



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.7127 OF 2025**

Prakash Vitthal Kale

Deceased through his Legal Representatives

1. Smt. Ashalata Prakash Kale
Age :- 73 years, Occu. Agriculturist,
R/o. 244, Bhawani Peth, Jalgaon,
Taluka and Dist,. Jalgaon.
2. Rajnikant Prakash Kale
Age :- 57 years, Occu. Agriculturist,
R/o. 244, Bhawani Peth, Jalgaon,
Taluka and Dist,. Jalgaon.
3. Sangita Ganesh Phirke
Age :- 54 years, Occu. Business,
R/o. 13, Nityanand Nagar,
Mohadi Road, Jalgaon,
Taluka and Dist,. Jalgaon.
4. Chandrashekhar Prakash Kale
Age :- 52 years, Occu. Agriculturist,
R/o. 244, Bhawani Peth, Jalgaon,
Taluka and Dist,. Jalgaon.
5. Yuvraj Prakash Kale
Age :- 49 years, Occu. Agriculturist,
R/o. 244, Bhawani Peth, Jalgaon,
Taluka and Dist,. Jalgaon.

..Petitioner
(Orig.Defendant/Judgment
Debtor)

Versus

1. Maharashtra Pulse Mills, Jalgaon
A Registered Partnership Firm
Through its Partner
Ashwin Hansraj Shah
Age :- 65 years, Occu. Business
R/o. 68-A, Kalash, Shivram Nagar,
M.J. College Road, Jalgaon,
Taluka and Dist. Jalgaon.

[Note :- Respondent No. 1 is adequately represented through only
one partner, hence other partners are not made party
herein]

2. Sunil Vitthal Patil

Age : 56 years, Occu. Business
R/o. 18, Vidyut Colony, Jalgaon,
Taluka and Dist,. Jalgaon.

3. Sultan Babmiya Patel

Age : 58 years, Occu. Business
R/o. 49, Aqusa Nagar, Mehrun,
Jalgaon, Taluka and Dist,. Jalgaon.

4. Shaligram Raghunath Kale

Age : 51 years, Occu. Business
R/o. At Post- Asoda, Jalgaon
Taluka and Dist,. Jalgaon.

5. Ramesh Ramdas Narkhede

Age : 73 years, Occu. Business
R/o. 4, Yashwant Colony, Ring Road,
Jalgaon, Taluka and Dist. Jalgaon.

..Respondents

(No. 1 Orig. Plaintiff/Decree
Holder, Nos. 2 to 5-Subsequent
Purchasers)

...

Mr. Girish S. Rane, Advocate for Petitioners.

Mr. V. B. Patil, Advocate for Respondent No1.

...

CORAM : S. G. CHAPALGAONKAR, J.
DATED : 27th JUNE, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of the parties, matter is taken up for final hearing at admission stage.

2. The present Writ Petition takes exception to order dated 18.02.2025 passed below Exhibits-243 and 248 in Regular Darkhast No.152/2012 pending before 5th Joint Civil Judge, Junior Division, Jalgaon.

3. The petition comes with chequered history. Suffice to state that decree dated 30.07.1977 for specific performance of contract, which was confirmed by this Court vide judgment and order dated 23.06.1982, has been put to execution in Special Darkhast No. 2/1978. However, till this date could not be culminated in final decree. This litigation is classic example as to how litigant can drag execution of decree from stage of preliminary decree to final decree in suit for specific performance of contract.

4. Brief facts giving rise to present Writ Petition are as under:

The respondent no.1 instituted Special Civil Suit No.4/1975 seeking decree of specific performance of contract. On 30.07.1977, Civil Judge Junior Division, Jalgaon decreed suit. The decree was put to execution in Special Darkhast No.2/1978 (later numbered as Regular Darkhast No.152/2012). As per stipulations in decree, it was necessary to seek N.A. permission. However, N.A. permission was rejected by Collector giving reasons that suit property is earmarked for service industry. The Pulse industry for which N.A. permission is sought does not fit in service industry. Eventually, petitioner/JD filed application at Exhibit-37 to dispose execution proceeding as decree become non-executable. The Trial Court dismissed application and allowed respondent no.1 to seek N.A. permission for residential purpose. The said order was

unsuccessfully challenged in CRA No.685/1985 before this Court and then in Special Leave to Appeal No.13559/1986 before Supreme Court of India. Ultimately in year 1986, Court Commissioner was appointed for obtaining N.A. permission for residential purpose. On 18.06.1991 Collector granted N.A. permission. Even litigation against such order was unsuccessfully dragged before Appellate and Revisional Authorities under Maharashtra Land Revenue Code and finally set at rest by this Court. Thereafter, in the year 1994 due to change in composition of partnership of DH firm, execution proceeding was dismissed observing that respondent no.1 has no *locus standi* to continue. However, said order was set aside by this Court and execution proceeding was restored vide order dated 19.06.2003 passed in CRA No.389/1994.

On 13.01.2014, decree holder filed application below Exhibit-179 seeking permission to deposit amount of Rs.42,000/- in the Court towards balance consideration amount as per decree as N.A. permission was granted and there was no impediment in execution of sale deed. The said application was allowed. However, petitioner carried this order upto Supreme Court and finally vide order dated 19.07.2021 passed in Special Leave to Appeal No.5465/2021 Hon'ble Supreme Court directed respondent-decree holder to deposit amount of Rs.1 crore and give quietus to the

litigation. Accordingly, respondent-decree holder deposited amount of Rs.1 crore.

On 05.07.2024, respondent-decree holder filed an application below Exhibit-243 seeking appointment of Court Commissioner for making compliance of requirements of Municipal Corporation for obtaining revised N.A. permission for residential purpose. Similarly, filed one more application below Exhibit-248 seeking direction to Court Commissioner to execute sale deed and hand over possession free from all encumbrances, so also fix remuneration of Commissioner. The petitioner / JD opposed both applications by filing reply. The learned Executing Court allowed both applications filed below Exhibits-243 and 248 vide impugned order dated 18.02.2025 and directed appointment of Shri. S. Y. Joshi as Court Commissioner for the purpose of taking necessary steps for obtaining N.A. permission for residential use and getting measurement carried from Competent Authority for fixation of boundaries so also deliver possession in favour of decree holder free from all encumbrances.

5. Mr. Rane, learned Advocate appearing for petitioners, after taking this Court through history of litigation, invites attention to clauses of agreement to sale dated 17.01.1972 and endeavours to contend that sell of suit property (Agriculture land) was intended for raising Dal Mill, with further stipulation that in case

permission for non-agricultural use is refused, on refund of earnest money of Rs.11,000/-, agreement would be treated as canceled. He would urge that Executing Court, while executing decree, cannot transgress beyond intention of parties as discernible from contents of agreement. According to him, direction to Court Commissioner to take necessary steps for obtaining N.A. permission for residential use or further direction for carrying measurement, fixation of boundaries and delivery of possession free from all encumbrances is beyond scope of decree. Mr. Rane submits that in light of Rules 6 and 7 of Order XX of Code of Civil Procedure, decree shall agree with the judgment and operative order shall be in consonance with reasoning and conclusion arrived at by Court while answering issues framed. According to him, once N.A. permission for Pulse Mill was refused, contract stood rescinded in light of terms of agreement and different interpretation cannot be adopted by Executing Court, thereby incorporating terms, which were never agreed between parties. According to Mr. Rane, impugned orders cannot be countenanced for the reasons that Executing Court traveled beyond decree without appreciating essence of operative order. According to Mr. Rane, aforesaid issues were left open for consideration of Executing Court by this Court while disposing CRA No.389/1994 vide order dated 19.06.2003. In this background, he placed his reliance on observations of Supreme

Court of India in case of ***Topanmal Chhotamal Vs. Kundomal Gangaram***¹, which reads thus:

“It is a well-settled principle that a Court executing a decree cannot go behind the decree: it must take the decree as it stands, for the decree is binding and conclusive between the parties to the suit.”

