

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

33 WRIT PETITION NO.311 OF 2023

JAYACHAND CHHANULAL FATELASHKAR
AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA THROUGH
ITS PRINCIPAL SECRETARY AND OTHERS

...

Advocate for Petitioners : Mr Chandrakant D. Biradar
GP for Respondent/State : Mr D.R. Kale
Advocate for Respondent Nos. 9 to 20 : Mr A.S. Bajaj

**CORAM : MANGESH S. PATIL AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 09-01-2023

PER COURT :

1. We have heard both the sides.
2. The petitioners, who claim to have become owners of certain portions of the different properties are aggrieved by the initiative taken by the Divisional Commissioner, Aurangabad, whereby he had directed number of lands including the lands being claimed by the petitioners to be measured at the request of the contesting respondent Nos. 9 to 20.
3. The learned advocate for the petitioners vehemently submits that decision has been rendered in their favour and that they have become owners of their respective shares under the Hyderabad Tenancy and Agricultural Lands Act, 1955 which has reached finality and certificates under Section 38(E) and 6-A have been directed to be issued. The

contesting respondents are purchasers from the heirs of the landlady and the measurement is now being sought to be carried out at their instance. The petitioners have been served with the notice dated 19-12-2022 and today the measurement is to be carried out.

4. The learned advocate Mr Bajaj *suo motu* appears for the contesting parties and submits that innocuous prayer to carry out the measurement has been considered and the survey is to take place. He submits that there is no question of dispossessing or putting up any claim at the present juncture over specific portion of the properties. Being purchasers, they are anxious to know the extent and the location of their property. The learned counsel submits that the petitioners are not exclusive owners of the entire lands and could claim title only in respect of the portion regarding which certificates have been issued to them under Hyderabad Tenancy and Agricultural Lands Act, 1955. The anxiety being expressed and entertained by the petitioners is unwarranted. By way of the impugned notice, they have been merely asked to remain present while survey is conducted.

5. By the impugned notice, several lands are to be measured and the petitioners are claiming right and title in respect of few of them that too a portion of these gut numbers. Even if the measurement is carried out, it would merely demarcate these gut numbers. It would not result in either proving a claim or result in dispossession of anybody and induction of somebody. When the parties i.e. the petitioners and contesting respondents independently can resort to appropriate civil remedies, the

impugned action to undertake measurement in our considered view, is not something by which the petitioners claim can be said to be objected to.

6. We dispose of the writ petition by clarifying that by virtue of the impugned notice, only the measurement shall be carried out and the petitioners would be entitled to put up any objection post such measurement.

[S.G. CHAPALGAONKAR, J.]

[MANGESH S. PATIL, J.]

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