



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.2413/2024

1. Moreshwar S/o Anandrao Sawarkar,
Aged about 48 years, Occu. Farmer,
R/o Ward No. 3, Pipala Dak Bangala,
Savner, Dist. Nagpur – 441113.
2. Pitamber S/o Anandrao Ikhar,
Aged about 52 years, Occu. Farmer,
R/o Plot No. 50, Gajanan Mandir Road,
Near Dadaji Dhuniwale Math, Vinayak
Nagar, Hudkeshwar Bk., Nagpur,
Dist. Nagpur - 440034

... **PETITIONERS**

...**VERSUS**...

1. The State of Maharashtra,
Through - The Collector, Nagpur
Add. Collector Office, Civil Lines,
Nagpur.
2. Naib Tahsildar, Saoner,
Add. Tahsil Office, Saoner, Dist. Nagpur.
3. Smt. Pushpa w/o Nilkanth Patil,
Aged about 62 years, Occu. Household,
R/o 15, Mahalaxmi Nagar, Nagpur,
Tah. and Dist. Nagpur

...**RESPONDENTS**

Shri Sawan Alaspurkar, Advocate for petitioners.
Shri H.D. Dubey, Assistant Government Pleader for
respondent Nos.1 and 2.
Shri Pravin Dandwate, Advocate for respondent No.3

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 13/02/2025

DATE OF PRONOUNCING THE JUDGMENT : 18/03/2025.

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned Counsel appearing for the parties.

2. Being aggrieved by the order dated 28/11/2023 passed by the respondent no. 2, the learned Naib Tahsildar, in Ra.Ma.Kra.05/SRV-43/2023-24 of Mouza-Bhendala, Tahsil Saoner, District Nagpur.

3. Property no.1 and property no.2 were joint together and one piece of property consisting of 2.01 HR., which is herein after referred to as said entire field of Mouza-Bhendala. Petitioner no.1 is owner and possessor of property no.1 by virtue of registered sale-deed dated 31/07/2019 executed by Shri. Ramdas Krushnarao Nagpure in favour of petitioner no.1. It is submitted that the petitioner no.2 is the owner and possessor of property no.2 by virtue of registered

sale-deed dated 13/01/2020 executed by Shri. Ramdas Krushnarao Nagpure in favour of petitioner no.2.

4. Property no.1 was mutated in 7/12 extract in the name of petitioner no.1 as well as the property no.2 was also mutated in the name of petitioner no. 2 in 7/12 extract by deleting the name of Ramdas Krushnarao Nagpure. The said entire field of Mouza-Bhendala was previously owned by predecessor in title of petitioner nos. 1 & 2. The vendor of the petitioner nos. 1 & 2 namely Mr. Ramdas Nagpure, out of the said entire field of Mouza-Bhendala, total admeasuring 2.01 HR., the area admeasuring 1.20 HR sold to the petitioner no.1 by registered sale deed and remaining area admeasuring 0.81 HR. sold to the present petitioner no. 2 by registered sale deed.

5. Petitioner nos. 1 and 2 are nearest relative. As the petitioner no.1 was dire need of fund for his business purpose therefore, he approached to the bank for obtaining personal loan for business. At that time, it was suggested by bank to the petitioner no. 1 that if he has to mortgage any property owned

by him as a collateral security therefore, for obtaining loan, he was required to obtained certified copies of 7/12 extract and mutation entries thereof. Accordingly, he started to collect the all the relevant documents pertaining to property no.1. On 18/01/2024, the petitioner no.1 obtained 7/12 extract of Property no.1, thereafter, he immediately applied for certified copy of mutation entry on 18/01/2024. It is for the first time come to the notice of the petitioner no.1 that without any notice and knowledge of petitioners, their names have been deleted from 7/12 extract. Petitioners are real owners of property nos.1 and 2 respectively and they are enjoying possession peacefully over the said property nos.1 and 2.

6. After enquiry, it is first time brought to notice of the petitioner no. 1 that by violating the principal of natural justice/*Audi-Alteram-Partem* the learned Naib Tahsildar, Saoner, passed an order dated 28/11/2023 on the basis of Precept sent by the learned Civil Judge, Junior Division, Saoner, District Nagpur for execution and implementation of preliminary decree dated 25/04/2022. Consequently, the petitioners approached to the

Civil Court for obtaining certified copy of Judgment and Decree dated 25/04/2022 passed by learned Civil Judge Jr. Dn., Saoner, Dist. Nagpur in the Reg. Civil Suit No.85/2012 (old no. Spl. C.S. No. 755/1999).

7. On the basis of aforesaid Judgment and Decree, the respondent no.2 learned Naib Tahsildar passed an impugned order dated 28/11/2023 and on the basis of order passed by the respondent no.2, the Patwari implemented the said order dated 28/11/2023 and deleted the name of the petitioners from the 7/12 extract as well as from mutation entry mutated in the name of petitioners after adopting due procedure of law at the relevant time. The aforesaid order is the subject matter of challenge in the present writ petition.

8. Learned counsel for the petitioner contended that the learned Naib -Tahsildar erred in passing of the order dated 28/11/2023 on the basis of precept sent in pursuance of Judgment and Decree dated 25/04/2022 passed by the learned Civil Judge, Junior Division, Saoner in Reg.C.S. No.85/2012, wherein the petitioners are not party and especially the

respondent No.3 i.e. plaintiff sold property to purchaser from whom the petitioners have derived title and subsequently filed suit for partition and possession. It is further submitted that the respondent no 2 has violated principle of natural justice as well as violation of principle of *Audi-Alteram-Partem* and without giving any opportunity of hearing to the petitioners and behind their back, passed the said impugned order which needs interference by this Court and needs to be set aside.

