



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7659 OF 2025

Hindustan Petroleum Corporation Ltd.
Through it's Dy. General Manager
age 54 years, Occ. Service,
C/o. Its Regional Office, G-39,
at Town Centre, Cidco, Ch. Sambhajinagar
(Aurangabad) Petitioner.

VERSUS

Nandkumar Alias Laxman Sahadu Borude,
age 36 yrs, Occ. Agri.
R/o Padegaon Road, Tq. Shrigonda,
District Ahmednagar. Respondent.

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Advocate for Petitioner : Smt. Anjali Dube
Advocate for Respondent: Mr.A.D.Sonkawade h/f Mr.R.H.
Mewara

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : July 16, 2025

FINAL ORDER :-

1. Petitioner impugns the order dated 5.5.2025 passed by the learned Civil Judge, S.D., Shrigonda, below Exhibit-45 in Regular Darkhast No.43 of 2022, thereby rejecting prayer of petitioner/Judgment Debtor to exclude portion of land kept reserved for road widening as per sanctioned lay out plan of gat no.1498 while undertaking the measurement of the property for the purpose of handing over

the possession of land excess of agreement to holder of decree and for ensuring that judgment debtor would remain in possession of 929.6 square meter of land.

2. Facts giving rise to the present writ petition, can be summarized as under :-

The petitioner/Petroleum Corporation entered into a lease agreement dated 20.10.2004 with Respondent in respect of land admeasuring 929.6 square meters from gat no.1498 situated at Shrigonda to Ahmednagar road for the period of 29 years. Petitioner was put into possession of 929.6 square meters of land and in addition 505.55 sq. meters as per offer of respondent for additional lease. However, additional lease could not be executed.

3. Respondent instituted a Regular Civil Suit No.76 of 2012 before the Civil Judge J.D. Shrigonda for recovery of suit land. On 27.11.2020 the learned Civil Judge J.D., Shrigonda partly decreed the suit and directed petitioner to hand over possession of additional area as per measurement map Exhibit-150. The decree as passed by Trial Court attained finality in view of dismissal of petitioner's second appeal by this Court vide judgment and order dated 28.2.2023.

4. Respondent/plaintiff filed Regular Darkhast No.43 of 2022 for execution of the decree. He filed an application Exhibit-36 for issuing possession warrant and application Exh.38 for appointing Court Commissioner for measurement of the land as per map, which is part of the decree. Executing Court allowed both the applications and appointed Executing Officer/Bailiff and Court Commissioner for execution of decree and handing over possession of excess area as per map Exhibit-150, which is made part of the decree.

5. The petitioner/J.D. filed application below Exhibit 45 seeking direction that while maintaining possession of petitioner over 929.6 square meter of lease portion, land reserved for expansion of road shall be excluded and land from northern side be maintained in possession of petitioner. The learned Executing Court rejected said application observing that decree is passed on the basis of measurement map at Exhibit 150, wherein excess portion in possession of petitioner has been defined. Therefore, directions to exclude space reserved in sanctioned lay out plan for widening of the road would be introduction of new case or would be substantial

modification of the decree. Executing Court cannot go beyond the decree and, as such, application cannot be entertained.

6. Smt. Dube, learned advocate appearing for petitioner vehemently submits that at the time of execution of lease, no objection certificate was obtained from District Collector, Ahmednagar, wherein specific term is incorporated that no structures should be erected between control line i.e. 50.00 meters from the center line of the road. Even Shrigonda Municipal Council had issued no objection to execute the lease agreement after leaving 50 meters distance from center of the road. She would submit that lease agreement was executed on the basis of aforesaid no objections and offer letter given by the respondent. Accordingly, petitioner was put into possession. Smt. Dube would further point out that decree passed by the Civil Court upholds entitlement of petitioner to continue into possession of the 929.6 sq. meters of land on the basis of lease agreement. The decree of possession is passed only in respect of the Additional area occupied by petitioner. Therefore, it would be necessary to maintain the area in possession of petitioner keeping in mind lay out plan and center of the road. According to Smt. Dube, petitioner has apprehension that

while executing the decree, aforesaid factors may not be taken into account, thereby practically reducing area possessed by petitioner below 929.6 square meters.

