

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5720 OF 2018

1. Shri Shivdas s/o Kashinath Kamble,
Aged about 78 years, Occ. Teacher.
2. Smt. Annapurna w/o Bhavikdas
Khedkar, Aged about 66 years, Occ. Nil.
3. Shri Govandhan alias Jayant S/o.
Laxmanrao Dudhe, Aged about 58
years, Occ.: Government Servant.
4. Shri Marotrao S/o Shivram Pazare,
Aged about 70 years, Occ. Retired
Teacher.
5. Late Hemant s/o Gopichand Mankar
(Dead), Through LRs. Smt. Geetabai
wd/o Hemant Mankar, Aged about 61
years, Occ. House wife
6. Late Krushnarao s/o Nilkhantrao
Bhalshankar (Dead) Through LRs.
Shri Deepak S/o. Krushnarao Bhalshankar,
Aged about 60 Years, Occ.: Nil.
7. Late Shamrao s/o Marotrao Wane (Dead),
Through Lrs. Shri Vijay S/o Shamrao Wane.

All R/o. Bidkar Ward, Hinganghat,
Taluka Hinganghat, District- Wardha

.... **PETITIONERS.**

// VERSUS //

1. The State of Maharashtra,
Through its Secretary Revenue and
Forest Department Mantralaya,
Mumbai -32.

2. The Divisional Commissioner,
Nagpur Division, Nagpur
3. The Additional Collector Wardha,
Collector Office, Wardha.
4. The Sub-Divisional Officer,
Hinganghat, Taluka Hinganghat,
District -Wardha.
5. The Tahsildar, Hinganghat,
Taluka: Hinganghat, District :
Wardha.
6. The Superintendent of Land Records,
Land Record Office, Hinganghat,
Taluka : Hinganghat, District: Wardha.
7. Dr. B.R. Ambedkar, Educational
Institute, Through its Secretary
Shri Anil Aatmaram Jawade,
R/o. Hinganghat, Taluka:Hinganghat,
District : Wardha.
8. The Deputy Chief Conservator
of Forest, Forest Department,
Wardha, Distt. Wardha.

.... **RESPONDENTS.**

Shri S.P. Bhandarkar, Adv. a/w Ms Sejal Lakhani, Adv. for Petitioners.
Shri H.D. Dubey, A.G.P. for Respondent Nos.1 to 6 & 8/State
Shri F.T. Mirza, Advocate for the respondent No.7

CORAM : ANIL S. KILOR, J.
DATED : JULY 06, 2023.

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule is made returnable forthwith. Heard finally by consent of the parties.

3. In the present petition the order dated 09/06/2015 passed in an appeal preferred by the petitioners and the order dated 25/05/2018 passed on the review application, preferred by the respondent Nos.7 and 8, by the Additional Collector, Wardha, are under challenge.

4. The whole controversy in this matter is in respect of land Survey No.150 admeasuring 0.46 hectares, which is a Zudpi Jungle and situated at Mouza : Shahalangdi.

5. It is the case of the petitioners that they have purchased respective lands in their possession, from the Adarsh Janta Cooperative Housing Society, which are the parts of land Survey Nos. 299/1 and 321/1 of Mouza : Hinganghat adjoining to land Survey No.150 in dispute.

6. It is pertinent to note here that on a demand by respondent No.7 Education Society, part of land Survey No.150 was allotted to the respondent No.7 by the Government.

7. It is stated that, the Sub-Divisional Officer, Hinganghat vide order dated 27/02/2009 authorized the Tahsildar to hand over possession of the land Survey No.150 to Deputy Conservator of Forests, Wardha and submit the possession receipt. Accordingly, the Tahsildar carried out the measurement of the land Survey No.150, Mouza Shahalangdi, through Taluka Inspector of Land Records, Hinganghat (TILR), who measured the land and found that there is an encroachment made by 12 persons including the petitioners.

8. The names of the persons who have encroached the land and the area of encroachment in square meter as per TILR's report, shown in a chart given herein-below.:

Sr. No.	Name of The Encroachers	Area of Encroachment in sq. meters
1.	Shri Raju Papulalji Baisware	92.05
2.	Secretary Dr. B.R. Ambedkar, Education Society, Hinganghat	458.50
3.	Smt. Annapurna Bhavikdas Khedkar	162.00
4.	Shri Hemant Gopichand Mankar, Shri Rakesh Gopichand Mankar and Shri Vinod Gopichand Mankar	210.00 and 236.43
5.	Shri Marotrao Shivram Pajare	277.50
6.	Krushnarao Nilkanth Balshankar	268.55
7.	Bhagwan Dubaji Wani and Shyamrao Marotrao Wani	554.75
8.	Dr. Jayant Dudhe	279.50

9. Thereupon, the Deputy Conservator of Forests, Wardha informed the Tahsildar that possession of the land would be taken only after the encroachment noticed by the TILR is removed by the Revenue Department. Accordingly, the Tahsildar issued the notices to the encroachers including the petitioners and recorded their statements.

