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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.256 OF 2021

Bhiva Shankar Sonawane

PETITIONER

VERSUS

The Collector and Others

RESPONDENTS

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Mr. C. K. Shinde, Advocate for the petitioner

Mrs.G. L. Deshpande, AGP for respondent - State

Mr. S. P. Brahme, Advocate for respondents No. 3 to 5, 9 and 11

Mr. S. S.Bora, Advocate for respondents No. 8 (a) to 8 (d)

Mr. A. P. Bhandari, Advocate for respondent No. 6

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 6th JULY, 2022

ORDER :

1. proceedings filed before the Collector by the respondents under section 64 of the Civil Procedure Code are entertained by the Collector and stay order is passed in favour of the respondents. The petitioner is aggrieved by the same.

2. The petitioner has filed Execution proceeding for execution of partition decree dated 10th October, 1986 passed in Regular Civil Suit No. 153 of 1985. The said decree is confirmed up to this Court. The petitioner thereafter filed Regular Darkhast No. 333 of 1999. Civil Court forwarded the decree to Collector, for

partition under section 54 of the CPC.

3. In the year 1987, the property in question was converted into non agriculture use and plotting was made on the same and the plots are sold. When this fact was realized, the Collector, vide communication dated 27th May, 2011 informed the Executing Court that since the land is converted into non agriculture use, same is developed, there are constructions on the same and plot Nos. 1 to 28 are demarcated on the said land and since all the plots are sold, it is not possible to execute partition decree, giving half share to the petitioner. Hence, the matter was sent by the Collector to the Executing Court.

4. The Executing Court, vide order dated 18th March, 2019, sent the proceedings to the Collector as per section 54 of the CPC for effecting partition of undivided revenue assessable land, as specified in the decree, by appointing competent officer for that purpose. After the remand, the respondents raised objections before the Collector and the Collector has granted stay.

5. Though learned advocates for the respective parties have argued the matter on merits, taking into consideration the fact that the proceedings are pending before the Collector, this Court

is not inclined to go into the merits of the matter and the writ petition is disposed of by directing the Collector to take decision on the objections of the respondents within a period of eight weeks from the date of receipt of writ of this order and proceed further in accordance with law.

6. With aforesaid directions, writ petition is disposed of.

[NITIN B. SURYAWANSHI]
JUDGE

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