

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

WRIT PETITION NO.8904 of 2016

Rohidas Sopan Tike & ors.

Versus

Murlidhar Ranga Koli & ors.

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Mr. S.D. Tawshikar, Advocate for the petitioners

Mr. S.V. Natu, Advocate for the respondent Nos.1 to 3 & 5

Mr. M.A. Jahagirdar, Advocate for the respondent No.4

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Coram : N.M. Jamdar, J.

Date : 19 November 2018

Per Court :

1 By this petition, the petitioners have challenged the orders passed by the learned Civil Judge Junior division in execution proceeding holding that all the contentions raised by the petitioners can be considered by the Collector to whom the decree can be sent for execution.

2 The learned counsel for the petitioners has placed reliance on the Judgment in the matter of ***Glorio Rosario Furtado (D) thr. Legal Heirs vs. Cathedral Chapter of the Archdiocese of Goa and Daman***

and others reported in ***(2016) 2 Mah LJ 854***, wherein, it is held that the Collector has no such jurisdiction to decide the various disputes raised.

3 Learned counsel for the respondent-decree holder submits that arguments that the sale deeds, are registered sale deeds and have not been set aside can be considered by the collector to decide, whether anything remains for execution. As regards the question of limitation is concerned, learned counsel for the respondents submits that it is only preliminary decree.

4 In this petition the decree, which is of the year 1974, has not yet been executed. The writ petition is already pending since the year 2016. It appears that, after the decree was passed, the petitioners and the other respondents have purchased certain lands from the respondent-decree holder. There are registered sale deeds to that effect. Considering this position and the ambit of jurisdiction under Article 227 of the Constitution of India, I am of the opinion that no interference is warranted at this stage. If there are registered sale deeds by which properties are purchased, and the sale deeds are unquestioned, the Collector can omit those portion from consideration. Prima facie, it appears that the registered sale deeds are registered and they are not been challenged till today. If the Collector comes to the conclusion that

he cannot look into even in such admitted position the grievance of the petitioners can be considered.

5 In the circumstances, this writ petition is disposed of giving liberty to the petitioners to revive this petition, if the Collector comes to the conclusion that the grievance raised by the petitioner, cannot be considered by him. Considering the long standing pendency of this dispute, further action be undertaken by the learned Civil Judge as early as possible. The Collector will also take a decision thereupon as early as possible preferably within a period of three months from the date the proceedings are sent to him.

N.M. Jamdar, J.

agd