

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7040 OF 2013

Pramod Moreshwar Tattu .. Petitioner
Versus
Sub-Divisional Officer, Baramati
and others .. Respondents

WITH

WRIT PETITION NO.8042 OF 2014

Narayan Atmaram Bhoir & ors .. Petitioner
Versus
The Tahsildar, Thane Division,
Thane and others .. Respondents

...

Mr.A.V.Anturkar, Sr. Counsel i/b Sugandh B. Deshmukh for the petitioner in WP 7040/13.

Mr.R.M.Haridas with K.S. Patil for petitioner in WP 8042/14.

Mr.B.V. Samant, AGP for respondent nos.1 to 3.

Ms.Neha Doshi i/b Vidhi Partners for respondent no.5.

**CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H.DANGRE, JJ.**

RESERVED ON : 21st JUNE 2018

PRONOUNCED ON : 17th JULY 2018

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JUDGMENT (Per SMT.BHARATI H. DANGRE, J)

1 The two writ petitions revolve around a common issue as to whether it is mandatory for the State Government to record an entry of *lis pendence* in the land record, including the 7/12 extracts maintained under the Maharashtra Land Revenue Code, 1966. (for short “Land Revenue Code”). In Writ Petition No.7040 of 2013, a challenge is also raised to a Government Resolution issued by the Revenue and Forest Department of the Government of Maharashtra on 21st September 2017 by which the State Government had issued directions not to record *lis pendence* in the 7/12 extract, and the petitioner prays for quashing and setting aside of the same.

2 Since the parties have agreed to argue the matter finally, Rule. Rule returnable forthwith.

 Heard finally by consent of the parties.

3 In order to enable us to adjudicate the issue in the writ petitions, it would be necessary to have some factual

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statements which would give an insight into the backdrop, in which the issue has been raised in the present petition.

Writ Petition No.7040 of 2013 seeks a direction to the State of Maharashtra to take entries of the *lis pendence* in the land records. The petitioner before the Court has mortgaged the property Gat No.41/4 admeasuring 1 Hectare 12 Ares situated at Village Patas, Taluka Daund, District Pune in favour of one Shri Deshpande which was subsequently subjected to change of hands from time to time until it was purchased by one Anand R Goyal, the respondent no.4 to the petition. The said property was assessed to 0.13 paisa. The name of the last respondent was mutated vide Mutation Entry No. 11620 which is placed on record along with the petition. The petitioner had filed a Civil Suit against Shri Madhukar V. Deshpande and 55 others for redemption of the mortgage in the year 1991 which came to be numbered as Civil Suit No.152 of 1991 and the suit is pending for adjudication in the Court of Civil Judge, Jr. Division, Daund. During the pendency of the said suit, the petitioner, with an objective of protecting the property which is a subject matter of the Regular Civil Suit

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no.152 of 1991 registered a *lis pendence* notice and gave intimation to the Tahsildar who made an entry to that effect vide Mutation Entry no.11645. Against the said mutation entry, the respondent no.4 preferred an appeal to the Sub-Divisional Officer, Baramati (RTS) Appeal No.133 of 2012 on 15th May 2012 and the Sub-Divisional Officer by an order dated 8th May 2013 cancelled the said mutation entry effected on 10th January 2012. The Sub-Divisional Officer, Baramati recorded a finding that it is not permissible to effect a mutation entry on the basis of *lis pendence* and observed that just because a civil suit was filed, it did not create a right in the property, and as per Section 149 of the Maharashtra Land Revenue Code, 1966, the mutation entries are to be effected only after acquiring the rights in the same. Another ground on which the Sub-Divisional Officer allowed the appeal was in respect of non-compliance of the procedure prescribed in Section 150 of the Maharashtra Land Revenue Code and it was observed that the mutation entry without giving notice to other side, was illegal and resultantly, liable to be set aside.

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Being aggrieved by the said order of the sub-divisional officer, the petitioner has approached this Court by placing reliance on a communication addressed by the Additional Collector, Pune to all the Tahsildars, thereby directing that the *lis pendence* notice should be registered and mutation entries should be recorded in the 'other right column' in the 7/12 extracts and according to the petitioner, the said directives issued would bind the sub-divisional officer. The petitioner also places reliance on the rules framed in exercise of powers conferred under the Maharashtra Land Revenue Code i.e. Maharashtra Land Revenue Records of Rights and Register (Preparation and Maintenance) Rules 1971.

4 During the pendency of the writ petition, the State Government issued a resolution on 21st September 2017, which according to the petitioner, is in exact contrast to what the claim of the petitioner is and therefore, the petitioner assails the said Government Resolution and prays that it be quashed and set aside, as according to him, by not taking note of the *lis pendence* into the land records, the rural population is likely to

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be placed in an disadvantageous position as 7/12 extract is the only first hand information to assess the ownership and other details in respect of a particular property and this is the only document according to him which is accessible to a common man.

