

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

WRIT PETITION NO. 11754 OF 2019

1. Luniya Munot & Co.,
A duly Registered Partnership Firm,
Having its office at Ahmednagar,
Through it's Partner,
Shri Rasik Zumbarlal Luniya,
Age: 71 years, Occ.:Business,
R/o Anand Rushiji Marg,
Near Manik-nagar, Ahmednagar.

2. Shri Rasik Zumbarlal Luniya,
Age: 71 years, Occ:Business,
R/o Anand Rushiji Marg,
Near Manik-nagar, Ahmednagar

PETITIONERS

VERSUS

1. The State of Maharashtra
Through: The Secretary,
Revenue and Forest Deptt,
Mantralaya, Mumbai-32.
2. The Commissioner,
Revenue Division, Nasik
3. The Collector, Ahmednagar,
Dist:Ahmednagar

RESPONDENTS

WITH

WRIT PETITION NO. 5121 OF 2019

1. Sima Paresh Gandhi
Age: 43 years
2. Shilpa Sharad Mutha
Age: 46 years
3. Nirmal Sharad Mutha
Age : 41 years
4. Smt.Mangala Sharad Mutha
Age: 68 years,
Through her GPA Shri Ashok Bansilal Mutha,
Age 72Yrs, Occ.Agri & Business.

Occ.of all above: Agriculture and Business
All R/o 83, Maniknagar, Nagar-Pune Road,
Ahmednagar

PETITIONERS

VERSUS

1. The State of Maharashtra
Through: The Secretary,
Revenue and Forest Deptt,
Mantralaya, Mumbai-32.
2. The Commissioner,
Revenue Division, Nasik
3. The Collector, Ahmednagar,
Dist:Ahmednagar

RESPONDENTS

WITH

**CIVIL APPLICATION (St) NO.30500 OF 2019
IN
WRIT PETITION NO. 11754 OF 2019**

Rahul S/o Ganesh Pawar

APPLICANT

VERSUS

Luniya Munot & Co. & Ors.

RESPONDENTS

WITH
CIVIL APPLICATION (St) NO.30501 OF 2019
IN
WRIT PETITION NO. 11754 OF 2019

Hasan S/o Babu Zarekari

APPLICANT

VERSUS

The State of Maharashtra & Ors.

RESPONDENTS

WITH
CIVIL APPLICATION NO.6476 OF 2019
IN
WRIT PETITION NO. 5121 OF 2019

Sima Paresh Gandhi & Ors.

APPLICANTS

VERSUS

The State of Maharashtra & Ors.

RESPONDENTS

WITH
CIVIL APPLICATION NO. 6477 OF 2019
IN
WRIT PETITION NO. 5121 OF 2019

Rahul S/o Ganesh Pawar

APPLICANT

VERSUS

Sima Paresh Gandhi & Ors.

RESPONDENTS

Mr R.R.Mantri, Advocate for the petitioners;
Mr K.S.Patil, AGP for respondent/State;
Mr N.V.Gaware, Advocate h/f Mr S.P.Salgare, Advocate for
intervenor in CA (St.) No.30500/2019 & CA No.6477/2019
Mr R.N.Dhorde, Senior Counsel i/b Mr V.R.Dhorde, Advocate
for intervenor in CA (St.) No.30501/2019 & CA
No.6476/2019;

**CORAM : PRASANNA B. VARALE &
AVINASH G. GHAROTE, JJ.**

DATED : 24th SEPTEMBER, 2019

ORAL ORDER:

All civil applications seeking intervention are
allowed.

2. These petitions have an identical prayer,
namely, early decision of appeals/applications filed
before the Commissioner. Both these petitions are taken
up together for hearing/disposal with consent of the
parties.

3. In Writ Petition No. 11754 of 2019, the basic
prayer is prayer clause (B) and the same reads thus:

"B. Issue writ of certiorari or appropriate order and call for the record of Watap Case No. 80/2019 from Collector, Ahmednagar, and appeal no.383 and 384, both of 2019, from Commissioner, Nasik, and be further pleased to direct him to consider stay applications and be further pleased to allow the stay application in appeals no. 383/2019 and 384/2019 till decision of said appeal."

