

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3609 OF 2025

Kiran Raghunath Kale and others

Petitioners

versus

Gangabai Shiva Kale, since deceased
through Legal Heirs and others

Respondents

Mr.Umesh Iyer with Mr.Rahul Patil and Prashant A.Ghosh for
Petitioner.

Mr.Sanjeev Gorwadkar, Senior Advocate, Mr.Surel Shah, Senior
Advocate i/by Mr.Gurudas Gorwadkar for Respondent nos.1c, 2
and 3.

CORAM : AMIT BORKAR, J.

DATE : 12th March 2025

PC :

1. The present writ petition emanates from proceedings initiated in furtherance of the execution of a decree for partition and the issuance of a precept. It is apparent from the record that Special Civil Suit No. 26 of 1949 was decreed in the year 1951, and the appeal preferred therefrom also came to be dismissed. Pursuant to the decree, execution proceedings were instituted by filing Special Darkhast No. 1 of 1971 before the Executing Court. The Executing Court, in order to give effect to the decree for partition, appointed a Court Commissioner. Consequent thereto, the Collector, in compliance with the partition decree, undertook the partitioning of the suit land and, upon effecting

the partition, directed the recording of Mutation Entry No. 38741 in the revenue records, thereby effectuating the division as per the decree of the civil court.

2. Respondent Nos. 1 to 3, being aggrieved by the said mutation entry, preferred RTS Appeal No. 43 of 199 and RTS Appeal No. 44 of 199 before the appropriate revenue authority. The said appeals were considered, and after due scrutiny, the mutation entry came to be confirmed. Not content with the outcome, the respondents carried the matter further before the Collector and the Commissioner by way of subsequent appeal and revision. However, after a detailed examination of the facts and circumstances, both authorities arrived at the conclusion that the mutation entry was in accordance with law and did not warrant any interference, leading to the rejection of the appeal and the revision.

3. The State Government, however, by the impugned order, set aside the concurrent findings rendered by the Commissioner and the Collector. It proceeded to direct the Tahsildar to prepare a precept of the decree in accordance with the order passed by the Hon'ble High Court in Appeal No. 129 of 1951. Further, the State Government directed that, after affording an opportunity of hearing to both parties, possession of the land should be handed over as per the said order. This intervention by the State Government, which effectively unsettled the findings of the revenue authorities, has given rise to the present challenge.

4. At this juncture, it is pertinent to examine whether the order passed by the State Government withstands judicial scrutiny. It is not in dispute that the State Government recorded findings of fact which have been alleged to be incorrect. However, mere procedural lapses or deficiencies in the opportunity of hearing, if not resulting in independent legal prejudice, cannot vitiate the ultimate decision. The Hon'ble Supreme Court, in *State of Uttar Pradesh vs. Sudhir Kumar Singh*, (2019) 19 SCC 608, has lucidly enunciated the principle of "empty formality." It has been held that the mere breach of principles of natural justice does not automatically lead to the setting aside of an order unless it is demonstrated that substantial prejudice has been caused to the affected party. The Supreme Court emphasized that, while the obligation to provide a hearing is fundamental, a challenge to an order on grounds of procedural lapse must be accompanied by cogent material establishing actual prejudice suffered by the petitioner.

5. In the present case, the petitioners have failed to demonstrate any legal prejudice suffered due to the alleged procedural deficiency. Furthermore, there is no serious dispute that the partition chart was not prepared in accordance with the terms of the consent decree. Once the State Government, in its impugned order, has recorded findings that are in consonance with the decree for partition, the same does not warrant interference solely on the ground of an alleged lack of opportunity of hearing. The paramount consideration is adherence to the decree of partition, and in the absence of

material to show that the impugned order materially deviates from the terms of the decree, no case for interference is made out.

6. In view of the aforesaid, no infirmity is found in the impugned order warranting the exercise of writ jurisdiction under Article 226 of the Constitution of India. The petition, being devoid of merit, is accordingly dismissed with no order as to costs.

(AMIT BORKAR, J.)

MST