



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
WRIT PETITION NO. 3578/2025

(KAMALABAI MAAROTRAOJI MAHADULE & OTHERS **VERSUS** SHOBHARAM KISANJI GAWHANE
(DEAD) THR. LR's OMPRAKASH SHOBHARAM GAWHANE)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri A.S. Dhore, counsel for the petitioners.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : DECEMBER 03, 2025.

Heard the learned counsel for the petitioners.

2. Since the connected petition bearing Writ Petition no.7570 of 2025 was listed today, this matter was mentioned and accordingly it is taken up on today's board.

3. By this petition, the petitioners have challenged the order dated 03.12.2024 passed by the executing Court by which the Deputy Engineer, Public Works Department, Ramtek is ordered to be appointed as Court Receiver. The petitioners' contention is, the appointment of Court Receiver is unwarranted since the same is not contemplated by the decree under execution. The learned counsel for the petitioners submitted that the direction to appoint Court Receiver is based on assumptions and presumptions and the Court Receiver cannot be directed to remove encroachment on the disputed area to handover possession of the suit property.

4. It has to be seen that the impugned order is passed in the execution proceedings bearing Regular Darkhast no.1 of 2016 for execution of a decree passed in Regular Civil Suit no.15 of 2005 by which the defendants were directed by an order of mandatory injunction to remove encroachments on the site shown by letters ABCD in the plaint map within three months and handover possession of that portion to the plaintiff.

5. In the execution case, since the decree has attained finality, possession warrant dated 03.05.2024 was issued but the same was not executed in view of existence of certain construction on the suit property. In this background the decree holder had filed an application for appointment of the Court Receiver under Section 51(D) read with order XL Rule 1 of Code of Civil Procedure, 1908. The decree sought to be executed has attained finality up to the Supreme Court and there is no impediment to execute the decree. Under these circumstances, the appointment of Deputy Engineer, Public Works Department, Ramtek as Court Receiver was found necessary for execution of the decree. A perusal of the impugned order shows that the executing Court has passed the order for proper execution of the decree and there is no perversity in the impugned order.

6. Hence, no indulgence is warranted under Article 227 of the Constitution of India. The writ petition is accordingly dismissed with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)