

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 1688 of 2017****CHINTANBHAI ROHITBHAI SHAH & ANR.****Versus****MANJUSHA MANOHAR BOBDE & ORS.****Appearance:****MR TATTVAM K PATEL(5455) for the Petitioner(s) No. 1,2****MR SP HASURKAR(345) for the Respondent(s) No. 2,3****MS SURBHI BHATI, AGP for the Respondent(s) No. 4 - 5****NOTICE SERVED for the Respondent(s) No. 1****CORAM: HONOURABLE MR. JUSTICE DIVYESH A. JOSHI****Date : 28/11/2025****ORAL ORDER**

1. By way of preferring present petition under Articles 226 and 227 of the Constitution of India, petitioners have sought for the following relief/s:

“(a) Admit/allow this writ petition.

(b) to issue a writ of certiorari or any other appropriate writ, order or direction, quashing and setting aside order dated 29.06.2016 in RTS/Appeal No.2/15 passed by Dy. Collector, Vadodara (City).

(c) During admission, hearing and final disposal of above captioned Special Civil Application, stay execution and implementation of order dated 29.06.2016 in RTS/Appeal No.2/15 passed by Dy. Collector, Vadodara (City)

(d) any other and further order deem fit in the interest of justice may kindly be passed.”

2. The brief facts of the case of the petitioners can be summarized in nutshell as under:

2.1. That, house No.7 situated at Green Park Cooperative Housing Society Ltd. of village Tarsali, Vadodara was originally owned and occupied by one Purshottambhai Vaidya. On 01.01.1998, said Purshottambhai Vaidya executed one will in favour of his wife viz. Shakuntlaben, whereby, the aforesaid property was given to his wife. The said Purshottambhai Vaidya expired on 09.12.1998. Thereafter, the said Shakuntlaben executed one will on 21.02.2002, whereby, she had given the aforesaid property to her two sons viz. Jayantbhai and Arvindbhai. Pursuant to the death of Purshottambhai Vaidya, entry No.442 came to be posted on 06.03.2003 mutating the names of his legal heirs i.e. his wife, two sons and three daughters in the property in question. On the very same day, another entry No.443 came to be posted based on will dated 01.01.1998 executed by Purshottambhai Vaidya, whereby, names of his sons and daughters came to be removed and therefore the name of Shakuntlaben alone remained in the property in question. Thereafter, on 06.11.2011, Shakuntlaben passed away and upon her sad demise, an affidavit is filed by respondent No.1 i.e. Manjusha Bobde (old name Sudhaben – one of the daughters of deceased Purshottambhai Vaidya), inter alia, stating that as per the will of her mother Shankutalaben executed on 21.02.2002, she has no objection if the property is being transferred in the names of her two brothers. Not only that, on the same day, all the

three daughters of deceased Purshottambhai Vaidya wrote a letter to the Secretary, Greenpark Cooperative Housing Society Ltd. specifically stating that all the three sisters have no objection if the property in question would be transferred in the name of their brothers viz. Jayantbhai and Arvindbhai.

2.2. On 27.03.2012 heir-ship entry No.5746 came to be posted mutating names of all children of Shakuntlaben in the property in question and on 05.11.2012 entry No.7054 came to be posted removing names of daughters of Shakuntlaben from the property in question as Shakuntlaben had given the property in question to her two sons viz. Jayantbhai and Arvindbhai. Thus, after certification of entry No.7054, the names of Jayantbhai and Arvindbhai remained in the property in question.

2.3. On 18.03.2014, the said Jayantbhai and Arvindbhai sold the said property in favour of present petitioners by executing registered sale deed and after receiving full amount of consideration of Rs.72 lakh from the petitioners. Pursuant to said transaction, names of the petitioners came to be mutated in the revenue record as well as in the share certificate. Thereafter, based on the sale deed executed between the petitioners and said Jayantbhai and Arvindbhai, on 17.05.2014, entry No.8991 came to be posted mutating the names of the present petitioners.

2.4. However, after lapse of some time, respondent No.1 – one of the sisters of Jayantbhai and Arvindbhai has filed RTS appeal under the provisions of Rule 108(5) of the Bombay Land Revenue Code against the respondent Nos. 2 and 3 i.e. her brothers, whereby, she has challenged the entry No.7054. However, the respondent No.1 has not joined the present petitioners as party respondents. The said appeal came to be partly allowed by cancelling the entry No.7054 and remanding the matter back to the City Survey Superintendent No.4, Vadodara for deciding the issue afresh by affording opportunity of hearing to the parties.

3. Heard learned advocate Mr. Tattvam Patel for the petitioners, learned advocate Mr. S. P. Hasurkar for respondent Nos. 2 and 3 and learned AGP Ms. Surbhi Bhati for respondent Nos. 4 and 5. Though served, respondent No.1 has chosen not to appear and contest the present petition.

