

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7094 OF 2018

1. Late Laxman Kedari Suryavanshi
Since deceased through legal heirs,
Late Baburao Laxman Suryavanshi
Since deceased through legal heirs,
Late Jaising Baburao Suvyavanshi,
Since Decreased through legal heirs,
- 1A. Krishnat Jaysingh Suryavanshi,
Aged 45 yrs, Occu.Nil,
- 2B. Kundalik Jaysing Suryavanshi,
Aged 40 yrs., Occu. Business,
- 3C. Pandit Jaysing Suryavanshi,
Aged 38 yrs., Occu. Business,
- 4D. Bharat Jaysing Suryavanshi,
Aged 36 Yrs., Occu. Business,
- 5E. Shri. Balkrishan Baburao Suryavanshi,
Aged 70 Yrs., Occu. Nil,
Nos.1 to 6 residing at Suryavanshi Mal,
Samrat Nagar, E Ward, Kolhapur.
- 6F. Sou. Shobha Shrikant Misal,
Aged 45 yrs., Occu.Houshold,
Residing at Miraj, Dist. Sangli,

- 7G. Shri. Yuvraj Balkrishna Suryavanshi,
Aged 40 yrs., Occu. Business,
- 8H. Shri. Sanjay Balkrishna Suryavanshi,
Aged 43 Yrs., Occu. Business,
Nos.8 and 9 residing at Suryavanshi Mal,
Samrat Nagar, E Ward, Kolhapur.
- 9I. Shri. Vilas Baburao Suryavanshi,
Aged 68 Yrs., Occu. Nil
Residing at New Shahapuri,
E Ward, Kolhapur,
- 10J. Shri. Rajaram Dattu Suryavanshi,
Since deceased through legal heirs.
- 11K. Shri. Gajanan Rajaram Suryavanshi
Aged 46 Yrs., Occu. Agri & Business.
- 12.L. Shri. Nandkumar Rajaram Suryavanshi
Aged 45 Yrs., Occu Agri. & Business.
- 13.M. Shri. Arun Rajaram Suryavanshi
Aged 40 Yrs., Occu. Agri. & Business
Nos.11 to 14 residing at Shahu Maidan,
642, B Ward, in front of
Khasbag Maidan, Kolhapur
Through its Power of Attorney holder
Shri. Vasant Ramlal Raygandhi
Aged 40 Yrs., Occu. Business,
Residing at 1330/3, Shashtri Nagar,
Kolhapur.

....Petitioners

Vs.

1. The Commissioner, Kolhapur
Kolhapur Municipal Corporation,
 2. Kolhapur Municipal Corporation
Kolhapur
 3. The Assistant Director,
Town Planning Department,
Kolhapur Municipal Corporation
 4. The State of Maharashtra
Through its Town Planning Department,
Mantralaya, Mumbai.
 5. Bharat Sanchar Nigam Limited,
Having its office, at Final Plot No.526/1,
Samratnagar, Kolhapur,
District : Kolhapur.
 6. Shri. Narendra Lilachand Oswal,
Age : Adult Residing at : Survey No.526/1,
Final Plot No.9A, Kolhapur Municipal Corporation,
District Kolhapur.
 7. Om Ganesh Construction, Through
Shri. Sunil Gajanan Shrishirmal
Adult, Occupation : Business,
Resident at : 444 E Ward, Shahupuri,
Kolhapur Municipal Corporation,
Kolhapur, District Kolhapur.
- .. Respondents

- Mr. A.V. Anturkar, Sr. Advocate a/w. Mr. Harshvardhan B. Suryavanshi, for the Petitioners.
- Mr. Suresh M. Kamble, for Respondent Nos.1 & 2 – Corporation.
- Ms. M.P. Thakur, AGP for Respondent No.4–State.
- Mr. Chetan Patil i/b. Mr. Mandar G. Bagkar, for Respondent No.6.
- Mr. Sandeep Koregave, for Respondent No.7.
- Mr. Vinay Zagade, ADTP Kolhapur Municipal Corporation present.

**CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, JJ**

DATE : 21st JUNE, 2023.

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J)

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the respective parties.
2. Mr. Vinay Zagade, Assistant Town Planner of Kolhapur Municipal Corporation in compliance with the Order passed by this Court on 19.06.2023, is personally present before this Court. Upon hearing him regarding the issue being created by Kolhapur Municipal Corporation about handing over of the possession of the subject property, in terms of the letter dated 16.01.2013 issued by the Corporation to the petitioners, he sought some time to obtain instructions from Mr. Rahul Rekhawar, Collector Incharge, Kolhapur Municipal Corporation, Kolhapur. After establishing telephonic communication with him, Mr.

Vinay Zagade returned to the Court hall and as per the instructions received by him and in consultation with Mr. Kamble, learned counsel for the Respondent-Corporation, he made a statement that Kolhapur Municipal Corporation would be handing over the possession of the subject property in terms of the communication dated 16.01.2013, in a weeks time. Of course, initially, he also stated, on instructions, that this Court should pass some order to protect third party interest and when this Court refused to do so, considering the fact that rights of the petitioners, as declared in the judgment of this Court dated 16.12.2011 rendered in Writ Petition No.8415 of 2011, have already been crystallized and have been further made precise by the communication of the Corporation dated 16.01.2013.

3. With this background of facts, this Court made it clear that it would not be possible for us to go behind the judgment dated 16.12.2011 and the satisfaction recorded by the Corporation in its communication dated 16.01.2013. Thereafter, Mr. Vinay Zagade in consultation with Mr. Kamble, learned counsel for the Respondent-Corporation, made a statement that Kolhapur Municipal Corporation would be handing over the possession.

4. In view of above, we find that now there is no need to initiate any *suo-moto* contempt proceedings against the officers, who were found

to be *prima facie* committing breach of the order of this Court, and therefore, the move proposed in this direction as per the order dated 19.06.2023 is dropped, for the present. On the next date, Mr. Vinay Zagade, Assistant Town Planner of Kolhapur Municipal Corporation need not personally attend this Court to inform the compliance of this order and it would be enough for him to depute another officer in his place for reporting compliance of this order.

5. In these circumstances, we direct Mr. Rahul Rekhawar, Collector and Commissioner Incharge, Kolhapur Municipal Corporation, Kolhapur, to hand over possession of the subject property to the petitioners through Mr. Vasant Ramlal Raygandhi on 23.06.2023 at 11.30 a.m., in terms of the communication dated 16.01.2013 on, "*As is, where is basis*" and issue a possession receipt accordingly in favour of Mr. Vasant Ramlal Raygandhi, on behalf of the petitioners.

6. Rule is made absolute in the above terms.

7. The petition is disposed of in the above terms. To be placed before this Court on 27.06.2023 for compliance.

8. Parties to act upon an authenticated copy of this order.

[RAJESH S. PATIL, J.]

[SUNIL B. SHUKRE, J.]