

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11463 OF 2019

Vitthal Mahadeo Babar ... Petitioner
Vs.
The State of Maharashtra and others ... Respondents

Mr. Arjun S. Pawar for Petitioner.
Mr. P. V. Nelson Rajan, AGP for Respondent Nos.1 to 5-State.
Mr. S. P. Shinde for Respondent Nos.6A, 6B, 6E to 6G and 7.

CORAM : UJJAL BHUYAN, J.
DATE : JANUARY 15, 2020

P.C. :

Heard learned counsel for the parties.

2. Without entering into the factual details, it may be mentioned that there is a dispute between the petitioner on one hand and respondent Nos.6 and 7 on the other hand relating to partition of the ancestral property, they being members of the same family. In this connection, an order was passed by the *Tahsildar* on 26.10.2017 finalizing the terms of partition. Petitioner was not agreeable to the said order and this came to be challenged before the sub-divisional officer in appeal.

3. Sub-Divisional Officer, Wai rejected the appeal vide order dated 15.05.2019.

4. Aggrieved by such order, petitioner preferred second appeal before the Additional Collector, Satara. On 27.08.2019, a status-quo order was passed. However, by subsequent order dated 27.09.2019, the status-quo order was vacated. Following the same, sub-divisional officer issued notice to the petitioner as well as to the respondents that possession of the land in question would be handed over on 06.11.2019. It was at this stage that the present writ petition came to be filed.

5. This Court by order dated 06.11.2019 had issued notice and passed an interim order to the effect that till the next date, petitioner

should not be evicted from the land in question pursuant to notice dated 31.10.2019.

6. Today when the matter is called upon, learned counsel for respondent Nos.6 and 7 submits that the second appeal itself has been decided against the petitioner by the Additional Collector, Satara vide order dated 03.12.2019. Therefore, writ petition has become infructuous.

7. On the other hand, learned counsel for the petitioner submits that despite order of this Court dated 06.11.2019, respondent Nos.6 and 7 had taken over possession of the land in question on that day itself despite intimation, which is however denied by learned counsel for respondent Nos.6 and 7. He further submits that petitioner may be given liberty to avail his remedy by filing revision petition before the divisional commissioner and for a limited period, the interim stay may be continued.

8. Submissions made have been considered.

9. Since the appeal itself has been disposed of on 03.12.2019, Court is of the view that the writ petition has become infructuous. Petitioner would be at liberty to avail his remedy as provided under the Statute. Since it is stated that possession of the land in question has been handed over to respondent Nos.6 and 7, continuing the interim order passed on 06.11.2019 any further would not be justified. However, for a period of 30 days from today, respondent Nos.6 and 7 are directed not to alienate the land in question or create third party rights or interest thereon to enable the petitioner to avail his remedy.

10. If the petitioner does not avail his remedy before the competent authority within the aforesaid period of 30 days, protection of this order will not be available to him.

11. Writ petition is accordingly disposed of.

(UJJAL BHUYAN, J.)