

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

WRIT PETITION NO.4068 OF 2022

**PRALHAD TULSHIRAM SHELKE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for the Petitioners : Shri Yogesh Bolkar h/f Shri Irale
Eknath G.

AGP for the Respondents/ State : Shri A.R. Kale

...

**CORAM : RAVINDRA V. GHUGE
&
ANIL L. PANSARE, JJ.**

DATE :- 22nd June, 2022

Per Court :-

1. The petitioners are aggrieved by the impugned letters dated 28.02.2022 and 17.03.2022 received from respondent Nos.4 and 5, respectively.

2. We have considered the submissions of the learned advocate for the petitioners and the learned AGP on behalf of all the respondents. On 25.11.2021, this Court had passed the order in Writ Petition No.12974/2021 filed by these petitioners and had observed as under :-

“1. The learned counsel submits that the petitioners have filed ROR appeal before the Honourable Minister. In fact, the matter was also heard

finally on 15th October, 2018, but the decision is not taken.

2. *The learned Government Pleader appears for the respondents.*
3. *In case, the appeal filed by the petitioner is pending with respondent No.2, then the respondent No.2 may endeavour to decide it on its own merits after hearing all the parties concerned, preferably within six months.*
4. *The writ petition is disposed of. No costs.”*

3. The grievance of the petitioners is that the Honourable Minister has still not decided the pending appeal and without waiting for the decision on the same, the impugned communications have been issued by the Tahasildar and the Circle Officer.

4. The learned advocate for the petitioners submits, on instructions, that the present litigation is unconnected with RCS No.576/2000 since that pertains to another share of the petitioners. Specific statement is made in paragraphs 4 and 5, which read as under :-

- “4. *The petitioners state that, the mother of Nagarbai and others filed the Regular Civil Suit No.576/2000 before the Ld. Civil Court at Latur for partition and possession with regard to the land situated at Mamdapur. The said Suit decreed and against the said Decree, the Regular Civil Appeal No.38/2002 was preferred. In the Appeal, the decree was modified by setting aside the decree with*

- regard to the property bearing Gut No.16.*
5. *The petitioners state that, due to the said modification, the plaintiffs/ respondents were entitled to execute the decree only to the extent of property bearing Gut No.13. Hence, they filed the execution proceeding before the Ld. Civil Court, Junior Division, Latur. The partition decree came to be referred by the Ld. Civil Court to the Ld. Collector for execution, which, in turn forwarded to the Tahsil Office at Latur. The plaintiffs i.e. one of the decree holder Nagarbai died intestate on 26.04.2010. Thus, her share in the land Gut No.13 is decided to the extent of 63 R, who is mother of the petitioners. Therefore, each of them legally entitled for 1/6th share in the land from Gut No.13.”*

5. In view of the above, it is apparent that had the pending appeal been decided as directed by this Court, the petitioners would have been able to face the situation. Without any decision on the appeal, they are now required to face the two communications by which, they are likely to be divested of their possession over the suit property.

6. As such, this Writ Petition is partly allowed with the following directions :-

(a) The impugned letters dated 28.02.2022 issued by respondent No.4 and the letter dated 17.03.2022 issued by respondent No.5, shall be kept in abeyance until the decision to

be delivered by respondent No.2 in the pending appeal, provided that the possession of the suit property has not been taken away from the petitioners.

(b) The second respondent shall issue notice to all the litigating parties before him on or before 08.07.2022 and endeavour to conclude the proceedings as expeditiously as possible and in any case, on or before 30.09.2022.

(c) All the litigating parties shall extend cooperation in the said proceedings and all of them and especially the petitioners are restrained from seeking unnecessary adjournments on unreasonable or trivial ground.

(d) We make it clear that there shall be no extension of time considering the earlier order dated 25.11.2021.

kps

(ANIL L. PANSARE, J.)

(RAVINDRA V. GHUGE, J.)