7. Per contra, Mr. A.D. Sonkawade h/f Mr. Mewara, learned advocate appearing for respondent submits that similar objection was raised in appeal against decree and after considering the same, this Court observed that the map exhibit 150 which is part of the decree shall govern rights of the parties. Petitioner cannot seek protection of possession beyond 929.6 square meters as earmarked in the suit map. In support of his submissions, he relies upon observations of the Supreme Court of India in case of **Kanwar Singh Saini Vs. High Court of Delhi reported in (2012) 4 Supreme Court Cases 307** and contend that Executing Court does not have power to go beyond the decree and once decree has attained finality, no objection can be raised to the execution in tune with the decree.

8. Having considered submissions advanced, it can be observed that petitioner is held entitled to remain in possession of land to the extent of 929.06 square meters from gat no.1498 in terms of lease agreement. The decree is passed

in favour of respondent to repossess excess area occupied by the petitioner from gat no.1498. The decree passed in R.C.S. No.76 of 2012 shows that map at Exhibit 150 is to be treated as part of the decree and decree is to be executed in terms of the said map.

9. The respondent filed Regular Darkhast No.43 of 2022 for execution of the decree and filed application below Exhibit 36 and 38 for appointing Court Commissioner as Officer of the Court for execution of the decree. The learned Executing Court allowed the said application and issued possession warrant under Order XXI Rule 35 of the Civil Procedure Code to handover the possession of land excess of agreement, to the holder of decree, as specified in measurement map annexed to the decree. Executing Officer/Bailiff is directed to take all necessary steps for putting the decree holder in possession of the land excess of agreement, as referred in the measurement map annexed with the decree. The Deputy Superintendent of Land Record, Shrigonda is appointed as a Court Commissioner to assist the executing officer/bailiff for execution of possession warrant and also for undertaking measurement. It is further specified

that Executing Officer and Court Commissioner shall ensure that J.D. would remain in possession of 929.6 square meters land as per the original lease agreement.

10. In this background, it is apparent that application is filed under apprehension that while determining the area of 929.6 square meters, reservation of land from center of the road would be ignored and petitioner may be continued in possession of 929.6 sq. meters of land, which may be affected by road widening as per reservation of lay out plan. The submissions advanced appears to be hypothetical in nature. The petitioner is in possession of land as per lease agreement dated 20.10.2004. In addition, petitioner had possessed the land approximately 505.55 square meters, for which there was no agreement. Respondent raised claim for possession of entire land occupied by petitioner. The map exhibit-150, which is made part of the decree, specifies lease area and additional area in possession of the petitioner.

11. It appears that trial Court recorded specific finding relying upon map Exhibit 150 that petitioner was found in possession of additional area over and above lease agreement. Nothing is brought on record to show contents of the map were

disputed by petitioner during course of the trial. Witness of defendant admitted possession of additional area. In that view of the matter, decree will have to be executed on the basis of the map at Exhibit 150. Petitioner's entitlement would be to remain in possession of 929.6 square meters area as specified in the map. As rightly pointed out by Mr. Sonkawade, the Executing Court cannot go behind decree or delete or supplement any part of decree or introduce any modification. Therefore, Court Commissioner and Executing Officer executing the decree will have to bear in mind the map Exhibit 150 while carving out additional area in possession of petitioner and put decree holder in possession of that part so also maintaining area to the extent of 929.6 square meters in possession of the petitioner. The Executing Officer or Court Commissioner will have to take into account position of the land as on the date of execution of lease agreement and accordingly, ensure that petitioner remains in possession of 929.6 square meters of land and hand over additional area in favour of the decree holder.

12. In that view of the matter, the impugned order passed by Trial Court cannot be faulted with. In the result, writ petition stands **dismissed**.

(S. G. CHAPALGAONKAR)
Judge

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