5 Writ Petition No.8042 of 2014 is filed by the petitioner in respect of agricultural land bearing survey no.95/7B and 95/7C situated at village Balkam Taluka, District Thane and the petitioner claims to be the owners and occupants of the said property. In the said case, the properties in question were originally owned by one Shri Dewoo S. Bhoir, the paternal uncle of the petitioner's father and subsequent to his death, Atmaram – the father of the petitioner acquired the right in the property by way of succession and inheritance and his name came to be recorded in the books of record by way of mutation entry. The petitioners are the legal heirs of Shri Atmaram and the names of all the legal heirs were recorded in the books of record. It is the case of the petitioner that one Raibai Maruti Bhoir who had no concern with the property nor possessed any

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right, title or interest over the said property, had executed a sale deed in favour of Respondent no.5 Company in the year 1961 and the respondent no.5 made an attempt to record their names in the books of record by making an application before the Tahsildar which was objected by Shri Atmaram Bhoir – father of the petitioner. The said application filed by respondent no.5 came to be rejected on 9th December 1963 by the Tahsildar and the said order was accepted by respondent no.5. However, another attempt was made by respondent no.5 in the year 1977 for recording its name, but once again the application came to be rejected. The petitioners, therefore, were constrained to file Regular Civil Suit against respondent no.5, but during the pendency of the suit, the respondent no.5 removed the encroachment caused on the petitioner's land and therefore, the said suit was not prosecuted. In the year 2012, the respondent no.5 moved another application for recording the name in the books of record, which in spite of the objection of the petitioners came to be allowed by the Tahsildar on 21st July 2014. The petitioner preferred an Appeal before the Sub-Divisional Officer under Section 247 of the Maharashtra Land

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Revenue Code and the said Appeal is pending. In this case, the petitioner had registered the notice of *lis pendence* before the Office of Registrar on the basis of the pendency of Regular Civil Suit No.776 of 2014 and moved an application before the Tahsildar for effecting the entry of *lis pendence* in the 'other right column' of property in question. The Circle Officer cancelled the said entry by relying upon the circulars issued by the Collector, Konkan Division. The petitioner, then aggrieved by the action of the Tahsildar in entertaining the application of respondent no.5 and approached this Court by way of writ petition.

6 The learned senior counsel Shri Anturkar who represents the petitioner in Writ Petition No.7040/13, while advancing his submissions in support of the petition, conceded that there is no express provision in the Land Revenue Code, 1966 which makes it imperative for the Revenue authorities to make an entry in the 7/12 extracts relating to the pendency of civil suit. He would, however, submit that this is the only mechanism which would enable a layman and specifically a

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person from rural area to get knowledge about pendency of the litigation in respect of any property with which he intends to deal. He would submit that the citizens face acute hardship, since there is no mechanism formulated by the revenue authorities or any other department of Government of Maharashtra, by which a citizen is informed about the pendency of litigation, in case he proposes to purchase any property. According to him, this has resulted into a situation which is chaotic and the transactions are being entered into without any knowledge about any pending civil litigation revolving around the said property. The learned senior counsel would make a reference to the judgment of the Hon'ble Apex Court in case of *T.G. Ashok Kumar Vs. Govindammal* and anr¹ and would specifically rely upon paragraph no.19 of the said judgment of the Hon'ble Apex Court. He would further submit that in the backdrop of the hardship, anxiety and unnecessary litigation caused on account of absence of a mechanism for prospective purchaser to verify whether a property is subjected to any pending suit or a decree of attachment, a solution which

1 2010(14) SCC 370

has been found for this problem in the State of Maharashtra by an appropriate amendment to Section 52 of the Transfer of Property Act, by Bombay Act IV of 1939, the Hon'ble Apex Court had expressed a hope that the Law Commission and the Parliament considers such amendment or other suitable amendment to cover the existing void in title verification or due diligent procedure and provisions which could be introduced for compulsory registration of such notices in respect of decree and in regard to attachment of immovable properties. The learned senior counsel would also place reliance on the Division Bench judgment of this Court in *Writ Petition No.2640 of 2010* wherein the Hon'ble Division Bench had recommended to the Government to issue a circular like the one issued by the Nasik Collectorate, so as to ensure that the pendency of the suit in respect of the properties sought to be transferred by any means is brought on record, while effecting an entry in 7/12 and other right column. Thus, in short, the learned senior counsel emphasized that in the absence of any express provision in the Land Revenue Code, 1966, it is necessary to find out some solution and he would submit that section 52 of

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the Transfer of Property Act itself has been brought on the statute book with an object of taking cognizance of the pendency of a suit or proceedings and by virtue of the said provision, a notice of pendency of such suit or proceeding is registered under Section 18 of the Indian Registration Act. On the notice so registered, the property cannot be transferred or otherwise dealt with by any party to the suit so as to affect the rights of any other party thereto under any decree or order, intends to protect such transactions. He would thus submit that if such is the situation, then taking a note of the same in the record of rights would be in the larger public interest.

