

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

**WRIT PETITION NO. 14538 OF 2022**

1. Shri Kisan Shivaji Kumbhar  
Age : 56 years, Occ. Brick Kiln Business

2. Shri Navnath Nivrutti Kumbhar  
Age : 47 years, Occ: Kumbhar Work,  
Both R/o. Gulunche, Tal. Purandar,  
District Pune

...Petitioners

vs.

1. The State of Maharashtra Through  
the Minister of Revenue,  
Mantralaya, Mumbai.

2. Additional Divisional Commissioner,  
Pune Division, Pune

3. The Collector, Pune  
Collector's Office, Pune

4. The Sub Divisional Officer,  
Daund-Purandar Sub Division,  
Purandar, Saswad, Tal. Purandar,  
District Pune.

5. Tehsildar, Purandar,  
Saswad, Tal. Purandar, District Pune

6. Circle Officer, Division Walhe,  
Tal. Purandar, Dist. Pune

7. Shri Akshay Vijay Nigade,  
Age 27 years, Occ: Agri.,  
R/o Gulunche, Tal. Purandar,  
District Pune

8. Shri Ramchandra Maruti Kumbhar,  
Age 108 years, Occ.: Retired.

9. Shankar Kondiba Kumbhar,  
(since deceased through LRs)

9A. Dattatraya Shankar Kumbhar  
Age 59 yrs, Occ: Kumbhar work,

10. Dhondiba Kondiba Kumbhar  
(since deceased through LRs)

10A. Shri Anil Dhondiba Kumbhar  
Age : 52 yrs., Occ. Kumbhar work,  
All R/o. Gulunche, Tal. Purandar,  
Dist. Pune

11. Ganpat Dagadu Kumbhar  
(since deceased through LRs)

11A. Raghunath Ganpat Kumbhar  
(since deceased through L.R.s.)

11B-1. Shri Pandurang Raghunath  
Kumbhar  
Age 52 yrs., Occ: Kumbhar work,

11B-2. Shri Gulab Raghunath Kumbhar,  
(since deceased through L.R.s)

11B-2-i. Vatsala Gulab Kumbhar,  
Age 47 yrs., Occ: Kumbhar work,  
All R/o. Gulunche, Tal. Purandar,  
Dist. Pune

...Respondents

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Mr. V. S. Talkute - Advocate for the Petitioners  
Mr. P. V. Nelson Rajan – AGP for the State

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CORAM : S. M. MODAK, J.

DATE : 25<sup>th</sup> NOVEMBER, 2022**JUDGMENT :-**

1. Heard learned Advocate Shri Talkute for the Petitioners and learned AGP for the Respondent Nos. 1 to 6. Respondent Nos. 8 to 11 are supporting the Petitioners. As they are not available at the time of filing of the petition, they have been joined as the Respondents. Whereas Respondent No. 7 is contesting. The Order dated 21/09/2022 is passed by the learned Additional Divisional Commissioner, Pune Division, in Revision Application No. 342 of 2022. It challenged by way of this writ petition.

2. During the pendency of the Revision Application, the Petitioners have prayed for staying the decision of learned Collector, Pune dated 29/06/2022. As per the said decision, the learned Collector has directed to take back the land from the Petitioners for breach of terms of the grant. The inquiry was started on the complaint of the Respondent No. 7. He has complained that the land bearing Gat No. 2/1 admeasuring 0.25R, situated at Mouje Gulunche, Tal. Purandar, District Pune is Gairan land and the

Petitioners are carrying on brick kiln and for pottery work on that land and it has deprived them from grazing their cattles on the said land. The enquiry was ordered through Revenue authorities. It was concluded that there was a grant in favour of the Petitioners. The letter dated 16/11/1972 is produced but after 31/07/1980 it was not renewed.

3. The lease was granted for the purpose of running a brick kilns and pottery work. One of the terms is as follows:

“4) That they should not make any additions or alterations in the existing area without prior permission of the undersigned”.

4. So also there is fact finding report that in fact brick kiln is not being carried out. There is also reference of a report given by Tahasildar dated 08/02/2021 in subject no. 3 of the order of the Collector. It mentions that there is no proposal for extension of the lease and as such extension is not justified. It further mentions that there are six houses and they were entered in the register of the encroachment. Finally learned Collector has passed the impugned order.

5. Apart from the grievance on the merits of the matter,

further grievance is that learned Divisional Commissioner on 21/09/2022 arbitrarily refused the application for stay. There is only one reason in para no. 4. It says as “*There will not be any loss to the Petitioners if stay is not granted*”. So this writ petition is filed for a limited relief that the order be set aside and stay be granted during the pendency of the revision.

6. As such this Court is not supposed to give any comment on the merits of the matter. The revenue authorities while dealing with such proceedings are exercising quasi judicial powers so they need to follow the procedure. If there is procedural irregularity, this Court can certainly interfere. This Court has to verify as to whether there is transparency in decision making process.

7. This Court feels that learned Divisional Commissioner has refused to grant stay arbitrarily. Copy of the revision application is filed. The Petitioners have pleaded what will be loss to the Petitioners if stay is not granted. The contention of the Petitioners is that though they have stopped brick kiln but pottery work is still going on. So the Petitioners needs to be given an opportunity to agitate that grievance before Revisional authorities. So this Court feels that the Petitioners have made out the case for stay during

pendency of the revision application.

8. In view of that Order cannot be sustained. Hence the matter needs to be remanded. At the same time, the Revisional authorities can be directed to decide the revision as early as possible.

9. Hence the following Order is passed:

**ORDER**

- (i) Writ Petition is allowed.
- (ii) The Order dated 21/09/2022 passed in RTS/Revision/Pune/342 of 2022 by learned Additional Divisional Commissioner, Pune Division, Pune thereby refusing stay is set aside.
- (iii) Stay is granted to the decision of the learned Collector Pune dated 29/06/2022 for a period of 30 days from today, subject to condition that the Petitioners will not create third party interest or part away possession about the structures standing on that land.
- (iv) The Petitioners are directed to appear before the learned Divisional Commissioner on 29/11/2022 at 11 a.m..
- (v) It is made clear that this Court has not expressed any opinion on the merits. The Divisional authority to decide the revision on its own merits.

- (vi) The Divisional Commissioner is further directed to ascertain about request made by the Petitioners dated 13/07/2022 for extension of lease period addressed to the Respondent Deputy Collector Pune is accepted or not and then take appropriate decision.

**[S. M. MODAK, J.]**