

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

WRIT PETITION NO.1046 OF 2024

1. Smt. Rekhaben Kantilal Bhandari
Wife of Milan Patel
Age:35 years,
Occupation: agriculture
2. Smt. Chanchalben Dilipbhai
Aged about : 58 Years,
Occupation: Agriculturist
3. Smit Rashmi d/o Dilipbhai
w/o Vipul Bhandi,
Aged about 43 years,
Occupation Agriculturist
4. Smt Yogisha d/o Dilip Bhandari,
w/o Dharmesh Bhandari
Aged about : 40 Years,
Occupation : Agriculturist
5. Smt Tejal w/o Viral,
d/o Dilip Bhandari,
Aged about : 38 Years,
Occupation: Agriculturist,
6. Smt Jigisha Dilp
w/o Dharmesh Bhandari
Aged about : 32 Years,
Occupation : Agriculturist
7. Smt Sapana Jainish Bhandari,
d/o Dilip Bhandari.
Aged about: 28 Years,
Occupation : Agriculturist

8. Shri Jigar Dilipbhai Bhandari
Aged about: 20 Years,
Occupation: Agriculturist
9. Smt Radhaben Kantilal Bhandari
Aged about : 65 Years,
Occupation: Agriculturist
10. Smt. Asmita w/o Dilipbhai Patel,
Aged about : 45 Years,
Occupation: Agriculturist
11. Smt Kalpanaben w/o Sunil Patel
Aged about : 42 Years,
Occupation: Agriculturist
12. Smt Nita Hiren Thakor,
Aged about: 40 Years,
Occupation : Agriculturist
13. Smt Nisha w/o Pinal Patel,
Aged about: 35 Years,
Occupation : Agriculturist
14. Smt Bhumika Vimal Bhandari,
Aged about : 32 Years,
Occupation: agriculturist
15. Smt Kaushika d/o Dilip
w/o Dharmesh Bhandari,
Aged about: 45 Years,
Occupation: Agriculturist

All residing at, School Faliya,
Khardpada, Silvassa,
Dadra and Nagar Haveli.

... Petitioners

Versus

1. The Mamlatdar,
Silvassa,
Dadra and Nagar Haveli
Pincode-396230
2. The Resident Deputy Collector,
Silvassa,
Dadra and Nagar Haveli
Pincode-396230
3. The Survey and Settlement Officers
Silvassa,
Dadra and Nagar Haveli
Pincode-396230

... Respondents

Mr. Hardik Joshi for the Petitioners.

Mr. Hiten Venegoankar a/w. Mr. Ayush Kedia for the Respondents.

**CORAM : G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.**

DATE : 23rd JANUARY 2024.

Oral Judgement (Per Firdosh P. Pooniwalla J.):

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.
2. Present Petition is filed under Article 226 of the Constitution of India seeking the following final reliefs:-

"a) This Hon'ble Court by issue an appropriate writ, direction or order be pleased to quash and set aside order dated 28.11.2023 passed by Ld. Resident Deputy Collector, Silvassa;

b) This Hon'ble Court be pleased to issue an appropriate writ, direction or order under Article 226 of the Constitution of India, directing Respondent No.1 Ld. Mamlatdar, Silvassa, DNH, and Respondent no.3, the Survey and Settlement Officer, Silvassa being the appropriate authority to carry out spot survey and measurement in presence of the Petitioner, Family members and all necessary parties and provide certified map of such survey to the Petitioner in respect land bearing survey no. 384/1p1 situated at situated at Village Kharadpada, D & NH.;

3. The Petitioners are the owners of land bearing Survey No.384/1p1 admeasuring around 30 Ares, situated at Village Kharadpada, Dadra and Nagar Haveli ("the said land") and the names of the Petitioners are reflected in the Revenue Records in respect of the said land. The original occupancy rights in respect of the said land were granted in favour of one Vajiyaben Vallabhbhai Bhandari by Order dated 18th October 1976 passed by the Land Reform Officer, Dadra and Nagar Haveli. The Petitioners are lineal descendants of Vajiyaben Vallabhbhai Bhandari.

