

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

WRIT PETITION NO.4117 OF 2017

Shri Satyanarayan Bhoot Charitable
Trust, Regd.No.E-74, Through its
Chairman Smt.Kirandevi Ajaykumar
Agrawal, aged about 64 years, occupation : Nil,
R/o Umarsara, Yavatmal, taluka and district
Yavatmal. **Petitioner.**

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1. Divisional Commissioner,
Amravati.

2. Additional Collector, Yavatmal,
Taluka and District Yavatmal.

3. Shri Rajesh Maganlal Rai,
Aged about 45 years, occupation : business,
R/o Balaji Square, Yavatmal,
Taluka and district Yavatmal.

4. Shri Chandrashekant Avinash Salokar,
Aged about 45 years, occupation business,
R/o Gandhi Nagar, taluka digras, district Yavatmal.

5. Sub Divisional Officer, Yavatmal,
Taluka and District Yavatmal. **Respondents.**

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Shri S.S.Shingne, Counsel for the petitioner.
Shri Nalin Majithia, Counsel for respondent Nos.3 and 4.
Mrs.Mrunal Barabde, AGP for respondent Nos.1,2, & 5.

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CORAM : **V.M.DESHPANDE, J.**
DATE : **FEBRUARY 10, 2021**

ORAL JUDGMENT

1. Heard learned counsel Shri S.S.Shingne for the petitioner, learned counsel Shri Nalin Majithia for respondent Nos.3 and 4, and learned Assistant Government Pleader Mrs.Mrunal Barabde for respondent Nos.1,2, and 5.

2. The petitioner, which is a trust registered under the Maharashtra Public Trusts Act, having its registration No.E-74, through its Chairman, approached to this Court challenging order dated 5.6.2017 in Appeal No.06/NAP-34/Umarsara-Yavatmal/2017-18 passed by respondent No.1/the Divisional Commissioner, Amravati dismissing the appeal filed on behalf of the petitioner-trust as infructuous.

3. According to the petitioner-trust, it purchased agricultural land admeasuring 11 acres from and out of survey No.9 on 7.4.1960 by a registered conveyance in its favour. In the said conveyance deed, a road was shown from northern boundary

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between survey No.9 and the adjoining land. It is submission of the petitioner-trust that respondent Nos.3 and 4 purchased survey No.9/1-A on 16.7.2004. It is submission of the petitioner that though in the joint measurement it is shown that the road which is described in the sale deed of the petitioner-trust is part and parcel of the land of respondent Nos.3 and 4, in the sale deed of respondent Nos.3 and 4 does not show any road.

4. When this fact was come in the knowledge of petitioner-trust in the year 2006, the petitioner-trust filed a suit bearing Regular Civil Suit No.140/2005 claiming decree of permanent injunction. The temporary injunction was not granted in favour of the petitioner-trust. Resultantly, the petitioner-trust approached to Appellate Court and as per submission of learned counsel for the petitioner, on 21.6.2010 learned District Judge-2, Yavatmal directed parties to maintain *status quo*. At Bar, a submission is made that the suit is still pending.

5. Be that as it may, on 19.1.2015 respondent Nos.3 and 4 applied before the Sub Divisional Officer, Yavatmal seeking

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permission for converting their agricultural land in dispute into non agricultural one and as per submission, the Sub Divisional Officer without verifying title granted permission and thereby converted land in dispute of respondent Nos.3 and 4 to non-agricultural one. The petitioner-trust questioned the said by filing an appeal before the Additional Collector, Yavatmal. On 4.2.2017, the appeal was disposed of by the Additional Collector filed by the petitioner-trust. Being aggrieved thereby, the petitioner-trust approached to the Divisional Commissioner, Amravati by filing an appeal in which the impugned order is passed.

6. I have perused impugned order dated 5.6.2017 passed by the Divisional Commissioner, Amravati. The order *sans a* detailed reasoning. The appeal was dismissed by the Divisional Commissioner as infructuous because of pendency of the regular civil suit. In my view, proceeding filed by respondent Nos.3 and 4 for obtaining permission for conversion of agricultural land into non-agricultural one is independent one. The suit filed by the petitioner-trust was for claiming permanent injunction against defendants

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therein that they shall not interfere with peaceful possession and enjoyment of the land in their possession.

7. The order passed by the Sub Divisional Officer was of converting the disputed land from agricultural land to non-agricultural one. In this view of the matter, the Divisional Commissioner ought to have decided the appeal filed by the petitioner-trust on its own merits rather than disposing the appeal as infructuous. Since there is no order deciding the appeal on its own merits, the matter will have to be remitted back. In the result, I pass following order:

ORDER

(1) The writ petition is allowed.

(2) The order dated 5.6.2017 passed by the Divisional Commissioner, Amravati in Appeal No.06/NAP-34/Umarsara-Yavatmal/2017-18 is hereby quashed and set aside.

(3) Appeal No.06/NAP-34/Umarsara-Yavatmal/2017-18 is restored to the file of the Divisional Commissioner, Amravati who shall decide

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the said appeal in accordance with law by giving an opportunity to the petitioner-trust as well as to respondent Nos.3 and 4.

(4) The petitioner-trust as well as respondent Nos.3 and 4 shall appear before the Divisional Commissioner, Amravati on 9.3.2021 and the said Authority shall decide the appeal within a period of six months from the date of first appearance of parties before it.

With this, the Rule is made absolute in aforesaid terms.

No costs.

JUDGE

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