7 The learned counsel for the petitioner Advocate Shri Kishor S Patil would advance his submissions in support of his Writ Petition no.8042 of 2014 and would pray for quashing and setting aside of the said Circular dated 21st September 2017. He would adopt the arguments of the learned senior counsel and he would submit that the whole purpose of registering notice of *lis pendence* is rather defeated by issuance of such a circular which is impugned in the petition. He would submit

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that as in the case of his petition, suit filed by the petitioner is pending and even the notice of *lis pendence* is duly registered in accordance with law. He would submit that recording of *lis pendence* in revenue record itself does not create any right over the property, however, by such recording the transferee is made aware of a pending litigation. He would further submit that in normal course, while purchasing a property, a purchaser would necessarily verify from the revenue record and if such an entry of *lis pendence* is made, it would obviously help the transferee and it would curtail further litigation. He would submit that making entry of *lis pendence* in Revenue record does not, in any way, prejudice rights of any person, but the *lis pendence* as per section 52 of the Transfer of Property Act merely makes it subservient to the rights of the parties to the litigation, though it does not create or affect rights of any person. He, would thus, pray for quashing and setting aside of the said Circular since it is also contrary to the judgment delivered by this Court on 20th October 2010 in Writ Petition No.2640/2010 on which the learned senior counsel Shri Anturkar has also placed heavy reliance.

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As against the submissions made on behalf of the petitioner, the learned AGP Mr.Samant would oppose the petition and would pray for upholding of the impugned Government Resolution. He would submit that the petition was initially filed, seeking directions to the State Government to issue circular to all District Collectors in Maharashtra State, thereby requiring entry of *lis pendence* to be recorded in the 'other rights column' in village form no. 7/12 maintained by the revenue authorities, but the State has now come up with a policy by issuing resolution on 21st September 2017, thereby directing the Revenue authorities not to take entries in respect of *lis pendence* in the revenue records. Mr.Samant would submit that the State Government is of the firm view that such entries regarding *lis pendence* are not required to be made in the village form no.7/12 by the revenue authorities and he would justify the said stand of the State Government on the ground that perusal of the provisions contained in the Land Revenue Code, 1966, specifically Section 148 of the Maharashtra Land Revenue Code does not permit such an entry being recorded. Mr.Samant would submit that section 148 of the Maharashtra

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Land Revenue Code, 1966 enumerates the particulars to be included in the record of rights which is to be maintained in every village. He would submit that the particulars to be included in the revenue record pertains to the nature and extent of the interest of holders, occupants, owners, mortgagees, lessees and tenants, and conditions or liability attached to such interest. He would submit that the pendency of any proceedings or suit before any court or other *quasi judicial* authority does not amount to any kind of right in praesenti and the right of litigant comes into existence on the passing of decree or judgment or order by the concerned Court after adjudication of the *lis*.

8 Mr.Samant would further submit that though section 52 of the Transfer of Property Act recognizes the principle that the result of pending litigation is binding on the parties to the case and persons claiming through them, and it puts a restriction on the rights of parties to suit or proceedings to transfer the property, which is subject matter of the said litigation, however, at the same time, the said section does not

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render any transfer done in violation of the said provision to be void *ab initio* hereto.

He would place reliance on the affidavit filed by the Joint Secretary, Revenue and Forest Department to oppose the said writ petition. He would submit that in the affidavit in reply, it is categorically stated that mere filing of the legal proceedings before a Court or *quasi judicial* authority, does not *per-se* create any right in respect of immovable property, nor such filing *ipso facto* results in creation or modification or deletion of any right in or touching the immovable property. It is further stated in the affidavit that the revenue records are mere reflection of the rights claimed by a person in respect of any immovable property and reported to revenue authority and the entries are always subject to adjudication of title rights by competent court and are bound to be created after final orders or decrees of competent court.

