

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY:**  
**NAGPUR BENCH : NAGPUR**  
**Writ Petition No. 4397 of 2017**  
**[Prabhakar Namdeo Dandge Vs. Shankar Namdeo Dandge & others]**

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Office Notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

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Court's or Judge's orders

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Mr. M. G. Rathi, Adv., for the petitioner.  
 Mr. N.B. Kalwaghe, Adv., for respondent nos. 1,2,3-A & 4.  
 Mrs. M. Naik, AGP for respondent nos. 7 to 11.

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**CORAM : A. S. CHANDURKAR, J.**

**DATE : 19th March, 2018**

**01.** The petitioner is the original defendant in the suit for partition and separate possession filed by the respondent nos. 4 to 6 - original plaintiffs. The petitioner as well as respondent nos. 1 to 6 being issues of the common ancestor - Namdeo were parties in Regular Civil Suit No. 38 of 2004. That suit for partition ended in a compromise between the parties. As per that compromise, agricultural land bearing Gat No. 52 admeasuring 10 acres 9 Gunthas was to be partitioned. The petitioner herein was held entitled to receive 6 acres 9 Gunthas land on the Northern portion while the respondent nos. 1 to 4 were to get 1 acre each on the Southern side of Gat No. 52. The said decree was sought to be executed vide Regular Darkhast No. 4 of 2005. In the meanwhile, about 86 Are land from Gat No. 52 was notified under the provisions of the Maharashtra

Project Affected Persons' Rehabilitation Act, 1999 [for short, "the Act of 1999"]. As that portion of the land could not be partitioned, the petitioner raised an objection. The Collector on 16th October, 2017 granted permission to effect the partition. The decree accordingly came to be modified and on the Southern side of Gat No. 52, about 86 Are land was kept in common between the respondent nos. 1 to 4 and the remaining land was to be partitioned. The appellate Court in Regular Civil Appeal No. 145 of 2012 on 14th November, 2014 affirmed that modified decree. The precept was thereafter sent to the Collector for effecting the partition. The petitioner, however, opposed the same. The parties then approached the Revenue Authorities and on 26th May, 2017, the Naib Tahsildar in exercise of powers under Section 85 of the Maharashtra Land Revenue Code, 1966 directed the petitioner to give possession of 6 acres 9 Gunthas land on the Northern side and 1 hectare 58 Are land on the Southern side to the respondent nos. 1 to 4. A provision was made for keeping 0.86 Are land on the Southern side for the Project Affected Persons and 0.72 Are land on the Northern side to avoid creation of any fragment. This order is challenged in the present Writ Petition.

**02.** It is submitted by the learned counsel for the petitioner that in the light of land being allotted to Project Affected Persons and the fact that the partition would result in creation of a fragment, the Tahsildar was

not justified in passing the impugned order. The learned counsel referred to the earlier adjudication and submitted that the order dated 16th October, 2007 passed by the Collector under provisions of Section 12 (2) of the Act of 1999 was subjected to a challenge before the Divisional Commissioner. This appeal was also pending and therefore, prior to decision of that appeal, the Naib Tahsildar was not justified in passing the impugned order.

**03.** The learned counsel for the respondent nos. 1 to 4 supported the impugned adjudication. It was submitted that the petitioner on one pretext or the other was trying to delay execution of the decree. The respondent nos. 1 to 4 had agreed to keep the land allotted to them in common so that no fragment would be created. As the petitioner was in possession of the entire land in question, he was interested in delaying the proceedings. It was, thus, submitted that the impugned order does not result in violation of any law, whatsoever and, therefore, no interference was called for.

The learned Asstt. Govt. Pleader for the respondent nos. 7 to 11 also supported the impugned order.

**04.** After hearing the learned counsel for the parties and after perusing the material placed on record, I do not find any reason, whatsoever, to interfere with the

order dated 26th May, 2017 passed by the Naib Tahsildar. The respondent nos. 1 to 4 having undertaken to keep 0.72 Are land as common so as to prevent creation of any fragment and 0.86 Are land having been permitted to be kept for Project Affected Persons which arrangement has been accepted by the Collector, there is no breach of any provision of law that would give cause to the petitioner to challenge the said order. Moreover, the order dated 16th October, 2007 was to remain in operation for a period of sixty days as stated in that order itself. Merely because an appeal was pending before the Divisional Commissioner, same would not be a ground to stall the execution of the decree. The Revenue Authorities being satisfied that by partitioning the suit property in the manner as stated above, there would not be a breach of any local law, I do not find any case made out to interfere in writ jurisdiction. It appears that the petitioner is merely interested in delaying the execution of the compromise decree which was passed way back in the year 2005, as perhaps he is still in possession of the entire suit property. As there is no merit in the challenge as raised, the Writ Petition stands dismissed. The decree in question be executed expeditiously.

**Judge**