Whereas, in Writ Petition No. 5121 of 2019, the petitioner seeks a specific direction against the Commissioner, Nashik Division, Nashik to hear and decide the application for interim order in Appeal No.244 of 2019. Prayer clause (C) in Writ Petition No. 11754 of 2019 is grant of stay to the order passed by the Collector dated 18th September, 2019 and prayer clause (C) in Writ Petition No. 5121 of 2019 is for grant of stay in terms of prayer made in stay applications before the Commissioner.

4. The present matter has a checkered history of litigation which was initiated nearly before 5 decades. It may not be necessary for us to refer to that checkered history and same would serve no purpose except making the order of this Court a lengthy one. The core issue is of an order passed by the Collector, Ahmednagar on 21st February, 2019 whereby, the Collector proceeded to distribute the property as per the decree passed by the competent Civil Court dated 24th September, 1963 and on the backdrop of order passed by the learned single Judge of this Court dated 27th March, 2018 in Writ Petition No. 276 of 2008. Being aggrieved by the order of the Collector, the petitioners in the respective petitions, namely, Shri Rasik Zumbarlal Luniya, a partner of Luniya Munot & Co., as well as Smt. Sima Paresh Gandhi, Shilpa Sharad Mutha, Nirmal Sharad Mutha and Smt. Mangala Sharad Mutha preferred appeals before the Commissioner. The appeal filed on behalf of Rasik Zumbarlal Luniya for Luniya Munot & Co., along with another person Rajendra

Shantilal Munot was presented before the Commissioner on or about 22nd May, 2019. Mr. Rasik Zumbarlal Luniya also presented separate appeal before Commissioner in his personal capacity and that appeal bears No. 383 of 2019.

5. Similarly, petitioner No.4 Smt. Mangala Sharad Mutha in Writ Petition No. 5121 of 2019 alongwith Sharad Mansukhlal Mutha presented Appeal bearing No. 244 of 2019 before the Commissioner on 18th March, 2019. The appellant Sharad Mutha in Appeal No. 244 of 2019 expired during pendency of the appeal on 25th March, 2019. In Appeal No. 244 of 2019, on the very date of filing of the appeal, application for stay was also filed and repeated requests were made to the authority i.e the Commissioner either to take the appeal for hearing expeditiously or to pass appropriate orders on the stay applications. The copies of the applications are placed on record in Writ Petition No. 11754 of 2019 and these applications are dated 19th September, 2019 and 21st

September, 2019. Copy of the application dated 17th September, 2019 with prayer for interim order placed on record shows that there is a reference of earlier request for passing order on stay applications and dates are mentioned in the applications as 18th March, 2019, 22nd April 2019, 30th April, 2019, 13th May, 2019, 23rd July, 2019 and 20th August, 2019.

6. This very application shows that the Commissioner has fixed the date of hearing as 10th October, 2019. It is then stated that in spite of repeated requests by the applicants/appellants, the learned Commissioner is not proceeding to pass appropriate orders on the stay applications.

7. It was the submission of Mr Mantri, learned Counsel for the petitioners that on one hand the petitioners/appellants are time and again making request to the Commissioner so as to pass appropriate orders on

stay applications to take up appeals for hearing and on the other hand, a notice came to be issued by the District Collector dated 18th September, 2019, whereby, it is informed that the authorities would proceed for recovery of possession and the notice also indicated of assistance of police force for coercive recovery.

8. Thus, it was the submission of Mr Mantri, learned Counsel for the petitioners that there was no other way left for the petitioners but to approach this Court by filing these petitions with the prayer seeking direction to the Commissioner either to pass appropriate orders on the stay applications or to decide the appeals expeditiously. He then submitted that, in this fact situation petitioners be protected by directing the Collector not to proceed with the notice dated 18th September, 2019 till stay applications are decided by the Commissioner.

9. Mr Dhorde, learned Senior Counsel and Mr Gaware, learned Counsel for intervenors in chorus vehemently submitted before this court that the only purpose of these petitioners to approach this Court is to protract and prolong the proceedings. It was the submission of learned Counsels that though the Writ Petition No. 5121 of 2019 was filed in the month of April 2019, the petitioners were just interested in keeping the petition pending in this Court without circulating them and now, the petitioners are in a hurry to seek directions for early decision of the appeals only when notice is issued for possession so as to give effect to the decree of the competent Civil Court and conclude the proceeding.

