

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No. 1839 of 2010

* Dhondiba Sukhdeo Mote,
Age 60 years,
Occupation: Agriculture,
R/o Shahajapur,
Taluka Parner,
District Ahmednagar. **.. Petitioner.**

Versus

- 1) Patilbuwa Pandu Mote,
Since deceased through
legal representatives.
- 1A Samabai Patilba Mote,
Age 35 years,
Occupation: Household.
- 1B Baba Patilba Mote,
Age 40 years,
- 1C Visabai Bhaskar Gange,
Age 38 years,
Occupation: Household.
- 1D Lahanabai Patilba Mote,
Age 42 years,
Occupation: Household.
- 1E Hausabai Patilba Mote.

All R/o Bhorwadi,
Taluka & Dist. Ahmednagar.
- 2) Dattu Pandu Mote,
Age 36 years,
R/o Shahajapur, Taluka Parner,
District Ahmednagar.

3) Bhau Santu Mote
Since deceased through
legal representatives

3A Babu Bhau Mote
Since deceased through
legal representatives

3A-1 Nathu Babu Mote,
Age 32 years.

3A-2 Gulab Babu Mote.
Age 42 years.

3A-3 Zumbar Babu Mote
Age 38 years.

3A-4 Raosaheb Babu Mote
Age 32 years.

3A-5 Samubai Babu Mote,
Age 45 years,
Occupation: Household.

Nos.3A-1, 3A-3 and 3A-4
R/o Machhi Band,
Barfachi Peti, Sasoon Dock,
Mumbai.

Nos.3A-2 & 3A-5 R/o
Shahajapur, Taluka Parner,
District Ahmednagar.

3B Baban Bhau Mote,
Age 28 years,

3C Bansi Bhau Mote
Age 31 years.

Both R/o Machhi Band,
Barfachi Peti, Sasoon Dock,
Mumbai.

- 4) Maruti Santu Mote
Since deceased through
legal representatives
- 4A Gunabai Maruti Mote
(Deleted as per Exh.218).
- 4B Dashrath Maruti Mote
Age 40 years
- 4C Janabai Arjun Mote
Age 43 years,
Occupation: Household.
- 4D Nanubai Nana Mhaske
Age 48 years,
Occupation: Household.
- 4E Venubai Ramdas Mhaske
Age 30 years,
Occupation; Household.
- 4F Sindubai Ranba Gayake
Age 58 years,
Occupation: Household.
- 4G Indubai Sarjerao Pawar,
Age 38 years,
Occupation: Household.

Nos.4B, 4D, 4E and 4F
R/o Shahajapur, Taluka Parner,
District Ahmednagar.

No.4C R/o Nimalak,
Taluka & District Ahmednagar.

No.4G r/o Bagunde, Taluka Parner,
District Ahmednagar.

- 5) Babu Bhau Mote
Since deceased through
legal representatives:

- 5A Nathu Babu Mote,
Age 32 years.
- 5B Gulab Babu Mote,
Age 42 years.
- 5C Zumbar Babu Mote
Age 38 years.
- 5D Raosaheb Babu Mote,
Age 32 years.
- 5E Samubai Babu Mote
Age 45 years,
Occupation: Household.

Nos.5A, 5C and 5D
R/o Machhi Band Barfachi Peti,
Sasoon Dock Mumbai.

No.5B & 5E R/o Shahajapur,
Taluka Parner, Dist Ahmednagar.

- 6) M/s Surgeon Realities Pvt. Ltd
Through
Shri. Nilesh Villabhdas Dhanani,
Age 33 years,
R/o Sainik Nagar, Plot No.24,
Sadar Bazar, Satara,
District Satara.
- 7) The Tahsildar, Ahmednagar,
District Ahmednagar.
- 8) The State of Maharashtra
Through the Collector,
Ahmednagar.

... Respondents.

Shri. Mukul Kulkarni, Advocate, for petitioner.

Mrs. M.S. Jagtap, Advocate for respondent Nos.4-B, 4-, 4-D, 4-F and 4-G.

Shri. S.D. Kulkarni, Advocate for respondent No.6.

Shri. S.K. Tambe, Assistant Government Pleader, for respondent Nos.7 and 8.

CORAM: T.V. NALAWADE, J.

DATE : 30 NOVEMBER 2016

ORAL JUDGMENT:

- 1) Rule. Rule made returnable forthwith. By consent, heard both sides for final disposal.
- 2) Present proceeding is filed to challenge the order made by the learned Tahsildar, Nagar on 1-1-2009 during the execution proceeding referred by the Civil Court under section 54 of the Civil Procedure Code to the revenue authorities. By this order, the learned Tahsildar directed his subordinates to re-measure the land in respect of which decree is given by the Civil Court and make fresh proposal as there was objection to the previous division made for execution of the decree in the year 1993.