10. Thereafter the Tahsildar passed the order dated 15/06/2010, imposing a penalty of Rs.1,000/- on each of the encroacher and directed to remove the encroachment.

11. The petitioners, feeling aggrieved by the same, preferred an appeal before the Sub-Divisional Officer, who dismissed the appeal vide order dated 16/04/2013. The petitioners thereafter filed second appeal before the Additional Collector and pending the said appeal the petitioners carried out fresh measurement. It is pertinent to note that, before the measurement was carried out by the petitioners, they gave an undertaking that if the encroachment is found to be done by the petitioners on Survey No.150, the petitioners would remove the same.

12. The Additional Collector thereupon dismissed the appeal vide order dated 09/06/2015 by placing reliance on the subsequent measurement carried out by the petitioners.

13. In the above referred backdrop, after going through the record, following admitted facts emerged from the record :

- (i) The land Survey No.150 Mouza Shahalangdi, is the Zudupi Jungle owned by the Forest Department.
- (ii) The Tahsildar in pursuance to the directions of Sub Divisional Officer (SDO) to hand over the possession of land Survey No.150 to the Forest Department carried out the measurement of the said land through Taluka Inspector Land Record (TILR) and found that 12 persons including the petitioners have encroached upon the above referred land in question.
- (iii) The Tahsildar accordingly, issued notices to the above referred encroachers, for removal of encroachment and passed the order dated 15/06/2010.

14. It is the case of petitioners that since the land purchased by them is in Mouza Hinganghat and the land in question i.e. Survey No.150, Mouza: Shahalangdi are adjoining lands and since the boundaries are overlapping, the authorities below have wrongly held that the petitioners have encroached upon the land Survey No.150. The petitioners tried to establish the same by filing four maps on record.

15. However, the respondent/State is denying the fact of overlapping.

16. In the circumstances, since it is a disputed question of fact, that whether the boundaries of above referred both the Mouzas are overlapping or not, this court in writ jurisdiction cannot go into the said issue and record any finding in this regard with certainty.

17. In the circumstances, I am of the opinion that, once the Tahsildar issued notices to the petitioners, basing upon the TILR's measurement report and in absence of any challenge to the said measurement, placing reliance on the measurement done at the behest of the petitioners, by Additional Collector, while rejecting the appeal, is not proper, particularly when the Additional Collector has not recorded any reasons for discarding the report of the TILR.

18. It is important to note that, though the SDO has upheld the order of the Tahsildar passed at the first instance, the petitioners are disputing the area mentioned in the order of SDO as regards encroachment. It is the case of the petitioners therefore, that the Additional Collector ought to have upheld the order of the Tahsildar dated 15/06/2010 instead of order of SDO dated 16/04/2013, while passing the order dated 25/05/2018 on the review application.

19. I find substance in the submission of the learned counsel for the petitioners for the reasons that if there is any discrepancy in the area of encroachment shown in the orders of the Tahsildar and the SDO as alleged, the order of Tahsildar would prevail, as the measurement report was placed by the TILR before the Tahsildar and that was the basis for issuing notices to the petitioners.

20. It is not in dispute that before the Additional Collector an undertaking was given by the petitioners that if any encroachment is found after remeasurement they will remove it. However, as I have observed that the objection is raised to the area of encroachment made by respective petitioners, and shown in the order of the Sub-Divisional Officer, I am of the opinion that the area shown in the notices issued by the Tahsildar shall be considered as an area of encroachment done by the respective petitioners.

21. The learned counsel for the petitioners made certain allegations against the Additional Collector who reviewed the order dated 09/06/2015 vide order dated 25/05/2018. It is submitted that, he acted in collusion with the respondent Nos.7 and 8.

22. The aforesaid allegations are made in his personal capacity without making him party to the present petition. Hence, I am not inclined to go into such allegations. Moreover, no specific pleadings are made in that regard in the petition.

23. In light of above referred observations and the findings recorded, as there is no challenge raised to the measurement carried out by the TILR and since it is a disputed fact, whether the boundaries of Government land i.e. field Survey No.150, Mouza: Shahalangdi and boundaries of private land Survey No.299/1 and Survey No.321/1 are overlapping, I am of the opinion that no case is made out by the petitioners to exercise the discretion by this Court under Articles 226 and 227 of the Constitution of India. Accordingly, I pass the following order:

- (i) The writ petition is partly **allowed**.
- (ii) The order dated 25/05/2018 passed by Additional Collector in review application preferred by the respondent Nos. 7 and 8, is hereby modified and thereby the order of the Tahsildar dated 15/06/2010 is upheld.

Rule accordingly. No costs.

(ANIL S. KILOR, J)