

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

WRIT PETITION NO.1753/2022

Sau. Shobha Vijayrao Jondhalekar

...Versus...

Punjabrao Kalidasji Khandare and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri S.V. Sohoni, Advocate for petitioner
Shri Y.P. kaslikar, Advocate for respondent nos.1 to 11
Mrs. M.A. Barabde, AGP for respondent nos.12 to 16

CORAM : AVINASH G. GHAROTE, J.

DATE : 17/10/2022

1. Heard Shri Sohoni, learned counsel for the petitioner, Shri Kaslikar, learned counsel for the respondent nos.1 to 11 and Mrs. Barabde, learned Assistant Government Pleader for the respondent nos.12 to 16.
2. The petitioner claims to have derived a right to the land of Survey no.15/2 admeasuring 2.30 HR Mouza Aliyabad District Amravati, by virtue of a Will dated 11/08/2006 executed by Kalidas Khandare, her father, in her favour. On the basis of the said Will, the petitioner applied for mutation entry, which was allowed by the Tahsildar by the order dated 15/10/2013 (pg.51). An appeal carried to the Sub Divisional Officer was dismissed on 21/06/2016 (pg.53).
3. A further appeal before the Additional Collector came to the allowed on the ground that though the Will dated

11/08/2006, which is wrongly mentioned as dated 11/07/2013, was registered, there was a requirement of obtaining prior permission of the Collector before executing it (pg.77), which has been upheld by the Additional Commissioner by his order dated 11/02/2022 (pg.86).

4. It is also not in dispute that there is suit filed, namely, Regular Civil Suit No.181/2016, which is pending, in which, the legality and validity of the aforesaid Will is questioned. That being the position, the order of the Sub Divisional Officer, which made the mutation entry on the basis of the Will dated 11/08/2006, subject to the result of the suit, would stand to reason as there is no warrant in law that before executing a Will in respect of immovable property, the permission of Collector is necessary, in view of which, the order dated 06/01/2018 by the Collector and 11/02/2022 by the Additional Commissioner are hereby quashed and set aside and the order of the Sub Divisional Officer dated 21/06/2016 is restored and it is made clear that the mutation entry in favour of the petitioner shall be subject to the final result in Regular Civil Suit No.181/2016.

5. The writ petition is accordingly allowed in the above terms. No order as to costs.

(AVINASH G. GHAROTE, J.)