3) To ascertain the real nature of dispute, the facts, in brief, need to be stated.

4) Regular Civil Suit No.70/1967 was filed by present petitioner for relief of partition and possession of agricultural lands. One land was Gat No.159 situated at village Pimpalgaon Kaunda, Tahsil Nagar. The petitioner got the decree of partition on 30-7-1968 and the Court gave 1/6th share to him in land Gat No.159. Admittedly that decision has become final. Regular Darkhast No.69/1968 was filed for execution of this partition decree. The matter was referred by the Civil Court under section 54 of the Civil Procedure Code to the revenue authorities for partitioning Gat No.159. The revenue authority prepared map and gave proposal. Gat No.159 was divided into two sub divisions like Gat No.159/1 and Gat No.159/2. Gat No.159/1 admeasrues 2 hectares 70 R and Gat No.159/2 admeasuring 8 hectares 38 R. Proposal was given to give portion which was given Gat No.159/1 to the plaintiff, decree holder and the remaining portion was to be given to the defendants. Thus, revenue division under section 85 of the Maharashtra Land Revenue Code

was made in the year 1993 itself. The possession was actually not handed over for one or the other reasons to the decree holder. In the year 2008 when the revenue authority went to the spot or handing over the possession of Gat No.159/1 to the decree holder, respondent No.6, M/s Surgeon Realities Pvt. Limited took objection to the handing over the possession and written objections was made to the Tahsildar on 15-12-2008. It was contended that first the suit property was sold to M/s Niskalp Investments & Trading Company Limited on 18-12-2000 by the owners and this company had installed windmills by spending huge amount on this land and then by sale deed dated 13-12-2001 the Tata Power Company Limited had purchased this land and so the land and the windmills standing on it were belonging to Tata Power Company Limited. Then, another application was given by Tata Power Company Limited to the Tahsildar and prayer was made to re divide the land and make new proposal of division under section 85 of the Maharashtra Land Revenue Code in view of the sale deeds executed in favour of the aforesaid two companies. After getting these objections and applications learned Tahsildar made the

order dated 1-1-2009 and directed his subordinates to take steps of making the divisions again to save the possession of Tata Power Company Limited. First, the learned Tahsildar gave direction to his subordinates and then he made correspondence with the Collector, who is the main authority in revenue district, to advise him in respect of the objections taken by Tata Power Company Limited.

5) To challenge the order, present petition came to be filed on 11-1-2010. It is unfortunate that the matter remained pending till today in this Court and the decree holder could not get fruits of the decree when decree was given in his favour in the year 1968.

6) The submissions made show that there were attempts made to settle the dispute. Learned counsel for the decree holder, petitioner, submitted that the petitioner was made to run pillar to post by the company and he was not allowed even to enter the office of the company when he went there to negotiate. In view of possibility of settlement this Court had also adjourned the matter at

least on two occasions. Yesterday, submission was made that officer of the company was on his way and so Court waited upto second session. Learned counsel for the respondent No.6 today submitted that the officer is present but there is no concrete proposal from respondent No.6.

7) Decree of partition is in favour of the present petitioner. It can be said that respondent No.6, a big company, is acting highhandedly and with presumption that nothing will happen to it. Even when decree had become final in respect of the suit property, courage was shown to purchase the property. When there is decree of partition, plaintiff is entitled to equitable partition. Division was accordingly made in the year 1993 and that can be seen from the map prepared by the T.I.L.R. which is on the record showing the date as 25-1-1993. Before making investment it was necessary for respondent No.6 company to go through the relevant record and make necessary inquiry. It can be said that knowing fully well that there was a decree of partition, the property is purchased by respondent No.6. Though there is no sale

deed on the record, contentions made in the aforesaid two applications given to the Tahsildar show that Tata Power Company Limited is shown as owner of the property. It can be said that present petitioner being a poor person, the big company has taken everything for granted and has successfully avoided to give possession to the decree holder for all these years. It is unfortunate that revenue authority, which is expected to act impartially, succumbed to the pressure and even when no right or title or any interest had passed as against the decree holder and in favour of Tata Power Company Limited the learned Tahsildar took the aforesaid steps. If that Tahsildar is still there, the Collector is expected to take appropriate action against the said Tahsildar. In view of the aforesaid circumstances, this Court holds that the things cannot be delayed any more as proposal was made in the year 1993. Sufficient time was given to the purchaser, Tata Power Company Limited to take steps for negotiations with the decree holder but no interest was shown with some presumptions already mentioned.

8) In the result, the petition is allowed. The order made by the learned Tahsildar to his subordinate to make division again is hereby set aside. Possession is to be given to the decree holder as per the proposal made on 25-1-1993 by which Gat No.159/1 was created for giving to the decree holder, present petitioner. Rule is made absolute in the aforesaid terms.

Sd/-
(T.V. NALAWADE, J.)

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