



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**Writ Petition No.1094 of 2025**

*Shri Prabhakar s/o Jagannath Hatwar*

vs.

*Shri Ishwar s/o Jagannath Hatwar and others*

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

*Court's or Judge's Orders*

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*Mr. H.R. Gadhia, Advocate for the Petitioner.  
 Mr. A.K. Tripathi, Advocate for Respondent Nos.1 to 3.  
 Mr. H.R. Dhumale, A.G.P. for Respondent No.4/State.*

**CORAM : ANIL L. PANSARE, J.**

**DATE : 23<sup>rd</sup> APRIL, 2025.**

01. On 6<sup>th</sup> March, 2025, the following order was passed:

*"Heard.*

*2] Respondent no.4 has partitioned the property under question amongst petitioner and respondent nos. 1 to 3 in terms of Section 85 of the Maharashtra Land Revenue Code, 1966 (for short "the MLR Code"), which reads thus :*

***"85. Partition***

*(1) Subject to the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, a holding may be partitioned on the decree of a civil court or on application of co-holders in the manner hereinafter provided.*

*(2) If in any holding there are more than one co-holder, any such co-holder may apply to the Collector for a partition of his share in the holding:*

*Provided that, where any question as to title is raised, no such partition shall be made until such question has been decided by a civil suit.*

*(3) The Collector may, after hearing the co-holder, divide*

*the holding and apportion the assessment of the holding in accordance with the rules made by the State Government under this Code.*

(4) [\* \* \* \*]

(5) *Expenses properly incurred in making partition of a holding paying revenue to the State Government shall be recoverable as a revenue demand in such proportion as the Collector may think fit from the co-holders at whose request the partition is made, or from the persons interested in the partition.”*

3] *As could be seen, the Collector, whose powers are exercised by the Tahsildar, has to hear co- holders and divide the holding and apportion the assessment of the holding in accordance with Rules. What has to be apportioned is the assessment. Thus, the assessment of the land carries some significance.*

4] *The Maharashtra Land Revenue (Partition of Holdings) Rules, 1967 (for short “Rules of 1967”), provides for procedure for partition of land.*

*Rule 5 is a mode of effecting partition. It provides that the Collector shall proceed to effect partition either personally or through some agency. It further provides that partition should be so made that the productivity of the area allotted to each party is in proportion to his share. Thus, the Collector has to ensure that the productivity of the area should be taken into account while allotting the share.*

*Rule 6 then provides for apportionment of assessment, which is to be distributed in proportion to the shares held in the holding by co-holders. Thus, while effecting partition, the assessment and the productivity of the area would be relevant. Thus, it appears that the partition should be equitable and not necessarily equal.*

*Rule 7 then provides that after partition has been completed, the Collector shall hear any objection, which the parties may make.*

5] *In the present case, the order impugned does not indicate that this procedure has been followed. What has been done is that respondent no.4 has straightaway relied upon the deed of partition prepared by respondent nos. 1 to 3, though the petitioner raised objection. The reason*

*assigned to overrule the objection is that no prejudice will be caused to him. The argument is that the order impugned is not in consonance with the provisions of the MLR Code as also the Rules of 1967.*

*6] Issue notice to the respondents returnable on 27/3/2025.*

*7] The learned A.G.P. waives notice for respondent no.4.*

*8] In the meantime, there shall be ad interim ex parte stay to the order dated 30/7/2024 passed by respondent no.4 - Naib Tahsildar, Nagpur, in R.M. No.1/S.R.V.-43/2023-24.”*

02. Thus, it was noticed that respondent No.4-Naib Tahsildar has not followed the procedure prescribed for partitioning the land.

03. Learned A.G.P. and learned Counsel appearing for respondent Nos.1 to 3 though made an attempt to justify the order, they failed to show from the impugned order or otherwise that the procedure prescribed under Rule 5, 6 and 7, amongst other Rules of 1967 was followed by respondent No.4.

04. That being so, the order impugned is unsustainable.

05. The petition is, accordingly, partly allowed. The order impugned dated 30/07/2024 passed by respondent No.4-Naib Tahsildar in R.M. No.01/SRV-43/2023-24 is quashed and set aside. The enquiry is remanded back to respondent No.4 for consideration afresh in accordance with law and what has been stated in the body of the order. The parties shall appear before respondent No.4 on 5<sup>th</sup> May, 2025.

06. The writ petition is disposed of in the above terms with no order as to costs.

**(Anil L. Pansare, J.)**

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