The affidavit on which Mr.Samant would rely, refers to the State Amendment of the then State of Bombay being Bombay Amendment Act XIV of 1939 and it states that the Amendment Act shall apply to properties situated wholly or

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partly in the city of Bombay (Mumbai) from the date of notification in the official gazette and provides for similar notification extending applicability of the Amending Act to the other areas to be issued. Then, a reference is made to Section 18 of the Registration Act which provides for optional registration of certain documents and to section 18(ee) which relates to notices of pending suits or proceedings referred to in section 52 of the Transfer of Property Act, 1882. It is further stated in the affidavit that the Transfer of Property Act, 1882 stands further amended by the Bombay Act No.57 of 1959 passed on 14th October 1959, which extended the provisions of the Amending Act XIV of 1939 to the rest of the areas of Bombay State. According to the State Government, the recording of *lis pendence* notice in the 'other rights column' in village form no.7/12 would not serve any gainful purpose. On the other hand, the State Government expresses an apprehension that it would give an erroneous impression, as if certain rights in respect of the concerned immovable property are held by some third parties which would affect the otherwise clear title of the holder of the land. The affidavit

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further states that in view of the aforesaid decision, the respondent State Government thought it fit not to permit registration of entries in revenue records in respect of notices of *lis pendence* and the decision taken by the State Government is just and proper and it is prayed that the writ petition be dismissed.

9 In the backdrop of these facts and on consideration of the arguments of rival parties, the issue which we are called upon to deal is whether a writ in the nature of mandamus can be issued, directing the State Government to record an entry of *lis pendence* in the revenue records and specifically in light of the Bombay Amendment Act XIV of 1959 extending the said provisions to the area of the Bombay State. For arriving at a definite conclusion, we would have to refer to the provisions of the Maharashtra Land Revenue Code and also the provisions as contained in the Transfer of Property Act dealing with *lis pendence*.

The Maharashtra Land Revenue Code, 1966 is an Act to unify and amend the law relating to land and land
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revenue in the State of Maharashtra. The State of Maharashtra which came into existence in 1960 by amalgamation of territories of Western Maharashtra of Bombay Presidency, Marathwada Region of Hyderabad State, Deccan Region of British Reign and Nagpur of Central Province and for Berar districts of Madhya Pradesh. In these regions, different revenue systems were already in existence like the Bombay Land Revenue Code, Berar Land Revenue Code, Madhya Pradesh Land Revenue Code etc. However, on formation of the State of Maharashtra, the need was felt to have a uniform Land Revenue Code and thus, the Maharashtra Land Revenue Code 1966 was formulated by unification of various existing Codes. The Maharashtra Land Revenue Code was brought into force with effect from 15th August 1967, after receiving the assent of the President on 22nd December 1966. It contains a detailed mechanism in relation to collection of Land Revenue, powers of Revenue officers, rights and liabilities of holders of land from State Government, agricultural tenure and other matters relating to land and liabilities incidental thereto. The underlined principle which runs through the entire Code is the

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principle of "superior holder" and in terms of section 20 of the Maharashtra Land Revenue Code, the entire piece and parcel of the land in the State in whatsoever form, including the public roads, bed of sea, streams, lakes etc, mentioned in Section 20 which are not the property of others, the title vests in the State Government and it is lawful for the authority mentioned in the Code to dispose of such land in such manner as may be prescribed by the State Government. The Land Revenue Code categorizes the different classes of land and land holders. Chapter IV makes all lands liable for payment of Revenue to the State Government unless and until they are exempted. Chapter X of the Code provides for the maintenance of land records. The record of rights is the most important statement of the land revenue records since it reflects the details in relation to the holder of such land, extent of interest of the holder, the liabilities attached to the said land, the revenue payable on account of holding of such land. It is imperative to maintain the record of rights in every village and section 148 sets out as to what particulars would be included in the said record of rights. It would be useful to reproduce section 148 of the Code.

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48. 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 order particulars as the State Government may prescribe by rules made in this behalf, either generally or for purposes of any area specified therein.

10 It is a definite and established position of law that the entries made in the revenue record do not create or extinguish any title in whose favour it is recorded. The entries in record of rights are entered only for the purpose of recovering of revenue and therefore, such entries cannot be taken as transfer of title by holder of property in favour of person in whose names the entries are effected. The entries by themselves thus do not determine title of a person though they

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are presumed to be true statement of their contents unless proved contrary. The mutation entry in a revenue record means a significant, basic alteration, substitution of the name of a person by name of another in relation to property in record showing right or title to the property. The 7/12 extract, traditionally known as '*saat bara utara*' is the extract from the land register of any district maintained by the Revenue Department of the Government in the State of Maharashtra. It is the revenue document showcasing the ownership, occupancy, rights, liabilities and other agricultural aspects pertaining to the land, mainly the agricultural land prepared for each respective village where the property is located. However, even the non-agricultural land has also its own extract. The 7/12 form is a denotation of the village form no.VII which refers to record of rights denoting the name of occupant, owner or mortgagees of the land or assignees of the rent or revenue, government lease, tenants and the liabilities of holders to pay revenue, whereas the lower part of the extract form no. XII refers to register of crops denoting the type of crops taken, figures of area under the crop and the fallow land. The manner in which such

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records are to be maintained are specified in the Maharashtra Land Revenue Record of Rights and Register (Preparation and Maintenance) Rules 1971. All records maintained under various village forms including form 7/12, are land records forming substantial part of the land record department required for maintaining and keeping the revenue account relating to a person from whom the land revenue is to be realized. These extracts, therefore, highlight the information of the land by its survey number, name of the taluka or tahsil and village in which the land is located, name of all other persons who are holders, occupants, owners, mortgagees of the land or assignees of the rent or revenue and the nature and extent of their respective interest of such person and the conditions of liabilities attached to such land, the area of the land, type of tenor etc.

