

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

WRIT PETITION (WP) NO.5651 OF 2018

1. Purushottam Rupchand Ghogre,
Aged about 28 years, Occ. Cultivator,
- 2) Shuddhodhan Maroti Khandare,
Aged about 46 years, Occ. Cultivator,
- 3) Shrikrushna Harishchandra Ghogre,
Aged about 41 years, Occ. Cultivator,
- 4) Mungutrao Maroti Khandare,
Aged about 52 years, Occ. Cultivator,
- 5) Sheshrao Maroti Khandare,
Aged about 65 years, Occ. Cultivator,
- 6) Rahul Baliram Khandare,
Aged about 47 years, Occ. Cultivator,
- 7) Devidas Deoman Khandare,
Aged about 50 years, Occ. Cultivator,

All R/o Bharatpur, Tq. Balapur, Distt.
Akola.

.... Petitioner(s)

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1. Additional Collector, Akola
- 2) Naib Tahsildar, Balapur, Dist. Akola
- 3) Mandal Adhikari, Wadegaon, Tq.
Balapur, Distt. Akola.
- 4) Januji Kisan Ingle,
Aged about 68 years, Occ. Cultivator,
- 5) Sanjay Umrao Ghogre,
Aged about 38 years, Occ. Cultivator,

- 6) Datta Avdhut Athrale,
Aged about 45 years, Occ. Cultivator,
- 7) Najuk Uttam Ghogre,
Aged about 46 years, Occ. Cultivator,
- 8) Sheshrao Jaanrao Ghogre,
Aged about 70 years, Occ. Cultivator,
- 9) Narayan Dattu Ghogre,
Aged about 56 years, Occ. Cultivator,
- 10) Shridhar Dyandeo Ghogre,
Aged about 58 years, Occ. Cultivator,
- 11) Yamuna Jaanu Ingle,
Aged about 60 years, Occ. Cultivator,
- 12) Tarachand Aananda Mahalle,
Aged about 47 years, Occ. Cultivator,
- 13) Sunil Bhimrao Ghogre,
Aged about 46 years, Occ. Cultivator,
- 14) Prakash Uttam Khandare,
Aged about 52 years, Occ. Cultivator,
All Res.4 to 14 R/o. Bharatpur Near
Water Tank, Tq. Balapur, Distt. Akola.

... Respondent(s)

Shri A.S. Dhore, Advocate for the Petitioners
Ms H.N. Jaipurkar, AGP for the Respondent Nos.1 and 2/State
Shri M.R. Khan, Advocate for the respondent Nos.4 to 14

CORAM : ANIL S. KILOR, J.
DATED : 17th April 2023

ORAL JUDGMENT :

1. Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent by the parties.

3. In this petition, a direction to carry out joint measurement of the agricultural lands in question by Taluka Inspector Land Records (TILR), Balapur, issued by the Additional Collector, Akola, while exercising the powers under the Mamlatdars' Courts Act, 1906 (for short "the Act of 1906"), is under challenge, on the ground that no such powers are vested with the Additional Collector under the Act of 1906.

4. The learned counsel for the petitioners points out that the respondent Nos.4 to 14 are claiming that the pandhan road available to approach their fields through the fields of the petitioners, has been obstructed and therefore, a proceeding under Section 5 of the Act of 1906 for removal of obstruction and to measure the land, was filed before the respondent No.2.

5. It is submitted that in the inquiry conducted by the Naib Tahsildar, no obstruction was found to the approached way, in question. The Naib Tahsildar, at the same time, further observed

that the agriculturists of both the sides of the approach way, shall remove their thorny fencing and clear the way. The said order was challenged before the Additional Collector, Akola, who has maintained the same to the extent that no obstruction was found in the approach way of the respondent Nos. 4 to 14. However, the Additional Collector, directed to TILR to carry out the joint measurement.

6. Thus, the learned counsel for the petitioners submits that there is no authority to the Additional Collector while exercising the powers under the Act of 1906, to direct the TILR to carry out joint measurement of the agricultural lands in question. He therefore, submits that the impugned order is erroneous and liable to be quashed and set aside.

7. On the other hand, the learned AGP supports the order and prays for dismissal of the present petition.

8. The learned counsel for the respondent Nos. 4 to 14, submits that under Section 23 of the Act of 1906, the Appellate Authority has power to issue direction as regards carrying out joint

measurement. He therefore, submits that the present petition is meritless.

9. In the light of the rival submissions, I have perused the record and the impugned order.

10. The powers of the Mamlatdar are given under Section 5 of the Act of 1906 and the Appellate Authority under the Mamalatdar Courts have the same power while dealing with the appeal. Section 5 of the Act of 1906 does not speak about issuance of direction to carry out the joint measurement by the TILR.

11. In a dispute about joint measurement, a specific remedy is provided under the Maharashtra Land Revenue Code, 1966 (MLR Code) and therefore, the respondent Nos.4 to 14 have a remedy under the MLR Code, if they so desired. However, in any case, said powers invested under the MLR Code cannot be exercised while entertaining the application under Section 5 of the Act 1906 or appeal.

12. In the circumstances, the directions issued by the Additional Collector, Akola for carrying out joint measurement by TILR are without jurisdiction and liable to be quashed and set aside. Accordingly, I pass the following order:

- (i) The writ petition is **allowed**.
- (ii) The order dated 03.03.2018 passed by the Additional Collector, Akola to the extent of clause (3), is hereby quashed and set aside.
- (ii) Liberty is granted to the respondent Nos.4 to 14 to avail a remedy as available under the law for getting their lands measured through TILR, if they so desired.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]