4. Learned advocate Mr. Tattvam Patel for the petitioners submits that the property in question originally belongs to one Purshottambhai Vaidya. The property in question is self-acquired property of said Purshottambhai Vaidya. The said Purshottambhai Vaidya, by way of executing a will, had given the said property to his wife viz. Shakuntlaben Vaidya. The said Shakuntlaben Vaidya, by way of executing a

will, had given the said property to her two sons viz. Jayantbhai and Arvindbhai. Necessary revenue entries also came to be mutated in that regard. He submits that after the death of said Purshottambhai Vaidya, names of his legal heirs i.e. his wife, two sons and three daughters have been mutated in the revenue record. Based on the will executed by Shakuntlaben Vaidya, names of her daughters were removed from the property in question and after the sad demise of Shakuntlaben, the names of Jayantbhai and Arvindbhai remained. He further submits that respondent No.1 herein has also filed an affidavit, inter alia, stating that she has no objection if the property in question is transferred in the name of her brothers viz. Jayantbhai and Arvindbhai. On the same day, all the three sisters have also wrote a letter to the Secretary of the society specifically stating that they have no objection if the property in question is transferred in the name of Jayantbhai and Arvindbhai. Thereafter, the said persons viz. Jayantbhai and Arvindbhai had sold the property in question to the present petitioners by way of executing registered sale deed and accepting the full amount of consideration of Rs.72 lakh in the year 2014. Therefore, the petitioners herein are the owners and occupier of the said property since then.

5. He submits that after the execution of sale deed in favour of the petitioners, respondent No.1 herein (one of the sisters of respondent nos. 2 and 3) had

initiated proceedings under Rule 108(5) of the Bombay Land Revenue Code challenging entry No.7054, whereby, the names of daughters of Purshottambhai and Shakuntlaben have been removed from the property in question. He submits that the petitioners are the *bona fide* purchaser and they are the affected party, despite the said fact, respondent No.1 has not joined the petitioners as party to the said proceedings. The concerned revenue authority has partly allowed the said proceedings and entry No.7054 came to be cancelled and matter was remanded back to the concerned authority to decide it afresh after affording an opportunity of hearing to the parties. Therefore, as a consequential effect, subsequent entries made in the revenue record after posting of entry No.7054, would automatically get cancelled and therefore petitioners are the most affected party. The petitioners have become absolute owners and occupiers of the property in question and entry to that effect is also mutated in the record of rights and those particular facts were well within the knowledge of the respondent No.1, despite that, at the time of initiation of the proceedings under the Bombay Land Revenue Code, the respondent No.1 has deliberately not joined the petitioners herein as party respondents. Therefore, at the time of deciding the impugned proceedings, revenue authority has indirectly passed the order against the petitioners by cancelling the entry mutated in the revenue record. Therefore, the impugned order is required to

be quashed and set aside and matter is required to be remanded back to the concerned revenue authority for deciding it afresh after affording opportunity of hearing to the present petitioners.

6. Learned advocate Mr. Patel further submits that it is pertinent to note that after the sad demise of mother of the respondent Nos. 1 to 3, all the three sisters have relinquished their right and informed the concerned authority, specifically stating that, if the property is transferred in the name of their brother, they have no objection. Therefore, at the time when the property was purchased by the petitioners from the brothers of respondent No.1, they were the absolute owners and in occupation of the said property based upon the will executed by the mother of the respondent Nos. 1 to 3. However, the respondent No.1 kept silence and after lapse of some time, she has initiated proceedings before the concerned Revenue Authority under the provisions of Rule 108(5) of the BLRC and that too without joining present petitioners as party respondents. Therefore, when the petitioners are the most affected party and impugned order is passed in their absence, the impugned order is required to be quashed and set aside and matter is required to be remanded back to the concerned revenue authority.

7. Learned advocate Mr. Patel further submits the respondent No.1 has not initiated any proceedings

challenging the will executed by her mother Shakuntlaben based on which entry in question has been posted and names of sisters of respondent Nos. 2 and 3 have been removed. Thus, the learned authority concerned has committed grave error while passing the impugned order, whereby, the entry in question has been deleted and matter has been remanded back to the concerned authority to decide the issue afresh, in absence of any order of the competent Civil Court, whereby, the will executed by the mother of respondent Nos. 1 to 3 has been declared as null and void. He further submits that notice issued by this Court has been duly served to respondent No.1 but she has chosen not to appear and contest present petition. However, certain correspondences have been made by the husband of respondent No.1, which are placed on record. He, therefore, submits that in view of the aforesaid overall facts and circumstances of the present case, petition may be allowed and impugned order may be quashed and set aside and matter may be remanded back to the concerned revenue authority to decide it afresh after affording full opportunity of hearing to the parties including the present petitioners.

