is actual or not.

(23) "occupant" means a holder in actual possession of unalienated land, other than a tenant or Government lessee: provided that, where a holder in actual possession is a tenant, the landholder or the superior landlord, as the case may be, shall be deemed to be the occupant.

(24) "occupation" means possession.

(25) "to occupy land" means to possess or to take possession of land.

148. Record of Rights:-A record of rights shall be maintained in every village and such record shall include the following particulars:-

(a) the names of all persons (other than tenants) who are holders, occupants, owners or mortgages of the land or assignees of the rent or revenue thereof;

(b) the names of all persons who are holding as Government lessees or tenants including tenants within the meaning of the relevant tenancy law;

(c) the nature and extent of the respective interests of such persons and the conditions or liabilities, if any, attaching thereto;

(d) the rent or revenue, if any, payable by or to any of such persons;

(e) such other particulars as the State Government may prescribe by rules made in this behalf, either generally or for purposes of any area specified therein.

A **149. Acquisition of rights to be reported.**-Any person acquiring by succession, survivorship, inheritance, partition purchase, mortgage, gift, lease or otherwise, any right as holder occupant, owner, mortgagee, landlord, Government lessee or tenant of
B 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 said Talathi shall at once give a written
C acknowledgement of the receipt of such report to the person making it:....

150. Register of mutations and register of disputes cases: - (1) The Talathi shall enter in a
D register of mutations every report made to him under section 149 or any intimation of acquisition or transfer under section 154 or from any Collector.

(2) Whenever a Talathi makes an entry in the register
E 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 or mutations to be interested in the mutation, and to
F any other person whom he has reason to believe to be interested therein.

(3) When any objection to any entry made under sub-section (1) in the register of mutations is made either
G orally or in writing to the Talathi, it shall be the duty of the Talathi to enter the particulars of the objections in a register of disputed cases. The Talathi shall at once give a written acknowledgement for the objection to the person making it in the prescribed form.

H (4) 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 rules made by the State Government in this behalf.

(5) The transfer of entries from the register of mutation to the record of rights shall be effected subject to such rules as may be made by the State Government in this behalf.

Provided that, an entry in the register of mutations shall not be transferred to the record of rights until such entry has been duly certified.

(6) Entries in the register of mutations shall be tested and if found correct, or after correction, as the case may be, shall be certified by any revenue or survey officer not below the rank of an Aval Karkun in such manner as may be prescribed:

Provided that, entries in respect of which there is no dispute may be tested and certified by a Circle Inspector.

Provided further that no such entries shall be certified unless notice in that behalf is served on the parties concerned.

(7) The State Government may direct that a register of tenancies shall be maintained in such manner and under such procedure as may be prescribed by rules made by the State Government in this behalf."

17. The aforesaid provisions were considered by the Bombay High Court in ***Bansrajidevi wd/o Bhuval Singh***

A ***Ramniranjan Singh and Others*** vs. ***M/s Byramjee Jeejeebhoy Pvt. Ltd. and Others*** 2006 (6) Mh.L.J. 95 wherein it was held as under:-

"8. It is thus clear that to exercise the right under section
B 148 read with Sections 149 and 150 of the Code for entering one's name in the Record of Rights, the applicant has to be a holder, occupant, owner, mortgagee or tenant. Such a right is also available to a person acquiring interest in the property by succession, survivorship,
C inheritance, partition, purchase mortgage, gift, lease or otherwise. Bhuvalsingh claimed that he was in occupation of 27 acres of land and he was holder of the same right from 1950 and, therefore, his claim was required to be entered in the Other Rights column. These
D contentions have been rejected by the Deputy collector and confirmed by the Additional Divisional Commissioner and rightly so. Merely a holder or occupant does not meet the requirements of law for exercising such a right. Section 2(12) of the Code, as reproduced hereinabove,
E makes it clear that to be a "land holder" or "holder of land" means to be lawfully in possession of land, whether such possession is actual or not and as per section 2(23) "occupant" means a holder in actual possession of unalienated land. It was, therefore, necessary for
F Bhuvalsingh to prove that his possession or occupation over the suit land was lawful or he had come in possession by a legal conveyance/title or any other instrument like receipt etc. to which the respondent No.
G 1 was a party or at its instance. Merely saying that none of the officers of the respondent No. 1 or its agents or representatives objected at any time to his possession does not make his possession lawful, even if it is accepted that he was in possession. He has to prove
H his title of possession by pointing out that it was lawful

