



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

WRIT PETITION NO.8564 OF 2025

Isharat Imam Shaikh
Age: 56 years, Occu: Household
R/o. Aman Colony
Darga Dahira Road, Mukundnagar,
Tq. & Dist. Ahilyanagar

.....PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary
Department of Revenue and Forest
Mantralaya, Mumbai-32.

2. The Additional Divisional Commissioner
Nashik Division, Nashik

3. The Collector Ahilyanagar
Tq. & Dist. Ahilyanagar

4. Sub-Divisional Officer
Nagar Division, Ahilyanagar

5. M/s. Luniya Munot Company
Through Rasiklal Zumbarlal Luniya
Age: 57 years, Occu: Business
R/o. 101, Rahul Apartment
Burudgaon Road, Ahilyanagar
Tq. & Dist. Ahilyanagar

.....RESPONDENTS

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Mr. N. B. Khandare Senior Advocate i/by Mr. V. S. Kadam, Advocate
for petitioner

Mr. K. B. Jadhavar, AGP for respondents-State

Mr. A. P. Bhandari, Advocate for respondent No.5

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CORAM : S. G. CHAPALGAONKAR, J.

DATE 15.07.2025

ORDER :-

1. The present writ petition is filed with following prayer:

“To quash and set aside impugned order dated 07.07.2025

passed by respondent No.2 in RTS Appeal No.475/2025, thereby confirming order passed by respondent No.3 dated 07.05.2025 in Darkhast/195/2025 and allow RTS Appeal No.475/2025 filed by petitioner.”

2. In nutshell, the facts leading to this petition are summarized as under.

3. One Mahboob bhai was owner of several lands, including land Survey No. 46/2 situated at Chourana Bk, Tq. & Dist. Ahmednagar. He died leaving behind wife Mamulbee and daughter Chotibee. In Civil Suit No.13 of 1956 filed by Chotibee against her mother Mamulbee, decree dated 30.09.1957 came to be passed for partition and separate possession. Decree of Trial Court was challenged before this Court in First Appeal, filed by purchasers of land. This Court directed equitable partition of property purchased by defendant Nos.7 and 8. It appears that during pendency of suit itself, plaintiff No.1 and defendant No.1 acknowledged that they sold property in favour of defendant Nos.3 and 4 and sought deletion of their names from suit. Eventually, their names were deleted from title and their holding in survey No.46/2 was excluded from suit. However, by inadvertence of Trial Court, it was included in decree of partition. This Court in Appeal, filed by purchasers, clarified aforesaid position. Decree passed by Appellate Court has attained finality.

4. Decree as passed was put to execution in Regular Darkhast No.57 of 1957. A precept was issued under section 54 of Civil Procedure Code to Collector for execution of decree. Learned District Collector prepared chart for delivery of possession of portions of suit lands, including survey No.46/2. Respondent No.5, who is purchaser of 1122.65 sq. mtr., land, from Survey No. 46/2 and challenged inclusion of Survey No.46/2 in chart of execution prepared by learned Collector by filing Writ Petition No.13928 of 2019 before this Court. The writ petition was dismissed by this Court. Aggrieved respondent No.5 then filed SLP (Civil) No. 2778 of 2024 before Hon'ble Supreme Court. Hon'ble Supreme Court allowed Appeal filed by respondent No.5 with following observations:

“As stated, the issue is rather simple, which is pertaining to the correct understanding of the judgment and decree of the First Appellate Court dated 24.09.1963. An admission made by a party is the best form of evidence. Insofar as a particular property is concerned, it becomes a fact in issue. It is the very statement made by the plaintiff No.1 and the defendant No.1 which was taken into consideration by the Trial Court in Civil Suit No. 13/1956, though the error was committed in the decree, which was rightly taken note of and corrected by the First Appellate Court. A decree has to be understood based upon the judgment. It cannot be read like a statute. We have no difficulty in appreciating the fact that the parties are trying to take advantage of the mistake committed by the Trial Court way back in the year 1956, though duly taken note of and corrected by the First Appellate Court vide the subsequent judgment dated 24.09.1963. The fact that the appellant is a subsequent purchaser is irrelevant, as we are inclined to hold that for survey No.46/2, neither the original plaintiff nor the defendant No.1 have any semblance of title.”

Accordingly, Hon'ble Supreme Court directed Collector to take appropriate steps to handover possession of Survey No. 46/2 to respondent No.5 by restoring it from plaintiff No.1 and defendant No.1, to the extent of his share.