8. Learned advocate Mr. Hasurkar for the respondent Nos. 2 and 3 submits that he has no objection if the present petition is to be allowed and matter is to be remanded back to the concerned revenue authority as they had executed registered sale deed in favour of

the petitioners after accepting full amount of sale consideration for the property in question.

9. Learned AGP Ms. Surbhi Bhati for respondent Nos. 4 and 5 has objected present petition with vehemence and submitted that the sequence of events of incident is narrated by learned advocate Mr. Patel for the petitioners and therefore she need not have to narrate those facts. She submits that in fact if the Hon'ble Court would make cursory glance upon the operative part of the impugned order, in that event, it would have been found out that based upon the proceedings initiated by respondent No.1 under the provisions of Bombay Land Revenue Code, the concerned authority has passed the impugned order, whereby, entry with regard to removing the names of sisters of respondent Nos. 2 and 3 has been cancelled and matter has been remanded back to the authority concerned to decide the issue afresh after providing full opportunity of hearing to all the parties. Therefore, no error of law and/or facts could be said to have been committed by the concerned authority while passing the impugned order and the impugned order is just, fair and reasonable and it does not require any interference by this Hon'ble Court at this juncture. However, she has fairly conceded that the petitioners have purchased the property in question from respondent Nos. 2 and 3, whose names have been mutated on the basis of will of their mother, and therefore when the petitioners are the *bona fide*

purchasers, an opportunity of hearing is required to be given to the petitioners before cancelling the entry in question, whereby, names of sisters of the respondent Nos. 2 and 3 have been removed on the basis of will of mother of the private respondents. She, therefore, submits that an appropriate order may be passed.

10. Having heard learned advocates appearing for the respective parties and having gone through the materials available on record, it is found out that the property in question belongs to father of respondent Nos. 1 to 3 herein. The said property is self-acquired property of their father. The father of the respondent Nos. 1 to 3 executed one will in favour of their mother, whereby, the property in question is given to her. The father of respondent Nos. 1 to 3 expired leaving behind him his wife, two sons and three daughters including respondent No.1 herein. The mother of respondent Nos. 1 to 3 has also executed one will in favour of respondent Nos. 2 and 3, whereby, the property in question is given to them. It is pertinent to note that after the death of mother of respondent Nos. 1 to 3, all the three sisters including present respondent No.1 relinquished their rights and also informed the concerned authority that they have no objection if the property is transferred in the name of respondent Nos. 2 and 3 herein i.e. their brothers. It is also pertinent to note that various entries were posted

and certified in the records of right. It is also found out from the record that on 05.11.2012, one entry No.7054 came to be posted removing the names of daughters of Shakuntlaben from the property in question as Shakuntlaben had given the property in question to her two sons viz. Jayantbhai and Arvindbhai – respondent Nos. 2 and 3 herein. Thereafter, the petitioners herein purchased the said property from respondent Nos. 2 and 3 herein by executing registered sale deed and paying full amount of consideration to respondent Nos. 2 and 3 herein. Thus, it is found out from the record that petitioners herein are the owners and in possession of the property in question since 2014. Thereafter, shockingly, the respondent No.1 herein had initiated RTS proceedings before the competent authority seeking to cancel entry No.7054, whereby, names of daughters of Shakuntlaben have been removed without joining the petitioners as party. The said proceedings came to be partly allowed by the concerned authority by passing impugned order, whereby, entry No.7054 came to be cancelled and the matter is remanded back to the concerned authority for deciding the issue afresh. It is pertinent to note that despite knowing fully well that petitioners herein are the affected party, respondent No.1 has not joined them as party to the said proceedings and it is an admitted fact that the impugned order came to be passed in their absence. It is also pertinent to note that the respondent No.1 or any of the legal

heirs of Shakuntlaben have not challenged the will executed by said Shakuntlaben, whereby, property is given to respondent Nos. 2 and 3 and based on that will, entry No.7054 came to be posted and names of all the three sisters have been removed. It is also pertinent to note that at the time when the petitioners purchased the property in question, the same was running in the name of respondent nos. 2 and 3 only and therefore it can safely be said that petitioners are the *bona fide* purchasers and they are the most affected party and therefore an opportunity of hearing is required to be given to them before cancelling the entry No.7054 by the concerned authority.

11. In view of the aforesaid observations, the petition is partly allowed. The order dated 29.06.2016 passed by learned Deputy Collector, Vadodara (City) in RTS/Appeal No.2/15, is hereby quashed and set aside. The matter is remanded back to the concerned authority for deciding the issue afresh in accordance with law and after affording full opportunity of hearing to all the parties concerned including the petitioners herein.

(DIVYESH A. JOSHI, J)

LAVKUMAR J JANI

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: LAVKUMAR JAYANTBHAI JANI(HC00210), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 01/12/2025 17:39:38