4. It is the case of the Petitioners that a part of the said land has been encroached upon and therefore there is a dispute regarding the boundary of the said land. In order to crystallise the boundary of the said land, the Petitioners filed an Application dated 11th January 2021, for carrying out spot survey and for demarcating the boundary of the said land. The said Application was made to the Survey Settlement Department, Silvassa. The Petitioners also paid the necessary charges for carrying out the spot survey of the said land.

5. Thereafter, since sport survey of the said land was not carried out, the Petitioners addressed a letter dated 20th January 2022 to the revenue

officials of Silvassa for carrying out the spot survey of the said land.

6. Thereafter, Respondent No.3 issued a Notice dated 28th January 2022 to the Petitioners and encroachers of the said land stating that the survey would be carried out on 2nd February 2022, at 10.30 a.m.

7. It is the case of the Petitioners that the encroachers did not allow the Revenue Officials to carry out the spot survey as mentioned in the Notice dated 28th January 2022.

8. Thereafter, Respondent No.3 issued a notice dated 14th March 2022 stating that the next survey was scheduled on 23rd March 2022, at 10.30 a.m., as the previous survey could not be carried out due to non co-operation by the parties.

9. On 23rd March 2022, the Revenue Officers visited the site but the encroachers resisted the survey. It is also the case of the Petitioners that the Revenue Officers were hand in glove with the encroachers who were none other than a superior authority working in the Revenue Department.

10. The Petitioners then approached the Administrator, Dadra and Nagar Haveli, for the purposes of carrying out spot survey of the said land. It is the case of the Petitioners that, upon the strict and categoric directions of the Administrator, the survey officers were directed to carry out the survey without any further delay.

11. It is the case of the Petitioners that the survey officers carried out survey on 18th January 2023 but did not follow the due procedure for carrying out the survey of the said land. Further, even after carrying out the so called survey of the said land, the survey department has till date not provided any map of the said land.

12. The Petitioners appraised the Collector, Silvassa, about the same and to the surprise of the Petitioners, Respondent No.2, by an Order dated 28th November 2023, disposed of the Application dated 11th January 2023 made by the Petitioners without recording any justifiable reasons except stating that Civil Suits had been filed claiming rights over the said land.

13. Aggrieved by the actions of the Respondents, the Petitioner has filed the present Petition seeking the final reliefs set out herein above.

14. In our view, since, the Petitioners had made an Application for carrying out a spot survey of the said land, measurement of the said land and also for furnishing a certified map of such survey, the Petitioners cannot be refused the same merely on the ground that Civil Suits have been filed claiming rights over the said land. Filing of the Civil Suits in respect of the said land does not bar the Respondents from carrying out a spot survey of the said land or from measuring the same or from preparing a survey map of the said land. In our view, Respondent No.3 is required to carry out the said spot survey, measure the said land and provide to the Petitioners a survey map of the said land.

15. For the aforesaid reasons, we hereby pass the following Orders:-
- a. Order dated 28th November 2023 is hereby quashed and set aside.
 - b. Respondent No.3 is directed to carry out a spot survey of the land bearing survey No. 384/1p1 situated at Village Kharadpada, Dadra and Nagar Haveli, in the presence of the Petitioners and all the necessary parties, after giving prior notice to them, to measure the said land and to provide to the Petitioner a survey map of the said land. The officer in charge of the concerned police station is directed to provide such police protection as is required by Respondent No.3 for carrying out the said spot survey and measurement of the said land.
 - b.1 The inspection is permitted to be videographed, which be undertaken by the concerned officer at the cost of the Petitioner and be completed within four weeks from the date the order is presented before the concerned authority.
 - c. Rule is made absolute in the aforesaid terms.
 - d. There shall be no order as to costs.

(FIRDOSH P. POONTIWALLA, J.)

(G. S. KULKARNI, J.)