

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

WRIT PETITION NO. 3245 OF 2023

1. Abhay Kisan Kolhe

2. Nilesh Kisan Kolhe

.. Petitioners

Versus

1. Ravindra Kashiram Kolhe

2. Kalpesh Shashikant Kolhe

3. Shaikh Idris Shaikh Hafiz

4. Shaikh Aslam Shaikh Mussa

5 The Sub Divisional Officer

6. The Additional District Collector

.. Respondents

Mr. Vinod Prakash Patil, Advocate for the Petitioners.

Mr. S. B. Pulkundwar, AGP for Respondent Nos. 5 and 6.

CORAM : KISHORE C. SANT, J.

DATED : 21st JUNE, 2023.

P C. :-

. The petition is mainly against the order dated 25.03.2022 passed by the Sub Divisional Officer, Faizpur thereby granting permission to sale the land to one of the owners. The main ground is that there is no fragmentation made of the land and under such circumstances the authority could not have passed an order violating the provisions of the

Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short “ Fragmentation Act”). The petitioners had, in fact, preferred an appeal bearing Appeal No. 95/2022 before the Additional Collector, Jalgaon. The Additional Collector, Jalgaon in his order observed that, since the order is passed under the Fragmentation Act there is remedy of filing appeal in view of Section 35 of the Fragmentation Act and disposed off the appeal.

2. Learned advocate for the petitioners submits that, in fact, the Sub Divisional Officer does not have power to pass order under the Fragmentation Act and therefore, he has directly challenged the report before this Court. His further submission is that, the Sub Divisional Officer does not have authority to pass such order. The order is without jurisdiction and therefore, writ petition is maintainable before this Court.

3. Learned A.G.P. points out that, in the impugned order dated 25.03.2022 itself there is mention of provisions of Fragmentation Act and thus, the order is necessarily passed under the provisions of the Fragmentation Act. He further submits that, since the order is under the Fragmentation Act, the petitioners need to avail the remedy provided under the Fragmentation Act only. He submits that, in view of above position this petition is not maintainable and there is

alternative remedy available.

4. After considering all these submissions this Court finds that, in the impugned order itself the Sub Divisional Officer has referred to the provisions under the Fragmentation Act and therefore, the proper remedy is the remedy under Section 35 of the Fragmentation Act.

5. Considering the above position, this Court is not inclined to entertain the writ petition. The petitioners are at liberty to approach the proper authority. Needless to say that, the concerned authority shall consider the time spent in pursuing this writ petition while considering the application for condonation of delay.

6. With this, the writ petition stands disposed off.

(KISHORE C. SANT, J.)

P.S.B.