

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11402 OF 2023

1. Fakira S/o Kaduba Kalam
Age: 38 Years, Occu: Agriculture,
R/o: Bhavan, Tq. Sillod, Dist. Aurangabad.
 2. Kacharu S/o Kaduba Kalam.
Age: 40 Years, Occu: Agriculture,
R/o Bhavan, Tq. Sillod, Dist. Aurangabad
- ... **PETITIONERS**

V/s.

1. The State of Maharashtra,
Through it's District Collector, Aurangabad.
 2. The Sub-Divisional Officer, Sillod.
Sub-Divisional Office, sillod,
Tq.Sillod Dist. Aurangabad.
 3. The Tahsildar, Sillod.
Tahsildar Office, Sillod,
Tal. Sillod, Dist. Aurangabad.
 4. The Talathi, Bhavan,
Talathi Office, Sajja Bhavan,
Tal. Sillod, Dist. Aurangabad.
- ... **RESPONDENTS**

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Mr. M.B. Ubale, Advocate for the Petitioner
Mr. V.M. Kagne, AGP for Respondent-State

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**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.**

RESERVED ON : 14th September, 2023

PRONOUNCED ON : 03rd October, 2023

JUDGMENT (Per: Y.G. Khobragade, J.) :-

1. Rule. Rule made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

2. During the course of the arguments, the learned AGP produced certain documents Page No. 1 to 13 i.e. copy of letter dated 01.02.2023 issued by the Respondent no. 4 to the petitioners, Order dated 03.02.2023 passed by the Respondent No.3, Tahsildar Sillod, Application dated 09.05.2023 filed by the Petitioners, Revenue Record Gav Namuna 7, Gav Namuna 6 (Mutation Entry Book) in respect of Gut Nos.201 and 175. Therefore, these documents are taken on record and marked as 'X' collectively for identification, by the consent of the parties.

3. Both the Petitioners contended that, though they applied to Respondent No. 3 for mutating their names in the revenue record as per the compromise decree passed by the learned Civil Judge Junior, Division, Sillod, no order has been passed on their application. On other hand, Mr. V.M. Kagne, the learned AGP submitted that, on 03-02-2023, Respondent no. 3 has already passed the order and turned down the request of the petitioners. Therefore, leave was granted to amend the pleadings and addition of the prayer for challenging the Order dated 03-02-2023 passed by the Respondent No. 3 Tahsildar, Sillod.

4. We have considered the strenuous submissions of the learned advocate for the Petitioners as well as the learned AGP. It is the contention of the Petitioners that their father Shri Kaduba Govind Kalam was owner and possessor of land Survey No.90 (now Gut No.,175, 176) and Survey No.103 (now Gut No.201) situated at village Bhavan, Tq. Sillod, Dist. Aurangabad to the extent of one third share as per Judgment and Decree dated 25.02.1970 passed by this Court in Second Appeal No.1071/1966. Subsequently, Petitioner No.2 filed a suit i.e. R.C.S. No.145/2010 before the learned Civil Judge J.D., Sillod, for partition and separate possession in respect of Gut No.201 against his brother i.e. Petitioner No.1 and their three sisters. On 06.02.2011, he, his brother and sisters arrived at a compromise and a compromise decree was passed. On the basis of the said compromise decree, both the Petitioners presented an application dated 29.11.2022 to the Respondent No.4 Talathi for effecting mutation in their favor in the revenue record. However, Respondent No.4 failed to consider their application. Therefore, on 16.12.2022, they submitted another application before the Taluka Level Committee headed by the Respondent No.2 – S.D.O., Sillod constituted as per Notification dated 13.02.2015. Respondent no. 2 directed them to get the compromise decree registered, vide letter dated 23.01.2023 and to file an application with the registered decree. Accordingly, on 19.04.2023, they got the compromise decree registered under the Registration Act and submitted an application with the

Respondent No. 4 for effecting mutation entry on 04.05.2023, but no mutation entry was taken in their favour. Hence, they pray for issuance of Writ of Mandamus against the Respondents for effecting mutation entry in the land revenue record.

