

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.630 OF 2019

(DINKAR MAHADU DUKRE...VS.. THE SUB-DIVISIONAL OFFICER, BULDANA & OTH.)

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

Court's or Judge's orders

Shri P.R.Agrawal, Advocate for Petitioner.
Shri Sagar Ashirgade, A.G.P. for Respondent Nos.1 & 2.
Shri A.V.Gawande, Advocate for Respondent No.5.

CORAM : Z.A.HAQ, J.

DATED : FEBRUARY 07, 2019.

Heard.

This petition arises out of the order passed in the proceedings under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as "Act of 1947"). The petitioner purchased 0.02 Are agricultural land from the respondent No.3. The respondent No.5, claiming to be the adjoining owner, filed complaint before the Sub-Divisional Officer that sale-deed of 0.02 Are agricultural land in favour of the petitioner is illegal, being hit by the provisions of the Act of 1947. The Sub-Divisional Officer dismissed the complaint filed by the respondent No.5 by order dated 25th October 2017. The respondent No.5 approached the Additional Commissioner in revision which is allowed by the impugned order. The learned Additional Commissioner has recorded finding of fact that the land of the petitioner is not adjoining the 0.02 Are agricultural land purchased by him from the respondent No.3 and therefore, the sale-deed is in breach of the provisions of the Act of 1947. The learned Additional Commissioner has directed cancellation of sale-deed dated 24th September 2008.

One of the submission on behalf of the petitioner is that the learned Additional Commissioner has not referred to any notification on the basis of which it can be said that the agricultural land purchased by the petitioner by the sale-deed dated 24th September 2008 is a fragment. This issue was not raised either before the Sub-Divisional Officer or before the Additional Commissioner. There is no explanation by the petitioner for not raising the issue before the subordinate authorities. Though this point is raised for the first time before this Court, it is in the nature of general ground and there is no specific challenge that such notification is not issued for Buldana district. In these facts, it is not possible for this Court to examine the legality of the challenge.

As far as the merits of the matter are concerned, the learned Additional Commissioner, after assessing the evidence on record, has held that 0.02 Are agricultural land purchased by the petitioner by the sale-deed dated 24th September 2008 is not adjoining field Survey No.365 owned by the petitioner. The petitioner has not been able to point out that this finding of fact is not correct. In the above facts, I see no reason to interfere with the impugned order.

The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE