

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4963 OF 2023



Shriram Mandir, Vaijapur,
Through Archak/Inamdar,
Jagdish Ranchhoddas Vaishnav,
Age: 60 years, Occ. Agril & Worship,
R/o:- Pardeshi Galli, Near Savitribai Phule School,
Vaijapur, Tq. Vaijapur. Dist. Aurangabad,
Through General Power of Attorney Holder,
Nilesh Jagdish Vaishnav,
Age-35 years, Occ - Advocate,
R/o:- Pardeshi Galli, Near Savitribai Phule School,
Vaijapur, Tq. Vaijapur. Dist. Aurangabad

..Petitioner

VERSUS

1. The Additional Collector Aurangabad,
Collector Office Aurangabad.
2. The Sub- Divisional Officer, Vaijapur (Atiyat)
Sub-Divisonal Office, Vaijapur, Dist. Aurangabad.

(Copy to be served on Government
Pleader, High Court of Judicature
of Bombay, Bench At Aurangabad)

3. Rangnath Eknath Jagtap
Age:-58 years Occ :- Agril,
R/o. At Post - Bhaggon
Tq. Vaijapur Aurangabad.
4. Sandip Murlidhar Chandane
Age / - 42 years Occ :- Agril,
R/o. At Post - Hingoni, Tq. Vaijapur,
Dist. Aurangabad,
C/o Yaswant Colony, Depo Road,
Vaijapur, Tq. Vaijapur Aurangabad.

..Respondents

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Advocate for the Petitioner : Mr. Kale Yogesh D
AGP for Respondents/State : Mr. S.N. Kendre
Advocate for Respondent Nos.3 & 4 : Mr. V.H. Pathade

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CORAM : S.G. MEHARE, J.

DATED : MAY 06, 2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. A small issue is, can the impugned order be stayed if it is executed. Learned counsel for the petitioner submits that the Collector passed the impugned order dated 17.04.2023 staying the order of Sub-Divisional Officer and Deputy Collector dated 06.12.2022. Learned counsel for the petitioner further submits that the order of the Sub-Divisional Officer dated 06.12.2022 was already executed and the possession was handed over to him. These facts were brought to the notice of the Collector, but he did not consider it and stayed the order which was already executed.

3. Learned counsel for the contesting respondent nos.3 and 4 submits that they have an apprehension of creating a third party interest in the property. It appears that the Collector has incorrectly stayed the order of the Sub-Divisional Officer dated 06.12.2022 which was executed. Therefore, the order granting stay dated 17.04.2023 is no order in the eye of law. It deserves to be quashed and set aside. However, respondents have an apprehension of creating a third party

interest, remedy is available to them to apply separately before the Collector.

4. In view of the above, the writ petition is allowed. The impugned order of the Collector dated 17.04.2023 is quashed and set aside.

5. Respondent nos.3 and 4 have liberty to move an application for injunction about creating a third party interest, if any, before the Collector.

6. Rule is made absolute in above terms. No order as to costs.

(S.G. MEHARE, J.)