

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.7436 OF 2022

SAHEBRAO BHAURAO BOCHARE  
VERSUS  
ANUP ANIL DESHPANDE AND OTHERS

Mr.E.S.Murge, Advocate for the petitioner.  
Mr.S.G.Sangle, AGP for the respondent/State.

( CORAM : RAVINDRA V. GHUGE AND  
ARUN R. PEDNEKER, JJ.)

DATE : AUGUST 5, 2022

PER COURT :

1. The petitioner has put forth prayer clause B and C as under :-

*"B. That, the impugned measurement notice dt. 09.06.2022 issued by the respondent No.11 Sub-Superintendent of Land Record Osmanabad may kindly be quashed and set aside and it may be directed to the Res.No.10 to 12 make partition of the land as per the court decree.*

*C. Pending hearing and final disposal of this writ petition impugned measurement Notice dt. 09.06.2022 issued by the Res.No.11 Sub-Superintendent of Land Record Osmanabad may kindly be stayed."*

2. It is undisputed that the matter has travelled to the revenue authorities under the M.L.R. Code pursuant to the directions of the Executing Court, for execution of the decree. Joint measurement of the

properties is a part of the activity of demarcating the shares and for handing over the respective shares to the respective decree holders.

3. In Paygonda Survgonda Patil and others Vs. Jingonda Surgonda Patil and others [AIR 1968 Bombay 198], it has been concluded in paragraph Nos. 15 and 16 as under :-

*" (15) We must finally refer to an argument which was advanced by Mr. Bhasme on behalf of the respondents to one of these petitions. Section 203 provides for an appeal from any decision or order of the Collector if there is no express provision to the contrary in the Bombay Land Revenue Code or any other law for the time being in force. Mr. Bhasme argued that an express provision to the contrary is found in the terms of section 54 of the Civil Procedure Code itself. Section 54 provides that in case of revenue paying lands the partition case of revenue paying lands the partition" shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf." Mr. Bhasme argued that the expression " shall be made by the Collector or any gazetted subordinate of the Collector" excludes revenue authority superior to the Collector from any function in connection with the partition of revenue paying lands. In our view, this argument also is without substance. The fact that the duty to effect a partition of revenue paying lands is cast by Section 54 on the Collector or any gazetted subordinate of the Collector deputed by him does not exclude the right of superior revenue authorities to examine and correct any decision or order of the Collector in the exercise of their appellate and revisional powers. Section 54 contains no provision and certainly no express provision, which runs counter to the*

*appellate powers conferred by section 203 of the Bombay Land Revenue Code.*

*(16) We are accordingly of the view that the Commissioner erred in law in holding that he had no jurisdiction to entertain an appeal or a revisional application against any order of a Collector passed in proceedings relating to the execution of a decree for partition of revenue paying lands passed by a Civil Court."*

4. The petitioner has available remedies under the MLR Code and the writ jurisdiction of this Court under Article 226 of the Constitution of India, cannot be a remedy.

5. With such liberty kept open, this petition is disposed off.

( ARUN R. PEDNEKER, J. )

( RAVINDRA V. GHUGE, J.)