

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

WRIT PETITION NO.13973 OF 2024

Shweta Sachin Bansali & Anr.

....Petitioners

V/S

Amol Sayaji Wadekar & Ors.

....Respondents

Mr. R.D. Soni with Mr. Tushar Momaiyesh i/b M/s. Ram & Co.
for the Petitioners.

Mr. Abhijit P. Kulkarni with Mr. Abhishek Roy, Mr. Shreyas R.
Zarkar and Ms. Sweta Shah *for Respondent No.1.*

Mr. S.D. Rayrikar, AGP *for Respondent Nos.3 to 6 / State.*

Mr. Rohit Sakhadeo *for Respondent No.7-PMRDA.*

CORAM: SANDEEP V. MARNE, J.
DATE : 16 APRIL 2025.

P.C.:

1. The Petition arises out of challenge raised by the Petitioners to the order passed by the Hon'ble Minister (Revenue) on 23 August 2024 dismissing the Revision Application filed by the Petitioners and upholding the order passed by the Deputy Director of Land Records dated 26 February 2024.

2. The Deputy Director in turn had dismissed the Appeal preferred by the Petitioners and had upheld the order passed by

the District Superintendent of Land Records dated 21 April 2023. The District Superintendent, by his order dated 21 April 2023 had set aside the measurement map dated 14 August 2019.

3. It appears that on account of cancellation of the measurement map dated 14 August 2019, the Pune Metropolitan Regional Development Authority (**PMRDA**) proceeded to cancel the development permission issued in favour of the Petitioners. It appears that Petitioners have already instituted a suit challenging the order passed by the PMRDA cancelling the development permission.

4. The main reason why the first Respondent challenged measurement map dated 14 August 2019 before the District Superintendent of Land Records is belief that some portion of land remaining in his ownership pursuant to the partition deed has been encroached upon by the Petitioners. It was his grievance that measurement map dated 14 August 2019 was prepared without issuing notice to him and behind his back.

5. Since the main grievance of the first Respondent was about preparation of measurement map dated 14 August 2019 behind his back, this Court passed following order on 21 March 2025:

“1. The moot question that arises for consideration in the present Petition is whether Respondent No.1 was issued notice at the time of conduct of the impugned measurement. The

original records of the case are placed before me which do not indicate that notice in the name of Respondent No.1 was even prepared. However in the statement recorded on 4 May 2016 signature of "S.S. Wadekar" appears. While it is the contention of Mr. Soni, the learned counsel appearing for the Petitioners that he belongs to the family of Respondent No.1, it is the contention of Mr. Kulkarni, the learned counsel appearing for Respondent No.1 that he is a distant cousin of Respondent No.1 and not really concerned with the property of Respondent No.1.

2. In my view with a view to achieve better clarity it would be necessary that a fresh measurement of land bearing Gat No.245 is conducted in which the land purchased by the Petitioner as well as land remaining in the ownership of Respondent No.1 as well as other holders can be demarcated. This would be without prejudice to the rights and contentions of the parties. This Court is mindful of the fact that Respondent No.1 has initiated proceedings challenging the measurement at the belated stage. In the meantime, the development of the land by the Petitioners is now complete.

3 Mr. Rayrikar, the learned AGP appearing for Respondent Nos.3 to 6/State, on taking instructions of the Deputy Superintendent of Land Records makes a statement that a fresh measurement can be conducted within a period of two weeks. At this juncture the Respondent No.1 shall bear the costs of fresh measurement by depositing with the Respondent No.5 (Deputy Superintendent of Land Records) fees of normal measurement on or before 25 March 2025. Petitioner as well as Respondent No.1 shall remain present for conduct of measurement on 1 April 2025. The Deputy Superintendent of Land Records shall forthwith issue notice to Shri Shivaji Anandrao Wadekar and Shri Shamrao Anandrao Wadekar calling them upon to remain present for conduct of fresh measurement on 1 April 2025.

