

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

WRIT PETITION NO. 565 OF 2014

Eknath Tulsiram Khadse

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

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Mr. V.J. Dixit, Senior Advocate h/f Mr. V.Y. Patil, Advocate for petitioner.

Mr. B.A. Shinde, A.G.P. for Respondent Nos. 1 and 2.

Mr. V.B. Patil, Advocate for Respondent No.3.

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CORAM : T.V. NALAWADE, J.

DATED : 01st DECEMBER, 2016

ORDER :

1. The proceeding is filed to challenge the order made by the Additional Collector in file no. LAND/2/NAS/PK-86/2012 which was filed by the Court Commissioner for getting the permission to sale the agricultural land admeasuring 06 acres 03 gunthas from Gut No. 130 of Umale, Tahsil Jalgaon. The application is allowed by the Additional Collector and that order is challenged. Both sides are heard.

2. Learned Senior Counsel for petitioner submitted that Court Commissioner was appointed by the Executing Court in Special Darkhast

No. 329 of 2012 (Old No. 33 of 2007) pending in the Court of Civil Judge, Senior Division, Jalgaon. The learned Senior Counsel submitted that the judgment debtor was Eknath Khadase and Court Commissioner was appointed to make application for getting permission on behalf of the judgment debtor but the application was moved for all the legal heirs of Tulshiram who were four in number and by presuming that all the four legal heirs of Tulshiram were there to get the permission, the Additional Collector granted permission. Learned Senior Counsel submitted that notices were not issued to anybody including Eknath and so the order cannot sustain in law.

3. Learned Counsel for respondent – decree holder submitted that when the decree was given against Eknath and Eknath was not turning up, it was open to the Executing Court to appoint Court Commissioner and take necessary steps for getting permission. It is true that the Court Commissioner can be appointed for doing such act. Further, order made by the Executing Court does not show that Court Commissioner was authorised or he could have been authorised to file application on behalf of other legal heirs of Tulshiram. Surprisingly the Court Commissioner who was an Advocate filed application for all the legal heirs of Tulshiram for getting permission.

4. In view of these circumstances, it can be said that it needs to presumed that permission was granted only in respect of Eknath and not in respect of other legal heirs. As only Eknath has come before the Court, this Court holds that it is not possible to interfere in the order. With the observations, that the order will not be binding on other legal heirs of Tulshiram i.e. Lilabai Khadse, Latabai Khadse and Yogesh Khadase, the petition stands dismissed.

(T.V. NALAWADE, J.)

SSD