

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

WRIT PETITION NO.7718 OF 2016

1. Sau Prachi Narendra Fatke,
Age : 28 years, Occ. Household/Agri.
R/o Newasa Tal. Newasa Dist. Ahmednagar
At present in U.S.A.

2. Shivaji Shankarrao Raktate,
Age : 55 years, Occ. Agri.

3. Sau. Sanjivani Shivajirao Raktate,
Age : 50 years, Oc. Agri.
Resp.No.2 and 3 R/o Kokamthan,
Tal. Kopargaon, Dist. Ahmednagar
All through their Power of attorney holder
Mr. Sopanrao Ramrao Suryawanshi,
Age : 62 years, Occ. Pensioner,
R/o Manas, Sahakarnagar,
Aurangabad, Dist. Aurangabad.

...PETITIONERS

(Ori. Defendant;s no.2 to 4)

VERSUS

1. Shaikh Khalil Shaikh Mannu Choudhari,
Age : 53 years, Occ.Agri. and business,

2. Shaikh Kasam Shaikh Mannu Choudhari,
Age : 63 years, Occ. Agri. and business,
Both R/o. Jinsi, Tal. and Dist. Aurangabad.

3. Aishwarya Constructions Company
Through it's partners ;
3(a). Babasaheb Bhagorao Ghuge
Age : 43 years, Occ.Agri. and business,

3(b). Suryakant Vitthalrao Ambarwadikar
Age : 30 years, Occ. Agri. and business,

3(a) & 3(b) R/o. Plot no.212 Samarth-Nagar, Aurangabad

3(c). Amol Vishwanath Badhe
Age 25 yrs. Occu. Agril,
R/o CL 7/54/1, 12th scheme CIDCO
Shivajinagar, Aurangabad

3(d). Kailas Asaram Vakhare.
Age : 38 years, Occ. Agri. and business,
R/O. Flat no.23, 2nd Floor,
Ganesh Plaza Complex Divan Devdi,
Aurangabad.

...RESPONDENTS

(Respt. no.1 & 2 are Ori.Plaintiff
& Respt.no.3(a) to 3(d) are
Orignl. Defts nos. 1(a) to 1(d)

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Advocate for the Petitioners :- Shri S. S. Wagh
Advocate for Respondent Nos. 1 and 2 :- Shri R. M. Joshi

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 4th February, 2019.

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally
by the consent of the parties.

2. The petitioners, who are original defendant Nos. 2 to 4,
are aggrieved by the order dated 16/01/2016 passed by the
Trial Court, by which, application Exhibit 56 filed by these
petitioners in RCS No. 321/2011 seeking rejection of the plaint

under Order VII Rule 11 of the CPC on the ground of under valuation, has been rejected.

3. The contentions of the petitioners are, that the plaintiffs desired injunction and possession over alleged encroached land. These petitioners had purchased 4 Acres of land out of the total land admeasuring 8 Acres 17 Gunthas. By order dated 27/04/2010 passed by the competent authority District Collector Aurangabad, 10030.16 sq. mtrs. out of 4 Acres of land in Gat No. 141, has been converted into a non-agricultural land. The suit property falls in the non-agricultural land. There is a constructed building and two rooms are claimed by the plaintiffs.

4. In this backdrop, it is contended that the valuation of the suit property should be in accordance with the Maharashtra Court Fees Act and as the two rooms are in non-agricultural land, the suit deserves to be dismissed on account of under valuation.

5. The learned Advocate appearing on behalf of the

plaintiffs specifically contends that they are claiming recovery of possession of 1 Acre of agricultural land on which these petitioners have encroached upon. Two rooms have been constructed in the said agricultural portion. The said two rooms are not a part of 10030.16 sq. mtrs. of the N.A. land of these petitioners.

6. The petitioners have placed reliance upon the judgment of the Honourable Apex Court delivered in the case of Santosh Ramchandra Tadsare Vs. Subhash Ramchandra Gujjar and others dated 18/03/2013 in Civil Appeal No. 2758/2013 wherein the Honourable Apex Court has concluded that the pleadings in the plaint unmistakably show that respondent No. 2 had converted the suit property from agricultural land to non-agricultural land and the same was sold to the appellant as non-agricultural property. In this backdrop, it was directed that the suit would be valued in view of the non-agricultural land.

7. These litigating sides had been before this Court in Writ Petition No. 1559/2013. The petitioners were aggrieved by

the order of the Trial Court directing the plaintiffs to pay court fees as per Section 64B of the Maharashtra Court Fees Act. This Court had allowed the petition by order dated 04/10/2013 and has observed as under :-

"4. On going through the order passed by the Trial Court, it is manifest that, the Trial Court has misdirected itself while considering the application Exhibit 56. The said order has been passed under total misconception of law which cannot be sustained. The land is an agricultural land. Even the provisions do not appear to have been properly quoted. The valuation in respect of claim of an agricultural land has to be made as per the assessment, which has been made. However, grievance of the respondents is that, the petitioners have claimed possession of two rooms in addition to the agricultural land and valuation of said rooms has to be considered for the payment of Court fees, so also valuation of the suit property"

8. This Court then, recorded in paragraph 6 of the order as under :-

"The Court will have to consider whether the suit property falls within the ambit and purview of Sec. 2(c) and then decide the question of payment of court fees and valuation".

9. I find from the earlier order passed by this Court reproduced above, that this Court had drawn an inference that the land is an agricultural land and it will have to be considered whether, the two rooms, in addition to the agricultural land, would be covered by Section 2(c) of the Hyderabad Tenancy and Agricultural Lands Act. It is evident from Section 2(c) that an "Agricultural land" would mean and include a land reserved for growing forests, fallow land, the sites of farm buildings and appurtenant to agricultural land and the sites of dwelling houses occupied by agriculturists, agricultural labourers or artisans and land appurtenant to such dwelling houses.

10. The plaintiffs categorically submit that they are seeking recovery of possession of 1 Acre of agricultural land allegedly encroached upon by these petitioners. The two rooms appearing in the land are beyond the 10030.16 sq. mtrs. of land which is approved as N.A. land.

11. In view of the above, I do not find that the impugned

order could be branded as being perverse or erroneous. As such, the judgment cited in *Santosh (supra)* would not be of any assistance to the petitioners in the light of the specific averments of the plaintiffs.

12. This petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-