11 The Land Revenue Code prescribes the manner in which such record is to be maintained by use of a suitable storage device. Section 149 makes it imperative on any person acquiring any land, whether by succession, survivorship,

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inheritance, partition, purchase, mortgage, gift, lease or otherwise any right as a holder, occupant, owner, mortgagee, landlord, government lessee or tenant of the land situated in any part of the State or assignee of the rent or revenue thereof to report orally or in writing about acquisition of such a right to the Talathi within three months from the date of acquisition and the Talathi is duty bound to issue a written acknowledgment of the receipt of such information to the person making it. Exceptions are carved out in favour of minor or otherwise disqualified person where an information can be supplied through the guardian or any other person having charge of his property or in favour of person acquiring a right with permission of the Collector etc. By virtue of the said section, revenue records which are maintained in the village thus, stand altered in terms of the holder of the land by substituting the name of the person in relation to the property if it is assigned to any other person, and it ensures that the records are updated from time to time. Section 150 of the Code contains a provision for maintenance of a register of mutation recording every report made to the Talathi under section 149 or

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on intimation of acquisition or transfer effected under Section 154 of the Code or any information received from the Collector. It is mandatory for the Talathi who makes an entry in the Register of Mutation to display the complete copy of entry in a conspicuous place in the *Chavdi* and to 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 person whom he has reason to believe to be interested therein. Whenever the objection is raised in relation to an entry, it would be the duty of the Talathi to enter the particulars of such objection in a register of disputed cases and the dispute entered in the register of disputed cases are to be disposed within one year by revenue of Survey Officer and the orders disposing of the objections are to be recorded in the Register of Mutations. Section 154 of the Code provides for intimation of transfers by the Registering Officers and it provides that when any document purporting to create, assign or extinguish any title to or any charge on land used for agricultural purposes or in respect of which a record of right has been prepared is registered under the Indian Registration Act, 1908, the Officer

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registering the document shall send the information to the Talathi of the village in which the land is situated and to the Tahsildar of the Taluka in such form as may be prescribed by Rules made under this Code. By virtue of Section 157 of the Code, an entry in the record of rights and a certified entry in the register of mutation shall be presumed to be true until the contrary is proved and the new entry is lawfully substituted therefore.

12 On perusal of the entire scheme as contained in Chapter X, in relation to the record of rights, it is clear that the record of rights which is maintained in every village would include such particulars which are prescribed in Section 148 of the Code and the records would be altered from time to time by substituting the names of the persons who have acquired any interest in the said property in the manner which is prescribed in Section 149, and such a person is duty bound to report acquisition of such rights to the Talathi within a period of three months from the date on which he acquired such rights. Record of Rights would thus give a clear picture of the name of

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the persons who are holding the land in a particular village and the capacity in which such land is held along with the conditions or liabilities attached to the said piece of land, including the rent or revenue payable by or to any such person.

Thus, the record of rights which is maintained by the talathi of the said village reflects the rights and liabilities in respect of every piece of land in a village. This record would give the particulars of all private rights and possession over each parcel of land and also some public rights. In short, the record of rights means the rights of a person in or over a land and the forms in which the records of various rights are to be maintained are specified by the Rules of 1971. The said Rules prescribe different forms in which the information is to be filled in and it is maintained in form of a register and it is through various forms the details of the lands in a particular village are maintained and these forms are required to be suitably amended in terms of the information received by the Talathi from time to time. The entries in the record of rights do not create any right, title or interest.

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13 What the petitioner seeks through present writ petition is that this record of right maintained under Chapter X of the Maharashtra Land Revenue Code should record an entry of *lis pendence*. At this stage, we would refer to the doctrine of *lis pendence*, is recognized by Section 52 of the Transfer of Property Act. *Lis pendence* means “a pending legal action” wherein *lis* means “suit” and “*pendence*” means “continuing” or “pending”. The said doctrine has been derived from a latin meaning “*Ut pendent nihil innovetur*” meaning that during litigation nothing should change. The principle embodied in the said doctrine is that the subject matter of a suit should not be transferred to a third party during pendency of a suit. In case of transfer of such immovable property, the transferee becomes bound by result of the suit.

