

PVR

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5014 OF 2021

Husenbasha Safilsaheb Patel & Ors.

... Petitioners

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr.S.S.Patwardhan i/b. Mohammad S.Mulla, for the Petitioners.

Mr.S.H.Kankal, AGP for the State-Respondent Nos.1 to 6.

Mr.Anand Kulkarni, for Respondent Nos.7 and 8.

CORAM : G.S.KULKARNI, J.

DATE : 14th September, 2021.

PC.:

1. Heard Mr.Patwardhan, learned Counsel for the petitioners, Mr.Kankal, learned AGP for the State-respondent nos.1 to 6 and Mr.Kulkarni, learned Counsel for respondent nos.7 and 8. Respondent no.9 has expired. Mr.Patwardhan states that the petitioners be permitted to delete respondent no.9. Accordingly, respondent no.9 is permitted to be deleted.

2. Challenge in this petition is to an order dated 30 June 2021 passed by the Collector, District Solapur, whereby an application as made by respondent no.7-Mr.Umesh Kumarappa Patil for providing corrected map in regard to new Gut No.557 which includes

consolidation Survey no.373 and 375, be is issued to him. Such an application was made on 1 October 2018 by respondent no.7. The impugned order is passed exercising powers under Section 135 of the Maharashtra Land Revenue Code,1966. The Collector, District Solapur has directed correction of the map whereby he ordered that the map was earlier prepared only in respect of Survey no.373 and it was an apparent mistake and hence, Survey no.375 be included in the map while correcting the plan.

3. Mr.Patwardhan's objection to the impugned order is on the ground that the Commissioner ought not to have passed the impugned order without notice to the petitioners and without the petitioners being heard, inasmuch as for any changes being made in the plan, according to him, it would create a prejudice the petitioners as the petitioners were interested parties being the owners of the adjoining land. It is submitted that on this count, the impugned order deserves to be set aside and the parties be relegated to the Collector, to be heard *denovo* before an order is passed on respondent no.7's application dated 1 October 2018. In supporting his contentions, Mr.Patwardhan has also drawn the Court's attention to an order dated 30 November 2018 passed by the Division Bench of this Court in Writ Petition No.13581 of 2018 filed by the petitioner (Husenbash Safilsaheb Patel

(Birajdar) & Ors. Vs. State of Maharashtra & Ors.) from the proceedings which had arisen under Section 31(A) of the Bombay Prevention and Fragmentation and Consolidation of Holding Act, 1947, and the entries as made in the revenue records relevant to the issues arising under the said enactment. On such petition while issuing notice to the respondents, the Division Bench has observed that it may be open to the respondents therein to hear the petitioners and proceed further with the matter. According to him, an opportunity of hearing to be granted to the petitioners, was recognized even by the Division Bench, for the reason that the petitioners were persons interested.

4. Learned AGP would not dispute that the petitioners were not heard by the Collector when the impugned order came to be passed. Mr. Kulkarni, learned Counsel for respondent nos. 7 and 8 has fairly stated that although his clients have an objection to the merits of the petitioners' contentions on the application of his clients dated 1 October 2018, he however submits that his client would not mind if the petitioners are heard by the Collector and thereafter, appropriate orders are passed by the Collector on the said application.

5. Considering the fair stand taken by the parties, in my opinion, the issues on the application of respondent no. 7 need to be re-visited by the Collector by holding a fresh inquiry, after an opportunity of

being heard is granted to all the parties including the petitioners and thereafter an appropriate decision to be taken.

6. In such view of the matter, the impugned order is required to be set aside. It is accordingly set aside with a direction to the Collector to pass a fresh order after hearing the petitioners and all other interested parties. The parties are directed to appear before the Collector at the first instance on 23 September 2021 at 11 a.m. on which date the Collector can fix a further convenient date on which all the parties can be heard for appropriate orders be passed on such application.

7. Needless to observe that all contentions of the parties on merits are expressly kept open. The petitioners are directed to cooperate in the proceedings before the Collector on remand. In the event, the petitioners adopt any approach of non-cooperation, the Collector is free to proceed and pass appropriate orders recording such conduct of the petitioners.

8. The Collector shall make an endeavour to decide the application of respondent nos.7 and 8 as expeditiously as possible within a period of six weeks of the parties appearing at the first instance before the Collector.

9. Disposed of in the above terms. No costs.

(G.S.KULKARNI, J.)