5. In pursuance of aforesaid directions issued by Hon'ble Supreme Court, respondent No.5 filed Darkhast No.195 of 2025. Learned Collector carried measurement, prepared execution chart and issued directions for delivery of possession of plot Nos. 14 and 15 from survey No.46/2 to respondent No. 5. The aforesaid order was challenged before learned Additional Divisional Commissioner, Nashik in Appeal under Section 247 of Maharashtra Land Revenue Code, 1966. However, the Appeal has been dismissed vide impugned order dated 07.07.2025.

6. Mr. N. B. Khandare, learned Senior Advocate appearing for petitioner submits that this Court, vide order dated 07.07.2025 passed in Writ Petition No.8121 of 2025, directed Additional Divisional Commissioner, Nashik to grant at least two weeks' time to petitioner to enable him to submit written notes of argument in addition to personal hearing before taking final decision in Appeal. However, without following aforesaid directions, learned Additional Divisional Commissioner decided RTS Appeal No.475 of 2025 allegedly under pressure exerted by respondent No.5. According to Mr. Khandare, petitioner was not given proper

opportunity of hearing. The impugned order suffers from impropriety. According to him, survey No.46/2 was part of decree. Petitioner is already put into possession of 23 gunthas of land from survey No.46/2. Respondent No.5 is entitled to the share of 1122.65 sq. mtr., and unless there is identification of specific share to be allotted to respondent No.5, decree cannot be executed.

7. Mr. Khandare would further submit that although Hon'ble Supreme Court has passed order to handover possession of survey No.46/2 to respondent No. 5 by restoring it from plaintiff No.1 and defendant No.1 to the extent of his share, later on, in Misc. Application No.74 of 2025 notices have been issued by Supreme Court and matter is still under reconsideration of Hon'ble Supreme Court. He would, therefore, submit that impugned order is liable to be quashed and set aside on multiple grounds.

8. Per contra, Mr. A. P. Bhandari, learned Advocate appearing for respondent No.5 vehemently opposes prayers in writ petition. He would submit that respondent No.5 has purchased property under registered sale deed. The sale deed specifies description of plot Nos.14 and 15 out of sanctioned layout which is part of survey No.46/2. According to Mr. Bhandari, by misleading Revenue Authorities during course of execution of decree, survey No.46/2 was erroneously included in chart prepared by

Collector and possession of respondent No.5 was erroneously disturbed. Eventually, Writ Petition No.13928 of 2019 was filed before this Court and finally in SLP (Civil) No.2778 of 2024, Hon'ble Supreme Court approved right of respondent No.5 to hold possession of 1122.65 sq. mtr., land out of survey No.46/2.

9. Mr. Bhandari would, therefore, submit that execution of decree is sought to be halted raising flimsy objections. According to him, proceeding taken up before learned Divisional Commissioner in Appeal itself is not maintainable.

10. Having considered submissions advanced, it is apparent that Survey No.46/2 was excluded from decree passed in Civil Suit No.13 of 1956. Respondent No.5 is purchaser of two plot Nos.14 and 15 admeasuring 1122.65 sq. mtr. His right is approved by Hon'ble Supreme Court in order dated 03.12.2024 passed in Special Leave to Appeal (Civil) No.2778 of 2024 with specific observations that plaintiff No.1 and defendant No.1 are not having any right in property. It is further observed that although respondent No.5 is subsequent purchaser, neither original plaintiff nor defendant No.1 had any semblance of title in respect of survey No.46/2. Therefore, petitioner has no right to obstruct restoration of possession in favour of respondent No.5.

11. So far identity of property is concerned, respondent No.5 was already put into possession of property purchased by him by way of registered sale deed dated 24.08.2012. However, he was wrongly dispossessed due to mistake in chart prepared by Collector, thereby including Survey No.46/2 for execution of partition decree as suit property. As such, when Hon'ble Supreme Court has directed restoration of possession in favour of respondent No.5 by withdrawing it from plaintiff and defendant No.1, there should not be any impediment for identification of property and delivery of possession. Even on perusal of notice for delivery of possession issued by Sub-Divisional Officer, Ahmednagar, it is clear that possession of respondent No.5 would be restored on plot Nos.14 and 15 i.e., part of survey No.46/2. It is not disputed that plot Nos.14 and 15 are part of sanctioned layout from Survey No.46/2 covers specified area of 1122.65 sq. mtr. In that view of the matter, no case is made out for interference in the impugned order.

12. In result, writ petition stands **dismissed**. Respondent No.3 shall expedite execution of decree in terms of order dated 03.12.2024 passed by Hon'ble Supreme Court.

[S. G. CHAPALGAONKAR, J.]

HRJadhav