In *Corpus Juris Secumdum (Vol.54) page 570*, the term has been defined in the following manner :-

“*Lis pendence* literally means a pending suit; and the doctrine of *lis pendence* has been defined as the jurisdiction, power or control which a Court acquires every property involved in a suit pending the

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continuance of the action and actual final judgment therein. Exceptions of the doctrine would indicate that it was instituted from the very nature of the jurisdiction of the Court and their control over the subject matter of litigation so that parties litigating before a Court may not remove any part of the subject matter outside the power of the Court to deal with it and thus render a pending proceeding, infructuous”.

14 Section 52 reads thus :

52. Transfer of property pending suit relating thereto.—During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits] by the Central Government of [any] suit or proceedings which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

[Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree

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or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]

It is to be noted that Section 52 was amended in Bombay in Bombay Act 4 of 1939 so as to insert the following words:

“If a notice of the pendency of such suit or proceeding is registered under section 18 of the Indian Registration Act, 1908, the property after the notice is so registered cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose. (2) Every notice of pendency of a suit or proceeding referred to in sub-section (1) shall contain the following particulars, namely :- (a) the name and address of the owner of immovable property or other person whose right to the immovable property is in question; (b) the description of the immovable property the right to which is in question; (c) the Court in which the suit or proceeding is pending; (d) the nature and title of the suit or proceeding; and (e) the date on which the suit or proceeding was instituted.

Explanation. – For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceedings in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become

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unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

It is evident that the doctrine applies not merely to actual transfers or rights which are subject matter of litigation, but to other dealings with it by any party to the suit or proceedings so as to avoid the right of any other party thereto. The purport of Section 52 is not to defeat any just and equitable claim but only subject the same to the authority of the Court which is dealing with the property before which the claims are put forward. It is based on principle of equity, good conscious and justice.

The doctrine essentially aims at (a) avoiding endless litigation, (b) protecting either party against the Act of others and (c) avoiding abuse of legal process. The said doctrine as captured under Section 52 of the Transfer of Property Act essentially prohibits alienation of immovable property when a dispute relating to the same is pending in a Competent Court of law. It is based on a principle that a person purchasing an immovable property from a judgment debtor during pendency

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of a suit has no independent right to the property, to resist or to object the executor of a decree.

15 The purpose of doctrine being to strike the attempts by parties to a litigation to circumvent the jurisdiction of the Court in which the disputes of rights or interest in immovable property is pending by private dealings that may remove the subject matter of litigation from the ambit of the power of the Court to decide a pending dispute or which may frustrate its decree. The rule is based on the doctrine of expediency that is necessary for final adjudication and it is immaterial whether the alienee *pendente lite* had or had no notice of the pending proceedings. However, as far as the State of Gujarat and Maharashtra is concerned, in view of the State Amendments, the doctrine only affects transactions, *pendent lite* if the *lis* has been duly registered, since it contemplates issuance of a notice of pendency of such suit or proceeding to be registered under Section 18 of the Indian Registration Act and then an embargo is created on the property being transferred or otherwise it will be dealt with after the notice is so registered, so as to affect the

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rights of any other party thereto, under any decree or order which may be made. It contemplates the pendency of suit or proceedings to contain the name and address of the owner of immovable property, description of immovable property, the Court in which the suit or proceedings is pending, the nature and title of the suit or proceedings and the date on which the date or proceedings were instituted.

16 In the backdrop of the two statutory provisions, the case of the petitioner is that in view of the amendment to Section 52 by the Maharashtra Act, it is imperative to take cognizance of a *lis pendence* since if the pendency of any proceedings in any Court in relation to a right to immovable property is specifically in question and if a notice of the pendency of such suit or proceeding is registered under Section 18 of the Indian Registration Act, the property after the notice is so registered, cannot be transferred or otherwise dealt with any party to the suit or proceeding so as to affect the rights of the other party, consequent to a decree being passed. Section 52 by the State Amendment in Bombay and Gujarat sufficiently

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safeguard the interest of a party who deals with any property, which is subject matter of any suit or proceeding and whenever such a pendency of the suit or proceeding is registered under Section 18 of the Indian Registration Act, an embargo is created to transfer the said property, or in any way dealing with the said property affecting the right of the parties to the suit. This provision included by Maharashtra Amendment in the Transfer of Property Act finds its way in Section 154 of the Maharashtra Land Revenue Code and it creates a mandate on the part of the registering authority under the Indian Registration Act, when any documents purporting to create, assign or extinguish any title to, or any charge on the land used for agricultural purposes or in respect of which a record of rights has been prepared is registered under the Indian Registration Act, 1908, then it is imperative for such Officer registering such document to send intimation to the Talathi of the village in which the land is situated and to the Tahsildar in the taluka in such form and at such time as prescribed by the Rules. The Maharashtra Land Revenue Code thus only prescribes for an intimation to be forwarded to the Talathi on registration of a notice under the

