

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

WRIT PETITION NO. 3316 OF 2015

Dnyaneshwar @ Bandu
s/o Tatyrao Ghodke,
Age: 30 years, Occu: Agriculture,
R/o. Pachod (Ekod),
Taluka and District Aurangabad

... Petitioner
[Original Plaintiff]

VERSUS

- 1] Pandurang s/o Rambhau Ghodke
Age: 71 years, Occu. Agriculture,
- 2] Manohar s/o Pandurang Ghodke
Age: 37 years, Occu. Agriculture,
- 3] Rambhau s/o Pandurang Ghodke
Age: 32 years, Occu. Agriculture,
- 4] Laxman s/o Sakharam Ghodke
age: 48 years, Occu. Agriculture,
- 5] Bhanudas s/o Sakharam Ghodke
Age: 46 years, Occu. Agriculture,
- 6] Govind s/o Sakharam Ghodke
Age: 43 years, Occu. Agriculture,

All residents of Pachod (Ekod),
Taluka and District Aurangabad

... Respondents
[Original Defendants]

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Mr. P. N. Sonpethkar, Advocate for petitioner
Mr. V. P. Latange, Advocate for respondents No. 1 to 3 and 5

.....

WITH**WRIT PETITION NO. 3317 OF 2015**

- 1] Smt. Padmabai Tatya Ghodke
Age: 50 years, Occu. Agriculture,
R/o. Pachod (Ekod),
Taluka and District Aurangabad
- 2] Dnyaneshwar @ Bandu s/o Tatyarao Ghodke
Age: 30 years, Occu. Agriculture,
R/o. Pachod (Ekod),
Taluka and District Aurangabad ... Petitioners
[Original defendants]

VERSUS

- 1] Pandurang s/o Rambhau Ghodke
Age: 71 years, Occu. Agriculture,
R/o. Pachod (Ekod),
- 2] Kundlik s/o Tukaram Ghodke
Since deceased – L.R.s
 - A] Nirmalabai Kundlik Ghodke
Age: 60 years, Occu. Household,
R/o. Pachod (Ekod),
Taluka and District Aurangabad
 - B] Sunanda Anantrao Gawande
Age: 40 years, Occu. Agriculture,
R/o. Chitegaon,
Taluka and District Aurangabad
 - C] Sumanbai Santosh Lembhe
Age: 50 years, Occu. Agriculture,
R/o. Lembhewadi, Taluke Paithan,
District Aurangabad
 - D] Eknath Kundlik Ghodke
Age: 35 years, Occu. Agriculture,
R/o. Pachod (Ekod),
Taluka and District Aurangabad

E] Balasaheb Kundlik Ghodke
Age: 30 years, Occu. Agriculture,
R/o. Pachod (Ekod),
Taluka and District Aurangabad

3] Raghunath Haribhau Ghodke
Age: 50 years, Occu. Agriculture,
R/o. Pachod (Ekod),
Taluka and District Aurangabad

4] Mukunda Haribhau Ghodke
Age: 55 years, Occu. Agriculture,
R/o. Pachod (Ekod),
Taluka and District Aurangabad

[Respondent Nos. 3 and 4 are heirs
of deceased Haribhau Rambhau
Ghodke]

5] Rambhau Pandurang Ghodke
Age: 30 years, Occu. Agriculture,
R/o. Pachod (Ekod),
Taluka and District Aurangabad

... Respondents
[Original plaintiffs]

.....

Mr. P. N. Sonpethkar, Advocate for petitioners

Mr. V. P. Latange, Advocate for respondents

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WITH
WRIT PETITION NO. 3318 OF 2015
WITH
CIVIL APPLICATION NO. 4186 OF 2015

1] Smt. Padmabai Tatya Ghodke
Age: 50 years, Occu. Agriculture
R/o. Pachod (Ekod),
Taluka and District Aurangabad

2] Dnyaneshwar @ Bandu s/o Tatyarao Ghodke
Age: 30 years, Occu. Agriculture
R/o. Pachod (Ekod),
Taluka and District Aurangabad

VERSUS

- 1] Superintendent of Land Records
Near Collector Office, Damadi Mahal
Aurangabad
- 2] District Inspector of Land Records
Near Collector Office, Damadi Mahal
Aurangabad
- 3] Pandurang s/o Rambhau Ghodke
Age: 71 years, Occu. Agriculture
- 4] Kundlik s/o Tukaram Ghodke
Since deceased L.Rs.
 - A] Nirmalabai Kundlik Ghodke
Age: 60 years, Occu. Household
R/o. Pachod (Ekod),
Taluka and District Aurangabad
 - B] Sunanda Anantrao Gawande
Age: 40 years, Occu. Agriculture
R/o. Chitegaon,
Taluka and District Aurangabad
 - C] Sumanbai Santosh Lembhe
Age: 50 years, Occu. Household
R/o. Lembhewadi, Tq. Paithan,
District Aurangabad
 - D] Eknath Kundlik Ghodke
Age: 35 years, Occu. Agriculture
R/o. Pachod (Ekod),
Taluka and District Aurangabad
 - E] Balasaheb s/o Kundlik Ghodke
Age: 30 years, Occu. Agriculture
R/o. Pachod (Ekod),
Taluka and District Aurangabad

