



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6357 OF 2022**

Bhika Vitthal Lokhande and Ors. ... Petitioners
versus
Balshiram Vitthal Lokhande and Ors. ... Respondents

Mr. Uday B. Nighot for Petitioner.
Mr. Prajkant Arjunwadkar, for Respondent Nos.1 to 3.
Mr. C.D.Mali, AGP for State.

**CORAM: N.J.JAMADAR, J.
DATE : 20 JULY 2023**

P.C.

1. Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, heard finally.
2. The Petitioners who are the Defendants – judgment debtors in Execution Petition No.38 of 2007 have assailed judgment and order dated 11 February 2022 passed by the Sub-Divisional Officer, Khed, Pune in RTS Revision No.15 of 2020 whereby the Revision Application came to be dismissed, affirming the order of partition by metes and bounds of subject-land passed by the Tahasildar, Khed in SR/Re-inquiry/07/2021 dated 20 February 2020.
3. Respondent Nos.1 to 3 instituted a suit being RCS No.93 of 2000 for partition of the agricultural lands including the subject lands situated at Mauje Kude Budruk, Tal. Khed, Pune. The suit was decreed. Respondent Nos.1 to 3 laid execution in Regular Darkhast No.38 of 2007. Thereupon, the executing Court

referred the decree to the Collector for partition and separate possession of the agricultural lands under Order XX Rule 18 of the Code of Civil Procedure, 1908.

4. In the meanwhile, in Civil Appeal No.535 of 2007, the decree in RCS No.93 of 2000 came to be modified. However, the decree for partition in respect of the subject lands was affirmed.

5. The Tahasildar, Khed suggested partition under a partition chart (Vatap Takta) on 29 January 2014. Being aggrieved, the Petitioners preferred RTS Revision No.21 of 2014. By an order dated 18 June 2014, the matter was remitted to the Tahasildar for fresh enquiry and partition.

6. It is the claim of the Petitioners that on 20 February 2022, upon re-enquiry, the Tahasildar, Khed, again passed an order proposing partition which was wholly inequitable, without application of mind. The Petitioners again carried the matter in Revision, being Revision No.15 of 2020.

7. By the impugned order dated 11 February 2022, the Sub-Divisional Officer dismissed the revision holding, inter alia, that the Revision Application was not tenable and the partition was, otherwise, also just and proper. Being aggrieved, the Petitioners have invoked the writ jurisdiction.

8. I have heard Mr. Nighot, learned Counsel for the Petitioners, Mr. Arjunwadkar, learned Counsel for Respondent Nos.1 to 3 and Mr. Mali, learned AGP for State.

9. Mr. Nighot, learned Counsel for the Petitioners submitted that the Sub-Divisional Officer misdirected himself in holding that the Revision was not maintainable against the order passed by the Tahasildar proposing and effecting the partition. The said approach vitiated the reasoning and the ultimate order passed by the Sub-Divisional Officer. Mr. Nighot would urge that despite clear directions by the Revisional Authority in Revision Application No.21 of 2014, the Tahasildar and the Deputy Superintendent of Land Records did not measure the lands, assess the quality of holding and mechanically proposed the partition. In fact, the Petitioners had shown willingness to accept the lot proposed to be allotted to Respondent Nos.1 to 3, in the partition chart prepared on 29 January 2014. However, the authorities went on to propose and effect the wholly inequitable partition, causing grave prejudice to the Petitioners.

10. The learned Counsel for Respondent Nos.1 to 3 submitted that, first and foremost, the Petitioners have an efficacious remedy of a further revision before the State Government under Section 257 of the Maharashtra Land Revenue Code, 1966. Reliance was placed on a decision of the Supreme Court in the case of **Gurudassing Nawoosing Panjwani V/s. State of Maharashtra and Ors.**¹ Therefore, this Court may not exercise the writ jurisdiction. Secondly, Mr. Arjunwadkar submitted that the order of partition has already been given effect to and the possession of the partitioned

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land has been delivered to Respondent Nos.1 to 3 and, thus, nothing survives for consideration in this Petition.

11. The aspect of availability of an alternate efficacious remedy need not detain the Court. In any event, the existence of an alternate efficacious remedy is a self imposed restraint and does not preclude the High Court from exercising the writ jurisdiction in a deserving case.

12. In the facts of the case, in my view, a limited question that crops for consideration is whether the revisional authority correctly exercised the jurisdiction to dismiss the revision. Mr. Nighot's submission that the revisional authority had proceeded on the premise that the revision was not maintainable, stems from the observations in the concluding part of the reasoning, in the passing, that in view of the earlier order passed by the revisional authority in Revision Application No.21 of 2014, there was no propriety in entertaining the revision again. However, that is not a predominant reason for dismissal of the revision. The revisional authority has delved into the merits of the matter and after satisfying itself that the Tahasildar has proposed the partition of Gat No.727 equitably, after inspection of the subject lands in the presence of both the parties and the statements were recorded by the Deputy Superintendent of Land Records, wherein the parties had admitted the proposed partition, found no merit in the revision.

13. Evidently, the partition has been given effect to and the parties have been

put in possession of the respective portions of the subject lands.

14. I have perused the partition proposed by the Tahasildar, Khed. Justifiable reasons have been assigned by the Tahasildar, Khed to correct the partition suggested by the Deputy Superintendent of Land Records as the area of 0.45R more was proposed to be allotted to the Respondent Nos.1 to 3.

15. In the totality of the circumstances, the fact that the Petitioners had been resisting partition of the subject lands in execution of decree passed in the year 2007 by raising objections, which were found to be untenable by the authorities below, cannot be lost sight of. The report of the Deputy Superintendent of Land Records dated 20 March 2018 explicitly refers to the obtrusive conduct of the Petitioners so as to delay the partition of the subject lands. Moreover, since the order of the Tahasildar proposing the partition has been given effect to and the possession has also been delivered to the Respondent Nos.1 to 3, at this juncture, I do not find any reason to exercise extra ordinary writ jurisdiction. The Writ Petition, therefore, deserves to be dismissed.

16. Hence, the following order :

ORDER

- (i) The Writ Petition stands dismissed.
- (ii) Rule discharged.
- (iii) No order as to costs.

(N.J.JAMADAR, J.)