

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5605/2019

M/S Avinash Developers, Through its Proprietor, Avinash s/o Deorao Kolte,
Nagpur

...Versus...

The Additional Commissioner, Nagpur Division, Nagpur, Civil Lines, Nagpur and
others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri F.T. Mirza, Advocate for petitioner
Ms Tajwar Khan, AGP for respondent nos.1 to 3
Shri Sunil Manohar, Sr. Advocate assisted by Shri D.L. Dharmadhikar,
Advocate for respondent no.4

CORAM : AVINASH G. GHAROTE, J.

DATE : 11/04/2023

1. The present petition challenges the order dated 10/05/2019, passed by the respondent no.1, whereby the earlier order dated 13/08/2018 passed by the learned Sub Divisional Officer (SDO) [pg.88] has been quashed and set aside and the matter is remanded by directing the Superintendent of land records to measure the entire land and thereafter the SDO is directed to take a decision after hearing the concerned parties including the adjacent neighbours.

2. Shri Mirza, learned counsel for the petitioner taking exception to the impugned order contends that earlier in

point of time a measurement had already taken place, in which, the land of Survey no.38/1, which is claimed to have been purchased by the petitioner by sale-deed dated 16/10/2012, has been held to be admeasuring 1.79 HR and therefore the notice dated 07/07/2018 (pg.86) as well as the impugned order is not justified.

3. Shri Sunil Manohar, learned senior counsel for the respondent no.4 opposes the said contention and submits that what the impugned order directs is only a measurement of the land of Survey no.38/1 including the adjacent lands so that the provisions of Section 106 r/w Section 135 of the Maharashtra Land Revenue Code (for short, “the MLR Code”, hereinafter) can be complied with and the correct extent and boundaries of the land would be determined.

4. Ms Tajwar Khan, learned Assistant Government Pleader for the respondent nos.1 to 3 supports the impugned order.

5. Though it is contended by relying upon the communications dated 21/03/2007, 24/04/2007, 24/08/2008 and the 7/12 extracts as well as the record of rights that the land of Gat no.38/1 admeasures 1.79 HR, no record indicating that the same has been done, in pursuance of statutory provisions, has been placed on record.

6. What the impugned order directs is merely measurement of the land by the Taluka Inspector of Land

Records or the Competent Authority and correction of the area statement after hearing the adjacent owners, which is in consonance with the provisions of Section 106 r/w 135 of the MLR Code and therefore such an action, cannot be objected to.

7. Needless to mention that the petitioner shall be entitled to place before the learned SDO all documents, which the petitioner deems necessary, in support of his claim of the extent of the land of Survey no.38/1 being 1.79 HR and not 0.83 HR, which shall be taken into consideration by the learned SDO along with whatever other documents and official records are available or may be placed before him by the respondent no.4. The measurement shall be carried out in the presence of the petitioner and the respondent no.4 along with the owners of the adjacent properties and the measurement report shall also be taken into consideration while passing appropriate orders regarding the area correction. Such proceedings shall be strictly in consonance with provisions of Section 106 r/w 135 of MLR Code.

8. The writ petition is therefore disposed of in the above terms. No order as to costs.

(AVINASH G. GHAROTE, J.)