

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

8. WRIT PETITION No. 3465 of 2019

Yadav Hari Bhandwalkar (Died)
through legal representatives and others ...Petitioners

VERSUS

The State of Maharashtra and others ...Respondents

Mr. R.R. Karpe, Advocate for petitioners
Mr. N.T. Bhagat, Asstt. Govt. Pleadr for Respts. No. 1 to 5
Mr. D.R. Jaybhar, Advocate for respondents No. 6 to 9.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 24th June, 2019

PER COURT:

1. Leave to delete respondents No. 11 to 26 is granted at the risk of the petitioners. Respondent No. 10 is deceased. Deletion be carried out.
2. The petitioners are aggrieved by the order passed by the Hon'ble Minister dated 23rd October, 2018.
3. I have heard the learned Advocates for the petitioners, on behalf of respondents No. 6 to 9 and the learned Asstt. Govt. pleader on behalf of respondents No.1 to 5.

4. The deceased petitioner had moved Reg. civil suit No. 64 of 1973 before the Trial Court seeking partition and separate possession of the ancestral property. The relatives connected with the ancestral property settled the dispute amongst themselves and the suit was decreed in terms of the settlement on 12th January, 1977. One of the parties to the suit moved M. C. Appeal No. 142 of 1993 against the order passed by the executing Court in Reg. *Darkhast* No. 38 of 1983. By the judgment dated 31st January, 2003, the learned District Judge allowed the Misc. Civil Appeal, set aside order dated 3rd April, 1993 passed by the executing Court and directed it to send a copy of the decree and relevant papers to the District Collector, Ahmednagar, for its execution.

5. In the meanwhile, the deceased petitioner moved the Tahsildar for carrying out the measurement of the properties and for making necessary entries in the revenue record. By order dated 1st December, 2005 the Tahsildar issued certain directions with regard to the revenue entries and the taxes to be paid. Respondents No. 6 to 9 herein, who were purchasers pendente-lite, approached the Additional District Collector in RTS Appeal No. 34/2007, which was dismissed by order dated 31st July, 2008. They moved R.T.S. Appeal No. 255/2008 and the Additional Divisional Commissioner, vide order passed in February, 2017,

rejected the said appeal. These third parties then approached the Hon'ble Minister in R.T.S. No. 3317/P.K. 506/J-6 and by order dated 23rd October, 2018 the earlier order of the Additional Divisional Commissioner, Nashik, was set aside and remitted the matter to the District Collector, Ahmednagar, for rehearing.

6. It is not in dispute that these three parties moved Reg. civil suit No. 35 of 2018 before the Trial Court seeking injunction against those title holders, who had got properties partitioned before the Trial Court by the verdict dated 12th January, 1977. By order dated 21st May, 2018 the Trial Court rejected application Exh. 5 and vacated the *ad-interim* protection granted.

7. Considering the above, since the suit is pending, in which the claim of all these three third party purchasers would be considered by the Trial Court, I do not find that the order passed by the Hon'ble Minister should be continued in the light of the backdrop of the litigation history between the parties to the original suit, in which they had sought partition and separate possession of the ancestral properties. The claim of these third parties-plaintiffs, as now put-forth in the pending suit, would be tested by the Trial Court in accordance with the law. I do not find any purpose in continuing with the direction of the Hon'ble Minister, vide which, the District Collector is directed to reassess

the whole situation and decide the shares allotted to these members of the family in pursuance to the partition suit having been decreed. Needless to state, result of the proceedings – Reg. civil suit No. 35 of 2018 before the Trial Court and proceedings originating from the same, would be binding upon all the litigating sides to the said suit.

8. This petition is, therefore, partly allowed. The impugned order passed by the Hon'le Minister dated 23rd October, 2018 stands quashed and set aside. The Appeal preferred by the third parties stands disposed off.

9. Needless to state, as noted above, all the revenue entries to the extent of the share that has been given to deceased Gangubai, from whom the said plaintiffs have purchased the properties, would be subject to the decision in the pending Reg. civil suit No. 35 of 2018.

(RAVINDRA V. GHUGE)
JUDGE