10. Mr Dhorde, Senior Counsel in his detailed submissions invited our attention to the order passed by learned single Judge of this Court, and so also order passed by the Division Bench of this Court and vehemently submitted that if an interim order is passed

by this Court as prayed by the petitioners, there is every apprehension that the appeal may prolong for further period on one or another ground and this delay would put the applicants to serious prejudice.

11. Considering the fact that the order passed by the Collector is the subject matter of an appeal presented before the Commissioner, the Commissioner has not applied his mind to the merits of the proceedings. Though the stay applications were filed by the parties and repeated requests were made, no orders are passed on the stay applications and there is certainly a reasonable apprehension in the mind of these petitioners that if the steps are taken in pursuance to the notice of Collector dated 18th September, 2019, the entire purpose of filing the appeals before the Commissioner would be nothing but a futile exercise. At the cost of repetition, we may say that the Commissioner at this stage has not even applied his mind either to the facts of appeal or merits of the appeal.

12. Mr Dhorde, learned Senior Counsel vehemently submitted that there is no reason for the Commissioner to hear these appeals as there is a detailed order passed by the learned single Judge of this Court and learned single Judge only permitted the judgment debtors and decree holders to be heard and these petitioners who are only either assignees or transferees of the properties need not to be heard by the Commissioner.

13. Though it was vehement submission of Mr Dhorde, learned Senior Counsel that it may not be necessary for the Commissioner to hear these petitioners, we are unable to accept his submissions.

14. In the order passed by single Judge and more particularly in Para-38, clause (e), in Writ Petition No. 276 of 2008 on 27th March, 2018, the learned single Judge though observed that the Collector would consider the

contentions of the decree holder and the judgment debtors before carrying out equitable partition, it cannot be stretched to submit that the petitioners who are either transferee or assignees of the properties have no right at all of hearing in the appeals presented by themselves before the Commissioner raising grievance against the order passed by the Collector which was for the distribution of property on the backdrop of the decree as well as the order passed by the learned single Judge on 27th March, 2018, in Writ Petition No. 276 of 2008.

15. Mr Mantri, learned Counsel submits that apart from the appeals as filed by the petitioner in these two petitions, several other appeals are filed and pending before the Commissioner against the same order of the Collector. List of the appeals is submitted by Mr Mantri, learned Counsel for the petitioners. This list is taken on record and marked 'X' for identification. It is brought to the notice of this Court that not only the

appeals presented by the petitioners are posted for hearing on 10th October, 2019, but all appeals against the order of the Collector dated 21st February, 2019 are posted for hearing on 10th October, 2019. Mr Gaware, learned Counsel submits that it is possible that apart from this enlisted appeals, there are other appeals being filed.

16. This situation can be taken care of by directing the Commissioner to decide the appeals filed by the petitioners, appeals enlisted in the list submitted to this Court and marked 'X' and the appeals which are presented before the Commissioner till today, within two weeks from 10th October, 2019, by giving an opportunity of hearing to the parties of appeals presented before the Commissioner. We further make it clear that the Commissioner Nasik, Division Nasik, will decide the appeals on their own merits strictly in consonance with the judgment in Civil Suit No. 13 of 1956 and as modified

by the High Court in First Appeal Nos. 78 of 1958 and 79 of 1958 and the consequent orders passed therein, as well as order passed by the Honourable Apex Court in Civil Application Nos. 3586 of 2010 and 6345 of 2011 dated 2nd August, 2017.

17. Needless to state that the parties to the appeal would assist the Commissioner to decide the appeals within stipulated time frame of two weeks from 10th October, 2019, as directed by this Court without fail and if any attempt is made to cause lingering of the appeals, the Commissioner shall not entertain such an attempt. The execution of the order dated 18th September, 2019 passed by Collector be deferred till decision of the Commissioner in the appeals as directed by this Court within stipulated period, i.e. till 24th October, 2019.

18. With these directions, both the petitions are disposed of.

19. Learned AGP to inform the order of this Court to the Collector, Ahmednagar as well as the Commissioner, Nasik Division, Nasik.

[AVINASH G. GHAROTE,J.]

[PRASANNA B. VARALE,J.]

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