

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

WRIT PETITION NO. 10842 OF 2022

1. Smt. Vimal Babasaheb Ghogare .. Petitioner
Age. 65 years, Occ. Household and Agri.,
2. Shri Manohar Babasaheb Ghogare
Age. 42 years, Occ. Agri and Service
3. Shri Bhausahab Balasaheb Ghogare
Age. 40 years, Occ. Agri.,
4. Yogita Annasaheb Shelke,
Age. 38 years, Occ. Household,
R/o. Adgaon Kd. Tal. Rahata,
Dist. Ahmednagar

Petitioner 1 to 3 R/o. Po. Loni Kd.
Tal. Rahata, Dist. Ahmednagar.

Versus

1. The State OF Maharashtra .. Respondents
2. Hon'ble Additional Collector
Ahmednagar
3. Vamanrao Chimanrao Ghogare
Age 40 yrs, Occ. Not any
R/o.Zarekathi, Tal. Sangamner,
Dist. Ahmednagar.
4. Dattatraya Chandrabhan Ghogare
Age. 45 yrs, Occ. Agri. And Collector,
R/o. Loni Kd. Tal. Rahata,
Dist. Ahmednagar.

Mr.A.Z. Gandhi, Advocate for the petitioners.
Mr.K.N. Lokhande, AGP for the respondent/State.
Mr.S.P. Shah, Advocate for respondent No.4.

CORAM : KISHORE C. SANT, J.
DATED : 10.08.2023

PC :-

01. Heard learned Advocates for the parties. This petition is limited to the extent of submitting of report by the learned Collector, Ahmednagar dated 17.01.2022 to the Court of Civil Judge, Junior Division, Rahta, who had passed order dated 22.02.2017 as below :-

- “1. Application is partly allowed.
2. The issue “Do transaction between defendant No.1 and defendant No.2 hit by the provisions of Maharashtra Prevention of Fragmentation Consolidation of Holdings Act, 1947? is referred before competent authority for adjudication.
3. The competent authority is hereby directed to proceed to decide above referred issue and adjudicate same within two months i.e. on or before 22-04-2017.
4. The competent authority is further directed to send back said issue along with it’s findings to this Court.
5. Costs in cause.”

02. Thus, direction was issued to decide the issue along with finding

and send back to the Court. The issue was as to whether the transaction between defendant No.1 and defendant No.2 is hit by the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. The petitioners' contention is that when the issue was directed to be adjudicated by giving findings on the said issue, it was necessary to hear the petitioners before answering the said issue. Instead of doing so, the learned Additional Collector, Ahmednagar has only sent a report, which is contrary to the order passed by the learned CJJD.

03. The learned AGP for the State submits that in-fact only report was to be sent to the Court. As per the order of the Court on the basis of report received from the Tahsildar for preparing such report, no hearing is required to the parties. He submits that rightly compliance is made of the order passed by the learned CJJD and prays for dismissal of the petition.

04. The learned Advocate for respondent No.4 who had filed suit, that is pending before the learned CJJD, Rahta, submits that to come to a conclusion as to whether there is fragment or not, no hearing is required as it is already under the Act as to how much land to be considered as fragment.

Even by giving hearing to the parties, there is no question of change of conclusion drawn by the authorities. Said issued was not even required to be referred to the authority and the Court itself could have very well considered the same. He further submits that in absence of specific pleadings as to how there is fragment, such issue was also not necessary.

05. Be as it is, this Court at this stage cannot go behind the order passed by the learned CJJD as same is not the subject matter of challenge before this Court. Looking to the order as it is, it is seen that the Court has specifically directed to adjudicate on the issue with findings. In such circumstances, it was necessary for the Additional Collector to give hearing to the petitioners & the concerned and then to send back the issue to the Court with findings. At this stage, Mr. Shah, learned Advocate submits that if suit is pending since 2013 and the same is not being decided for such technical reason, care can be taken of his anxiety by directing the concerned authority to decide the issue within one month by giving hearing to the petitioners and other persons, if necessary and send it back to the Court within 15 days thereafter.

06. Thus, in this view, the petition is partly allowed and disposed off with above directions. The petitioners to appear before the learned Additional Collector on 18.08.2023. The parties to act upon authenticated copy of this order.

[KISHORE C. SANT, J.]