6. Mr. Rane further relies upon observations of Supreme Court in case of ***Meenakshi Saxena and Anr. Vs. ECGC Limited***², which reads as under:

“The whole purpose of execution proceeding is to enforce the verdict of the court. Executing court while executing the decree is only concerned with the execution part of it but nothing else. The court has to take the judgment in its face value. It is settled law that executing court cannot go beyond the decree. But the difficulty arises when there is ambiguity in the decree with regard to the material aspects. Then it becomes the bounden duty of the court to interpret the decree in the process of giving a true effect to the decree. At that juncture the executing court has to be very cautious in supplementing its interpretation and conscious of the fact that it cannot draw a new decree. The executing court shall strike a fine balance between the two while exercising this jurisdiction in the process of giving effect to the decree.”

7. Mr. Rane would, therefore, submit that impugned orders are in the nature of supplementing or re-writing decree.

8. Per contra, Mr. Vijay Patil, learned Advocate appearing for respondent no.1 relying upon affidavit-in-reply submits that Commissioner appointed under impugned order has almost done his job. The measurement report dated 13.05.2025 is submitted by

Land Record Office. Even learned Tahsildar, vide order dated

¹ AIR 1960 SC 388.

² AIR 2018 SC 2831.

09.06.2025, granted Sanad. According to Mr Patil, execution of decree has reached last stage after facing turbulences of litigation for almost 47 years. According to Mr. Patil, present petition is filed after four months after impugned order hence suffers from delay and laches. Any interference at this stage would frustrate ends of justice. He would, therefore, urge to dismiss petition with exemplary costs.

9. Having considered submissions advanced by learned Advocates appearing for respective parties and on perusal of record tendered before this court, it can be observed that on 30.07.1977 respondents suit has been decreed for specific performance of contract in following terms:

“It is hereby ordered that the defendant Prakash Vitthald Kale do obtain N.A. Permission from the concerned authority within a period of two months and execute the sale deed of the suit land in the favour of the Plaintiff on the receipt of Rs.42,000/- from the plaintiff. If the defendant failed to do so, such N.A. permission will be obtained through court and the sale deed executed on behalf of the defendant through court in the favour of the plaintiff on his depositing Rs.42,000/- in the court. On the execution of the sale deed the plaintiff shall be entitled to possession of the suit land. The expense for getting N.A. permission and registration of the sale deed are to be borned by plaintiff. The costs of this suit shall be borned by the defendant with his own. Decree be drawn up accordingly.”

10. In pursuance to execution of aforesaid decree, an application was moved for N.A. permission, which was rejected by Collector, Jalgaon giving reason that suit land is reserved for service industry

and intended use for Pulse Mill is not in that class. This lead DH to file an application Under Sections 47 and 144 of Code of Civil Procedure vide Exhibit-37 in Special Darkhast No.2/1978. Learned Trial judge rejected said application observing that there is no prohibition in decree to use suit land, except for Dal Mill, therefore, it can be used even for residential, commercial or other non-agricultural purposes. It is further observed that judgment debtor has no right to obstruct execution of decree only because N.A. permission for Dal Mill was refused and plaintiff was held entitle to move Competent Authority for NA permission for residential or other purposes. The said order though assailed, is confirmed by this Court in CRA No.648/1985 vide order dated 05.08.1986 observing thus

“It is not possible to accept this contentions. The decretal command is clear and categorical. It does not restrict the use of the suit land for dal mill purpose. It grants specific performance subject to once conditions viz. Collector’s permission for non-agricultural use, without restricting that use only for dal mill purpose.”

11. Similarly, when petitioner had assailed N.A. permission for residential use and carried litigation upto this Court in Writ Petition No.627/1994, this Court made following observations in paragraph no.9 of order, which reads thus:

“The present petitioner entered into agreement for purpose of suit land in the year 1972. There is order passed in his favour in the year 1977, whereby, respondent No.1 has been directed to execute Sale deed after obtaining N.A. permission, and if he falls, then this is to be done by the

court, through commissioner. The objections taken up Respondent No.1 Prakash before the executing Court were strange and were absolutely unacceptable that the land could have been used only for the purpose of Dal Mill and for no other purpose.”