5] Raghunath Haribhau Ghodke
Age: 50 years, Occu. Agriculture
R/o. Pachod (Ekod),
Taluka and District Aurangabad

6] Mukunda Haribhau Ghodke
Age: 55 years, Occu. Agriculture
R/o. Pachod (Ekod),
Taluka and District Aurangabad

(Respondent no. 3 and 4 are heirs of
deceased Haribhau Rambhau Ghodke)

7] Rambhau Pandurang Ghodke
Age: 30 years, Occu. Agriculture
R/o. Pachod (Ekod),
Taluka and District Aurangabad

... Respondents
[Original Plaintiffs]

.....

Mr. P. N. Sonpethkar, Advocate for petitioners

Mr. S. K. Tambe, Assistant Government Pleader for
respondents No. 1 and 2

Mr. V. P. Latange, Advocate for respondents No.3, 4(A) to 4(E)
and 5 to 7

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 22nd JUNE, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally
with consent of learned advocates for the parties.

2. After hearing learned counsel, it transpires that the
consolidation proceedings in respect of then survey No.7

including survey No. 7/2 situated at village Pachod (Ekod), Taluka and District Aurangabad had been completed around 1965 resulting in formation of *Gut* No.2 (survey No.7/2). Accordingly, revenue entries were carried out in the relevant record and those continued for quite some period.

3. Dispute among the parties arose and suits against each other came to be filed around 2007. During pendency of the suits, it appears, respondents in aforesaid writ petitions approached the consolidation authorities in some proceedings concerning the disputed lands. It is the contention of the petitioners that till the impugned notice in writ petition No. 3318 of 2015, which is annexed as Exhibit-B at page No.26, they had not been aware of lodging of the proceedings in respect of consolidation record by the respondents, and as such they had been taken by surprise.

4. Learned counsel for the petitioners submits that under the orders of this court, further proceedings pursuant to the impugned notice had been stalled. He, under the circumstances submits that the notice be quashed.

5. Learned counsel Mr. Latange, appearing for respondents, however submits that the petitioners have not

approached this court under the writ petitions with clean hands, application had been moved in the suit proceedings filed by the present petitioners seeking stay to the measurement pursuant to the notice and further that their application has been rejected referring to that it is the consolidation proceedings which would prevail in the matter, having regard to the provisions of law.

6. Perusal of the documents and the orders passed from time to time, shows that the writ petitions have been moved before this court upon receipt of the notice for measurement immediately, and notice had been issued by this court to the respondents making it returnable before the date of the measurement.

7. Learned counsel for the petitioners submits that in anxiety, it appears that on the very day application was filed before the trial court seeking stay to the measurement notice, and that came to be rejected observing that it is the consolidation proceeding, which would have overriding effect.

8. From aforesaid, it is clearly revealed that 1965 consolidation proceedings are being subjected to further proceedings in 2012 and that since 2012 the petitioners had

no notice, till the notice of measurement dated 7th March, 2015, which, in fact, addressed to the respondents, had been served on them.

9. It further appears that the respondents had moved certain applications before the respective trial courts, before which the suits filed by the plaintiffs are pending for stay to the further proceedings having regard to Section 36B of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Accordingly, the suits came to be stayed under the order dated 03rd January, 2015 which are challenged in writ petitions No. 3316 of 2015 and 3317 of 2015.

10. The conspectus would indicate that the situation can be resolved by passing appropriate directions.

11. The petitioners in writ Petition No. 3318 of 2015 shall approach the authorities where the proceedings have been lodged by respondents in 2012. Necessary documents be supplied to the petitioners. Upon appearance and supply of documents, the petitioners to deal with the proceeding. The authorities concerned should decide the proceedings, having regard to the facts, situation and law as expeditiously as

possible, preferably within a period of six months from the date of receipt of writ of this order.

12. Having regard to aforesaid, the notice which is impugned in writ petition No. 3318 of 2015 shall remain in abeyance and shall be subject to such further orders as may be passed by the authorities.

13. Thus, writ petition No. 3318 of 2015 stands disposed of. Rule is made absolute accordingly.

14. Civil application No. 4186 of 2015 stands disposed of.

15. As far as writ petitions No. 3316 of 2015 and 3317 of 2015 are concerned, having regard to aforesaid position, the order passed by the trial court at this stage does not require consideration. As such, no interference is caused in those writ petitions. Therefore, both the writ petitions i.e. writ petition No. 3316 of 2015 and 3317 of 2015, stand disposed of. Rule discharged.

(SUNIL P. DESHMUKH, J.)

sms