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Indian Registration Act. What the petitioners are praying is taking note of such *lis pendence* in the record of entry. As we have already seen, the provision in relation to maintenance of record of rights as contained in section 148 of the Maharashtra Land Revenue Code, would include the constituent as mentioned in section 148 i.e. the names of all the persons who are holders, owners, occupants or mortgagees of the land or assignees of the rent or revenue thereof and the name of all the persons who are holding as government lessee or tenants. The record of rights also include the nature and extent of the respective interest of such person and the conditions or liabilities, if any, flowing therefrom the rent or revenue, if any, payable by or to any such person. Apart from the said particulars, the State Government is empowered to prescribe either generally or for the purposes of any areas specified therein, any other particulars by making rules in that behalf.

17 The record of right, as contemplated under Maharashtra Land Revenue Code, is maintained for the purpose of recovering revenue and it is not a record which creates any

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title or interest but merely recognizes a title or interest of a person in a piece of land located in a village. Thus, it is a record in respect of the lands maintained in the manner prescribed under the Land Revenue Code which do contain any provision which would mandate recording of a *lis* or its pendency.

The petitioner has claimed that Collectors of several districts have issued directives from time to time, thereby directing the *lis pendence* entries to be recorded in the record of rights. The petitioner has also placed heavy reliance on the judgment delivered by this Hon'ble Court on 20th October 2010 in Writ Petition No.2640 of 2010 which deals with an advisory Circular dated 12th November 2005. Before the Division Bench of this Court, the legality of the said Circular issued by the Collector Nashik, invoking powers under Section 148(c) of the Maharashtra Land Revenue Code, was assailed in the backdrop that a Special Civil Suit No.115 of 2004 was filed in the Court of Civil Judge, Senior Division Nashik along with an application for temporary injunction. The petitioner before

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this Court was defendant no.1 in the said suit and the application for temporary injunction came to be rejected, which was upheld in an Appeal against Order. The impugned circular was assailed on the ground that what the plaintiff could not achieve despite the application for temporary injunction being rejected, has been achieved through the circular issued by the Collectorate, Nashik, since the Circular puts unreasonable restriction and causes prejudice to the rights of the petitioner to dispose of the suit property and specifically when there is no legal impediment in creating such rights during the pendency of the suit and when the application for temporary injunction was rejected. The petitioner had questioned the authority of the Collector to invoke the powers under Section 148(6) of the Code.

In this backdrop of the facts, this Court noted that the circular was merely issued to ensure that the pendency of the suit in respect of the properties sought to be transferred is brought on record while affecting an entry in 7/12 and other rights extract. This Court observed that the Circular did not put any restriction on transfer of property or for creating any third

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party interest and it was with a view to alert the revenue officer and particularly those who are responsible for mutating the revenue entries regarding the right of the parties. The Division Bench of this Court concluded that the impugned circular is clarificatory in nature and it cannot be said that it is issued without any authority of law. The learned senior counsel had specifically relied upon the observations made by the Court by which it suggested all the District Collectors in Maharashtra to issue such circulars.

18 In the earlier round of litigation, when the petitioner approached this Court with a similar grievance by filing writ petition no.10052 of 2015 along with connected writ petitions, this Court on 7th June 2017 accepted submissions advanced on behalf of the Secretary, Revenue Department, Government of Maharashtra that the State authorities would take into consideration the issue raised in the petition and take appropriate decision within a period of eight weeks. In furtherance of the statement made before this Court, the State Government took a decision in relation to the entries of *lis*

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pendence being recorded in the record of rights and issued a Circular on 21st September 2017. The said Circular was specifically issued in the backdrop of the fact of the inconsistency being in operation in the State of Maharashtra in relation to the entry of *lis pendence* being recorded in the record of rights and on obtaining the opinion of the learned Advocate General of the State of Maharashtra, the circular came to be issued. By the said circular, the State Government has resolved that in light of the provision contained in Section 148 of the Maharashtra Land Revenue Code, the particulars to be included in the 7/12 extracts are already set out and this do not include the note of *lis pendence* being taken in the land records. The State Government, therefore, directed that the entry of *lis pendence* should not be recorded in the 7/12 extract. Thus, the State Government has taken a final decision on the conflicting directive issued by the respective Collectors. The State Government had made it amply clear by the said circular that the entries regarding *lis pendence* cannot form part and parcel of the contents of the land records which are to be maintained in terms of section 148 of the Maharashtra Land Revenue Code

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and the Rules framed thereunder and therefore, in village form 7/12, the *lis pendence* entries could not be taken.