12. Although Mr. Rane seeks to rely on observations recorded by this Court in CRA No.389/1994, particularly in paragraph no.8 of order dated 19.06.2003, to contend that issue as to validity of N.A. permission for residential purpose as against condition of agreement to use suit land for Dal Mill was kept open, on careful reading of order, it can be observed that mere submission of learned Advocates on this issue have been recorded and parties were left open to agitate before Executing Court, if such issue is already considered and decided or it is open to be raised by judgment debtor during further progress of the execution proceeding. However, as indicated in aforesaid paragraphs, it is clear that such an issue was already set at rest by previous order passed by this Court in Writ Petition No.627/1994.

13. Now turning back to the impugned order, it can be observed that Executing Court has appointed Court Commissioner to comply requirements of Corporation towards non-agricultural use of land, execute sale deed after fixing boundaries and hand over possession free from all encumbrances to DH. Although Mr. Rane submits that directions of Executing Court transgressed beyond decree such submissions cannot be countenanced as decree under execution is

for specific performance of contract in respect of open agricultural land. The defendant was put under obligation to hand over possession of suit land for non-agricultural use. At this stage, reference can be given to Rule 35(3) of Order XXI which reads as under :-

“35 (3). Where Possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.”

It is nobody's case that suit land was having construction or encumbrances at the time of passing decree. However, if defendant has raised any construction after passing of decree or created encumbrances, it is not beyond jurisdiction of Executing Court to issue direction to remove such obstacle and ensure delivery of possession free from all encumbrances.

14. Supreme Court of India adopted broader interpretation of Rule in case of ***B. Gangadhar Vs. B. G. Rajalingam***³, wherein in paragraph nos.6 and 7 following observations are made:-

“6. Rule 35(3) of Order 21 itself manifests that when a decree for possession of immovable property was granted and delivery of possession was directed to be done, the Court executing the decree is entitled to pass such incidental, ancillary or necessary orders for effective enforcement of the decree for possession. That power also includes the power to remove any obstruction or

³ AIR 1996 SC 780.

superstructure made pendente lite. The exercise of incidental, ancillary or inherent power is consequential to deliver possession of the property in execution of the decree. No doubt, the decree does not contain a mandatory injunction for demolition. But when the decree for possession had become final and the judgment debtor or a person interested or claiming right through the judgment-debtor has taken law in his hands and made any construction of the property pending suit, the decree-holder is not bound by any such construction. The relief of mandatory injunction, therefore, is consequential to or necessary for effectuation of the decree for possession. It is not necessary to file a separate suit when the construction was made pending suit without permission of the court. Otherwise, the decree becomes in-executable driving the plaintiff again for another round of litigation which the Code expressly prohibits such multiplicity of proceedings.

7. It is also not necessary that the tenant should be made party to the suit when the construction was made pending suit and the tenants were inducted into possession without leave of the Court. It is settled law that a tenant who claims title, right or interest in the property through the judgment debtor or under the colour of interest through him, he is bound by the decree and that, therefore, the tenant need not be impleaded as a party defendant to the suit nor it be an impediment to remove obstruction put up by them to deliver possession to the decree. What is relevant is only a warning by the bailiff to deliver peaceful possession and if they cause obstruction, the bailiff is entitled to remove the obstruction; cause the construction demolished and deliver vacant possession to the decree holder in terms of the decree. Thus considered, we hold that the High Court and the executing Court have not committed any error of law in directing demolition of shops and delivery of the possession to the decree-holder."

15. In that view of the matter, impugned order appears to be passed within parameters of jurisdiction of Executing Court. In fact it was obligation of Executing court to see that plaintiff/Decree Holder get fruits of decree and exercise all incidental and ancillary

inherent power to give effect to decree. Hence, Writ Petition sans merit and stands dismissed.

16. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/June-2025