

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

WRIT PETITION NO. 8664 OF 2013

Punyashlok Ahilyadevi Maharashtra
Mendhi Va Sheli Vikas Mahamandal .. Petitioner

Versus

Mahadu Chintaman Wani and others .. Respondents

Shri V. D. Salunke, Advocate for the Petitioner.

Shri M. A. Manjramkar, Advocate for Respondent Nos. 1 and 2.

Shri S. M. Ganachari, A.G.P. for Respondent Nos. 3 to 5.

**CORAM : S. V. GANGAPURWALA AND
K. K. SONAWANE, JJ.**

DATE : 22ND JUNE, 2016.

ORAL ORDER (Per S. V. Gangapurwala, J.) :-

. On 08th June, 2016 when the matter was called out, none appeared for respondent Nos. 1 and 2. As none had appeared for respondent Nos. 1 and 2, we had adjourned the matter in the interest of justice to 22.06.2016. Today also, when the matter is called out, none appears for respondent Nos. 1 and 2.

2. Mr. Salunke, the learned counsel for the petitioner submits that, the petitioner is the owner of land bearing gut No. 71 original Sy. No. 41 to the extent of 2H 22R from the Western side of the said survey number. The land originally belongs to Animal

Husbandry Department of the State Government. It is allotted to establish office training center and quarters. According to the learned counsel, the respondent Nos. 1 and 2 are claiming some portion of the said survey number and filed suit bearing R.C.S. No. 539 of 2001 against 74 persons for partition and separate possession. The petitioner was not party to the said suit. The said suit was decreed and was sent to the revenue authorities for execution U/Sec. 54 of the Code of Civil Procedure.

3. The learned counsel further submits that, the respondents prepared a map. The petitioner raised an objection immediately to the respondent No. 5 stating that the land of the petitioner cannot be handed over and further proceedings be stayed. The petitioner was directed to approach the Collector. The petitioner approached the Collector by filing an objection. The same was lying with the Collector, but no hearing was given. The petitioner also approached the Civil Court, but the objection was not accepted on the ground that the matter has already been sent to the revenue authorities. The petitioner approached this Court by filing Writ Petition No. 7162 of 2013. This Court disposed of said writ petition by giving liberty to raise objection. Pursuant thereto the petitioner approached the Collector requesting him to give opportunity of hearing and Tahsildar was directed to hear the same. The Collector was directed by the Executing Court to given possession to the decree holder. The petitioner

apprehended that it would be dispossessed. As such, the petitioner has approached this Court.

4. This Court in the present writ petition with the consent of the parties vide order dated 21st October, 2013 had directed re-measurement and the interim order was continued. Pursuant to the directions of this Court, re-measurement was conducted by the Superintendent of Land Records. The report of re-measurement is filed on record along with affidavit of the Deputy Superintendent of Land Records. The Deputy Superintendent of Land Records in para 5 has clearly stated that, in the re-measurement dated 08.11.2013 the area which was shown to be partitioned in between decree holders has entirely changed. Therefore, execution is stopped and as per re-measurement map, the area to be partitioned in between decree holders is not from the possession of the petitioner.

5. Para 5 of the said affidavit in reply is re-produced herein-below :

"05. I say that, after this the petitioner filed objection against the measurement on dated 22/08/2013. In pursuance of this objection The Tahsildar Aurangabad has instructed to this respondent vide letter dated 22/08/2013 to check and verify the measurement of land gut no. 71. I say that, mean while the Hon'ble High Court

passed order in the Writ Petition No. 8664/2013 which was filed by the petitioner on dated 15/10/2013 permitted for re-measurement. In compliance of this order the land of gut No. 71 was re-measured on dated 08/11/2013. In this measurement it is observed that the situation of the area which was shown to be partitioned in between the Decree Holder has been entirely changed. Therefore the execution in the matter was stopped. As per the re-measurement map, the area to be partition in between the Decree Holder is not from the possession of the present petitioner."

6. Subsequently in the afternoon session, Mr. Manjramkar, the learned counsel mentioned the matter and appears for respondent Nos. 1 and 2.

7. We have heard Mr. Manjramkar, the learned counsel for respondent Nos. 1 and 2. The learned counsel submits that, the re-measurement was directed by this Court without prejudice to the defences and contentions of the parties. The objection of the petitioner is still pending. The objection may be decided by the authorities within the stipulated period.

08. We have already observed supra that, as per the re-measurement report and the affidavit filed by the Deputy Superintendent of Land Record, the area in possession of the petitioner is not affected by the decree as per the re-

measurement map. If any of the party has an objection to the said re-measurement map, it is for the aggrieved party to raise objection before the appropriate forum. The petitioner has interest only to the extent that the measurement map which was earlier in force shall not be executed till the objection of the petitioner is decided and precisely the same is considered by us. The objection be decided expeditiously by the authorities.

9. Considering the above, as in re-measurement itself it has been observed that, the land of the petitioner is not affected by the said decree, naturally the respondents cannot now execute the decree as per the map at Exhibit - E, which was pursuant to the earlier measurement and pendency of objection of petitioner. Nothing is placed on record to show that said re-measurement done in the year 2013 has been challenged till date.

10. In the light of the above, rule is made absolute in terms of prayer clause "B". No costs.

[K. K. SONAWANE, J.]

[S. V. GANGAPURWALA, J.]