19 We do not find that there is any error in the said decision and rather the said decision taken by the State Government, as contained in the impugned circular, is in conformity with the provision of the Maharashtra Land Revenue Code, since section 148 of the Code sets out the particulars which should be included in the record of rights and it do not stipulate any other particulars to be included, except in accordance with the decision by the State Government, which it can prescribe by the rules. It is the State Government which has made it clear that the pendency of any proceedings or suit before any court or any other quasi judicial authority, does not amount to any kind of right in praesenti and a right of litigant comes into existence only on final adjudication by the concerned Court where the *lis* is pending. Since the Maharashtra Land Revenue Code itself do not provide for inclusion of a *lis pendence* in the record of right and the State Government had rather reflected its decision not to include the

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same in the record of right in the backdrop of the fact that the revenue records are mere reflections of the rights claimed by a person in respect of any immovable property and being reported to the revenue authority and such entries are subject to adjudication of title rights by Court of competent jurisdiction, the said decision of the State Government cannot be said to be arbitrary or capricious specifically when section 52 of the Transfer of Property Act protects the properties which are involved in any *lis* and the principle recognized in the said section put restrictions on the rights of the parties to a suit or proceeding to transfer the property, which is the subject matter of the said litigation. In any case, the object of Section 52 is not to make such transfers made in violation of the said provision to be void *ab initio*, but are only voidable at the instance of the party who has been prejudiced. The State amendment to section 52 further protects the interest of the land holders in the State and whenever the notices of pending suits or proceedings referred to in section 52 of the Transfer of Property Act, 1882 is given under section 18 of the Registration Act, the Land Revenue Code makes it imperative for the Officer

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recording such a registration to forward an intimation to the talathi of the village. The avowed purpose of such an intimation is to keep the Talathi of a village or tahsildar of a taluka updated about the dealings in respect of a piece of land, in respect of which he is duty bound to maintain the revenue record. In such circumstances, the decision of the State Government not to effect entries of *lis pendence* in the record of rights is perfectly in tune and spirit with the Maharashtra Land Revenue Code and we do not find that the said decision calls for an interference by exercising our writ jurisdiction. The petitioners are merely apprehensive that if such entries are not recorded in the 7/12 extract, the people in the rural area would be deprived of being in know-how of the pending litigation about the property in which they are dealing. However, it needs to be noted that Section 52 of the Transfer of Property Act has been enacted to deal with such a contingency and the rights of the transferee are thus made subservient to the proceedings which are pending before a competent court and the doctrine of *lis pendence* is based on principle of law and equity and good conscience. The said section creates only a

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right to be enforced to avoid a transfer made *pendente lite*, because such transfers are not void but are voidable at the option of the affected parties to the proceeding, pending which the transfer is effected. The right contemplated under Section 52 is a double edged weapon and it can be used as a shield depending on such facts as to what rights or interest are to be transferred and who is the affected party. In any contingency, the application of doctrine of *lis pendence* is not to nullify the conveyance but only to render it subservient to the rights of the parties to the litigation, that is why the defence of bonafide transferee for value without notice is not available on invoking the doctrine of *lis pendence*. In view of the said position of law, the claim of the petitioners that the population in rural area would be put to disadvantage, cannot be accepted.

20 It is a settled principle of law that once a methodology for doing a particular act is provided under the statute, rules or regulations then such Act must be done in the manner and the way prescribed alone and in no other way. The origin of this principle is traceable to the decision in *Taylor*

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vs. Taylor (45 LJCH 373) which was followed by **Lord Roche** in *Nazir Ahmed King Emperor (AIR 1936 PC 253)* who stated as under :

“[W]here a power is given to do a thing in a certain way, the thing must be done in that way or not at all”.

This Rule since have been approved by the Hon'ble Apex court in *Rao Shiv Bahadur Singh Vs. State of Uttar Pradesh*² and again in *Deep Chand Vs.State of Rajasthan*³, this rule has been applied to the exercise of jurisdiction by Courts and has also been recognized as salutary principle of administrative law. By applying the said rule, if a statute gives a power to do a certain thing in a certain way, then it has to be necessarily discharged in the same way and all other methods are necessarily forbidden.

By applying the aforesaid principle, since the Land Revenue Code sets out as to what should be the ingredients to be recorded in the land records, the insistence of the petitioner to take entry of *lis pendence* in the said records cannot be

² AIR 1954 SCC 322

³ AIR 1961 SCC 1527

justified and the said request needs to be turned down on the said count also.

21 We do not find any illegality in the impugned government circular and therefore, we are not persuaded by the submissions made by the learned counsel for the petitioner that for larger public benefit, the said circular needs to be quashed and set aside.

22 In light of the aforesaid discussion, the impugned circular is upheld.

Writ Petitions are dismissed.

Rule is discharged. No order as to costs.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)

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