and if such requirement could not be proved, the revenue authorities below were right in calling Bhuvalshing as the encroacher on the private land who was entitled to exercise such a right. The Tehsildar and subsequently the SDO did not consider the main issue as to whether Bhuvalsingh was in lawful possession of the suit land. Under the Maharashtra Land Revenue Code, the Government of Maharashtra has framed Maharashtra Revenue Record of Rights and Registers (Preparation and Maintenance) Rules, 1971 and Rule 10 thereunder gives form of register of mutations. Rule 11 is regarding making entries in register of mutations. Rule 12 is regarding recording mutations in certain cases, Rule 13 states that whenever an entry is made in the register of mutations under sub-section (1) of section 150 in relation to any land, the Talathi shall indicate, in pencil the number of that mutation entry against the entry relating to that land appearing in the record of rights with the remark that the mutation entry has not been duly certified. After this pencil entry is certified, it becomes an ink entry confirming the entry made in pencil. It was necessary for the Tehsildar and the SDO to test Bhuvalsingh's application on remand on the basis of the provisions of sections 2(12), 2(23) and 148, 149 and 150 of the Code and both these officers appear to have been overwhelmed by the report or the Tehsildar's satisfaction by personal visit to the land that Bhuvalsingh was in possession of the said land. Recording the claimant's name in the other rights column merely on the basis of possession is nothing short of perversity and unless the officer concerned was satisfied that the said possession was lawful such an entry could not have been done irrespective of whether the original owners appeared and contested the plea and more so when the officer was performing a

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A statutory duty. When the statute states that a duty has to be performed or an enquiry has to be conducted in a particular manner, it is well settled, it has to be done in that manner alone and it was necessary for the Tehsildar to ensure that the requirements of the Code were satisfied
B by the petitioners' predecessor". **(emphasis supplied by us)**

18. It is thus clear that to exercise the right under section 148 read with Sections 149 and 150 of the Code for entering
C one's name in the Record of Rights, the applicant has to be a holder, occupant, owner, mortgagee or tenant. Such a right is also available to a person acquiring interest in the property by succession, survivorship, inheritance, partition, purchase mortgage, gift, lease or otherwise. We fully approve the view
D taken by the Bombay High Court in the aforesaid decision. The appellant claimed that he along with others is in possession of the suit land for the last 15-20 years and, therefore, his claim was required to be entered in the "Other Rights" column. This contention has been rejected by the Sub-Divisional Officer as
E well as by the Deputy Collector (Appeals) but confirmed by the Additional Commissioner. Merely a holder or occupant does not meet the requirements of law for exercising such a right. Section 2(12) of the Code, as reproduced hereinabove, makes it clear that to be a "land holder" or "holder of land"
F means to be lawfully in possession of land, whether such possession is actual or not and as per Section 2(23) "occupant" means a holder in actual possession of unalienated land. It was, therefore, necessary for the appellant to prove that his
G possession or occupation over the suit land was lawful or he had come in possession by a legal conveyance/title or any other instrument like receipt etc. to which the Respondent No. 1 was a party or at its instance. It is also not the case of the appellant that he has perfected his title over the land in question
H by way of adverse possession.

19. Merely saying that the Respondent No. 1 or the original owner did not object at any time to the possession, does not make his possession lawful, even if it is accepted that he was in possession. The appellant has to prove his title of possession by pointing out that it was lawful and if such requirement could not be proved, mutation entry is required to be cancelled. Recording the name of the appellant along with six others in the other rights column merely on the basis of possession is nothing short of perversity and unless the officer concerned was satisfied that the said possession was lawful such an entry could not have been made irrespective of whether the original owners appeared and contested the plea and more so when the officer was performing a statutory duty. When the statute states that a duty has to be performed or an enquiry has to be conducted in a particular manner, it is well settled, it has to be done in that manner alone and it was necessary for the Tehsildar to ensure that the requirements of the Code were satisfied by the petitioners' predecessor.

20. In our considered opinion, the name of the appellant along with six others could not have been recorded in the 'Record of Rights' which contains the names of the persons who claim title to the land. We further hold that since appellant and others never claimed that they had any title to the land, entering their names in the 'Record of Rights' was not at all justified and, therefore, the Mutation Entry No. 4601 could not have been made in the said record. Hence, the Mutation Entry No. 4601 dated 06.03.1987 has rightly been set aside. The appeal is dismissed with no order as to costs.

Devika Gujral Appeal dismissed.