

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7035 OF 2022

Shri Subhash Shankarrao Adwal ... Petitioner

vs.

Shri Nivruti Genu Balwadkar and ors ... Respondents

Ms. Nikita Dharamshi i/b. C. K. Legal for the Petitioner.

Ms. Divya Parb for the Respondents.

CORAM : SANDEEP V. MARNE, J.

DATED : 23 JANUARY, 2023

P.C. :-

1. When the present Petition was heard on 13 September 2022, the following order was passed;

“1. Await service report. Ms. Parab, waives notice on behalf of respondent no.1(e)(i).

2. Heard learned Counsel for the petitioner.

3. Petitioner-decreeholder filed Execution Application No.136/2011 to execute, consent decree passed in Regular Civil Suit No.986/2003 dated 12th February, 2009 seeking demarcation and fixing of boundaries of Survey No.34, Hissa Nos.1 to 12, Balewadi, Pune.

4. The execution proceedings are pending for more than 12 years.

5. Thus, to expedite execution of the decree, petitioner had approached this Court in Writ Petition No.7271/2021. By order dated 26th February, 2022 this Court after perusing the report of Presiding Officer, directed to conclude execution proceedings expeditiously. In spite of the order, the Executing Court, vide order dated 21st April, 2022 referred the parties for mediation under Section 89 of the Civil Procedure Code, overlooking the directions issued in Writ Petition No. 728/2022. Assuming the directions of this Court, were not brought to the notice of the Executing Court, while referring the parties for mediation, however, even

after bringing the directions to the notice, the Executing Court, vide order dated 4th May, 2022 maintained its order dated 21st April, 2022. Apparently, the order referring the parties to mediation, was in breach of directions issued by this Court in Writ Petition No. 7271/2022. This lapse on the part of Presiding Officer, cannot be ignored.

6. Be that as it may, learned Counsel appearing for the petitioner, has drawn my attention to the rojnama of the Executing Court, at page-118 of the petition. It shows, on 19th April 2022, the Superintendent of Land Records, has submitted his report and the same has been taken on record. The only exercise, which is to be done by the Executing Court, is to accept the Report, in as much as, the decree herein is a consent decree. However, the Executing Court, mechanically, adjourned the execution proceedings, although specific directions were issued by this Court, in view of the decision of Hon'ble Apex Court in the case of **Rahul S. Shah Versus. Jinendra Kumar Gandhi and Others, 2021 SCC Online SC 341.**

7. In consideration of these facts, the concerned Executing Court shall dispose off Execution Application No. 136/2011 on/or before 12th October, 2022.

8. Petitioner shall communicate this order to the concerned Executing Court.

9. Presiding Officer, who, by order dated 21st April, 2022 had referred the parties to mediation, shall submit explanation as to why such a order was passed, inspite of clear directions issued by this Court vide order dated 26th February, 2022 in Writ Petition No. 7271/2021.

10. The Registrar (Judicial), shall forward copy of this order to the Principal Judge, City Civil Court, Mumbai with request to forward copy of this order to the concerned Presiding Officer, whereafter concerned Presiding Officer shall file explanation in these proceedings, within three weeks through the proper channel.

11. All concerned to act on authenticated copy of this order.

12. List the petition to verify the compliance of the order dated 21st October, 2022.”

2. The learned counsel appearing for the parties tender across the bar, a copy of order dated 10th October, 2022 passed by the executing Court, and submit that the execution

proceedings being Regular Darkhast No.136 of 2011 stands concluded.

3. In view of the above, nothing survives in the present Petition, Writ Petition is accordingly disposed of.

(SANDEEP V. MARNE, J.)