5. The learned AGP vehemently canvassed that on 03.02.2023, the Respondent No.3 – Tahsildar passed an order on the application of the Petitioners and rejected the request to effect the mutation entry on the ground that the Petitioners prayed for effecting mutation entries in pursuance of the compromise decree passed in R.C.S. No.145/2010 in which the subject matter was of partition of Gut No.201 ad-measuring 10 R and Gut No.175 ad-measuring 25 R. However, under the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, there is prohibition about partition and fragmentation of irrigated land less than 0.20 HR and non-irrigated land less than 0.80 HR. Therefore, on 03.02.2023, the Respondent no. 3 passed the order and declined to mutate names of the petitioners.

6. Needless to say that, as per the compromise decree passed in R.C.S. No.145/2010, Petitioner Nos.1 & 2 have equal shares in Gut Nos.201 and 175 of village Bhavan, Tq. Sillod, Dist. Aurangabad. There is no dispute that, Gut No.201 is ad-measuring 0.10 HR and Gut No.175 ad-measuring 0.50

HR . As per compromise decree, both the Petitioners are entitled for equal shares i.e. 0.5 HR in Gut No. 145 and 0.25 HR in Gut No.175.

7. Section 4 (1) of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 provides for settlement of standard minimum areas as a separate plot. Sub-Section 2 of Section 4 empowers the State Government for prescribing standard cultivable area by publication of notification in the Official Gazette. As per Scheduled "B" to the Notification published on 13.12.1963, the State Government prohibited fragmentation below certain sizes of the lands. Section 8 of the Act, 1947 provides that, no land in any local area shall be transferred or partitioned so as to create a fragment. Sec. 8AA (1) provides for effecting of partition of land by transfer, decree, succession or otherwise, two or more persons are entitled to shares in an undivided agricultural land in any local area for which standard areas have been fixed but, such partition shall be effected so as not to create a fragment.

8. Sub-section (2) of Section 8AA provides that, where such partition is made by the Court or the Collector, the following procedure shall be adopted:-

(a) If, in effecting a partition among several co-sharers, it is found that a co-sharer is entitled to a specific share in the land and cannot be given that share without creating a fragment, he shall be compensated in money for that share. The amount of compensation shall be determined

so far as practicable in accordance with the provisions of section 23 of the Land Acquisition Act, 1894.

(b) If, in effecting a partition, it is found that there is not enough land to provide for the shares of all the co-sharers in accordance with the provisions of the sub-section (1), the co-sharers may agree among themselves as to the particular co-sharer or co-sharers who should get the share of land and which of them should be compensated in money. In the absence of any such agreement, the co-sharers to whom a share of land can be provided and those to whom money compensation should be given shall be chosen by lot in the manner prescribed.

(c) -----.

(d)-----.

(e)-----.

9. During the course of hearing, the learned AGP produced Notification dated 08.08.2023 issued by the State Government under the provisions of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. As per the said notification, the State Government prohibited fragmentation of agricultural land less than 0.20 HR for non-irrigated (Jirayat) and 0.10 HR irrigated land. Therefore, taking into consideration the Notification dated 08-08-2023, we are of the view that there is no legal impediment for effecting partition/fragmentation between the Petitioner 1 & 2 in respect of Gut no.175. However, there is a prohibition under said Act for partition of Gut No. 201 which is ad-measuring 0.10 HR land, that is ad-measuring only 10 R. Since Sub-section 2 of Section 8 AA provides for payment of compensation as per Section 23 of the Land Acquisition Act, 1894

because of creation of fragmentation. Therefore, either Petitioner No.1 or Petitioner no. 2, may accept the entire land and pay compensation to the other party to the extent of the half share. The amount may be determined by Respondent No.1 and mutation to that effect can be effected.

10. In view of the above conclusion, the present Petition is partly allowed with the following directions:

a. The impugned order dated 03.02.2023 passed by Respondent No.3 is quashed and set aside to the extent of the rejection of partition/fragmentation in respect of land Gut No.175. Accordingly, Respondent No.3 is hereby directed to effect the partition between the Petitioner Nos.1 and 2 in respect of Gut No.175.

b. However, both the Petitioners are at liberty either to pay or receive appropriate compensation as per Section 23 of the Land Acquisition Act, as may be determined by Respondent No. 1 under Sub-section (2) (a) of Section 8AA of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

c. No order as to costs.

11. Rule is made partly absolute in the above terms.