4. Let the measurement map be presented before the Court on the next date of hearing. List the Petition for further consideration high on board on **7 April 2025**.

6. In pursuance of order passed by this Court on 21 March 2025, the Deputy Superintendent of Land Records, Khed, Rajguru Nagar, Pune has conducted fresh measurements on

1 April 2025 and has prepared a fresh measurement map. There is no dispute to the position that the first Respondent was present during the course of conduct of measurements on 1 April 2025. The first Respondent is however unable to agree with the findings recorded in the measurement map prepared on 1 April 2025.

7. It appears that the first Respondent has already instituted Regular Civil Suit No.150 of 2025 in the Court of Civil Judge Junior Division, Khed, in which he has made following prayers:

“a. This honourable court may kindly be pleased to hold and declare that Sale Deed No.578/2009 dated 09/03/2009, Sale Deed No.5261/2013 dated 28/06/2013, Sale Deed No. 128/2016 dated 06/01/2016, Sale Deed No. 2086/2019 dated 23/04/2019 and Mortgage Deed No. 10630/2022 dated 05/09/2022 executed by Defendants are not binding on these plaintiffs and the property inherited by Plaintiffs under the registered Partition Deed No. 6259/2008 dated 17/09/2008 and the properties which are not a part of Sale Deed No. 6258/2008 dated 16/09/2008.

b. By appropriate injunction, this honourable court may kindly be pleased to direct the Defendants No. 6 to 12 or their agents or their subsequent purchaser, if any be perpetually restrained from causing any kind of disturbance to the long-standing peaceful position of plaintiffs over the suit property (b), be perpetually restrained from creating any third party interest in the suit property and be perpetually restrained from changing the nature of the suit property particularly 16 Aar land on the north - western corner of retained property having 95 feet frontage as shown in the map attached in Schedule - II to the plaint.

c. By appropriate orders, this honourable court may kindly be pleased to direct removal of encroachment made by Defendant No. 6 to 9 on plaintiffs' property from the northern side shown in green colour in the map annexed in the Schedule - II to the plaint.

d. Interim Injunction as prayed in 'para b' be granted.

e. Full costs of this suit be awarded from the Defendants to the Plaintiff.

f. Grant any other and further relief that this Hon'ble Court deems just and proper.”

8. Thus there is a specific prayer for removal of alleged encroachment made by the Petitioners on the property owned by the first Respondent. The first Respondent will have to ultimately prove before the Civil Court that there is encroachment on land belonging to him. Therefore in the event Petitioners rely upon measurement map dated 1 April 2025 while defending Regular Civil Suit No.150 of 2025, it would be open to the Plaintiffs therein to question correctness of the said measurement map. It is well settled position of law that the decree of the Civil Court would ultimately prevail over the findings recorded by Revenue and Survey Officers. Thus whether any encroachment is committed by the Petitioners on land belonging to the first Respondent or not would ultimately be decided by the Civil Court.

9. In the light of the fact that the first Respondent has already instituted Regular Civil Suit No.150 of 2025, in my view, nothing remains to be adjudicated in the present Petition. Parties would be at liberty to rely upon as well as question the measurement map prepared on 1 April 2025 in the said suit. Rights and entitlement of parties would ultimately be decided in the pending suit and nothing observed in any of the impugned

orders, which are challenged in the present Petition would come in the way of parties prosecuting or defending the said suit.

10. As of today even if the measurement map dated 14 August 2019 is set aside on account of orders passed by District Superintendent of Land Records, Deputy Director of Land Records and the Hon'ble Minister, fresh measurement map has been prepared after due notice to the first Respondent on 1 April 2025. It would be open to the parties to either rely upon or question correctness of the said measurement map in the pending suit.

11. With the above observations, the Petition is **disposed of**. All contentions raised by parties on merits are expressly kept open to be decided in pending suit.

(SANDEEP V. MARNE, J.)

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by
SUDARSHAN
RAJALINGAM
KATKAM
Date:
2025.04.21
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