9. Learned Counsel for petitioner relied on following citations:

- (i) ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others, (1998) 8 SCC 1,***
- (ii) ***Kusum Dashrath Kharmare Vs. Popat Madhav Gangarde and others, 2008(1) Mh.L.J. 267.***

10. Learned Counsel for the Respondent nos. 1 and 2 contended that they are not part of the Civil Suit or any transactions made in between the parties to the said suit. So also is not concerned with the any transaction pertaining to the said Survey number. The petitioners have the remedy to file an appeal and challenge the order passed in civil suit before the

competent Civil Court, so also the impugned order can also be challenge before the competent authority by filing a revenue appeal. Without availing the available remedies, petitioners have directly approached to this Court and seeking the remedy against the respondents without following the due process of law, which is bad in law. Hence the present writ petition is not maintainable and also prayed for dismissal of the same.

11. Learned Counsel for the Respondent no.3 contended that according to the Judgment and Decree of partition and separate possession dated 25/4/2022, passed by the learned Civil Judge, Junior Division, Saoner, in Reg.C.S. No.85/2012, the Naib Tahsildar, respondent No.2 herein has to power under Section 54 of Civil Procedure Code to make 7/12 extract separately, partition and separate possession in the suit properties and the respondent no.3 herein/plaintiff-Decree Holder in Regular Civil Suit No.85/2012 is entitled to get the suit properties separated by way of partition and separate possession. It is further contended that the respondent no.3 is not only entitled to get 1/5th share in the property bearing

Survey no.118 but also entitled to get 1/5th share by partition in the entire suit properties. Unless and until the decree is fulfilled, the respondent no. 3/Sau. Pushpa Patil will be depriving from getting her 1/5th shares in the suit properties. Hence, the present writ is immature, which is liable to be dismissed.

12. Heard both the parties. Perused the impugned order, considered the documents on record and citations relied on by the parties.

13. The contention of the petitioners is that they have purchased the property from one Mr. Ramdas Nagpure by registered sale deeds. When the petitioner no.1 was dire need of fund for his business, he approached to the Bank for obtain personal loan and, therefore, he required to obtain of 7/12 extract and mutation entries thereto. On 18/01/2024, the petitioner no.1 obtained 7/12 extract and immediately applied for certified copy of mutation entry. It is for the first time came to the notice of the petitioners that without any notice and knowledge, their names have been deleted from 7/12 extract. It

is contended that they are enjoying the possession peacefully as they are owners of the properties. Before deleting such names, no notice was given to the petitioners by the Naib Tahsildar nor any opportunity of hearing was granted. The said order of deletion passed by the Naib Tahsildar is on the basis of Precept sent by learned Civil Judge, Junior Division, Saoner, District Nagpur for execution and implementation of preliminary decree. It appears that name of the petitioners were taken on 7/12 extract on the basis of registered sale deeds executed by Ramdas Nagpure. The name of Ramdas Nagpur also appears to be deleted (page 57 of the petition). Further document at Annexure-D (page 58) shows that Smt. Pushpabai Nilkanthrao Patil purchased the land from one Shri Hemraj Chintamanrao Choudhari on 12/10/1998. Said Pushpabai Patil sold the said property to one Sau. Kalawati Krushnaji Panpatte for registered sale deed dated 18/08/2003 (page 66). Said Kalawati Panpatte sold the said property to Shri Ramdas Krushnarao Nagpure on 25/07/2006 by registered sale deed (page 82).

14. The learned Counsel for the petitioners drawn my attention to Section 227 of the Maharashtra Land Revenue Code, 1966 (for short “MLR Code”) which empowers every Revenue officer or Survey officer to summon any person whose attendance is consequently necessary either to be examined as a party or to give evidence as a witness, or to produce documents for the purposes of any inquiry which such officer is legally empowered to make. No such procedure is followed by the Naib Tahsildar. The said Pushpabai Patil, who was already sold the property to Kalawati Panpatte vide registered sale deed dated 18/08/2003 and Kalawati Panpatte sold the same to the Ramdas Nagpur vide registered sale deed dated 25/07/2006. It is contended that suppression all these transactions, the plaintiff obtained decree for partition of the suit property in Reg. Civil Suit No.85/2014. On the basis of Precept sent by the learned Civil Judge, Junior Division, Saoner, the impugned order of deletion was passed by the Naib Tahsildar, deleting the entry in 7/12 extract.

15. In view of Section 85 of the MLR Code, when such

decree of Civil Court sent for partition, the Collector may partitioned of all share of co-holder in the holding. It is further provided that if the question of title is raised, no such partition shall be made until such question has been decided by a civil suit. 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. Thus, it is incumbent on the Collector and the Revenue authority to give notice to the co-holders.

16. Admittedly, name of the petitioners were entered into the revenue record on the basis of sale deed executed by Ramdas Nagpure and before such deletion, it was a duty of the Revenue Authorities to grant opportunity of hearing to the concerned person.

17. Learned Counsel for the petitioners relied on ***Whirlpool Corporation*** (supra), in support of their reply to the preliminary objection of alternative remedy, the Hon'ble Apex Court in para 15 held as under :

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

18. The learned Counsel for the petitioners also placed reliance on ***Kusum Dashrath Kharmare*** (supra) in support of their contention that there is no prohibition in the MLR Code for passing of more than one preliminary decree if circumstances justified the same. This Court held in ***Kusum Dashrath Kharmare*** (supra) is that,

“The order of the Court, deciding that dispute and making variation in shares specified in the preliminary decree, already passed, is a decree in itself which would be liable to an appeal. However, while saying so, it must be confined to the partition suits and in relation to parties belonging to Hindu religion.”

19. On perused of the impugned order dated 28/11/2023, it reveals that Naib Tahsildar in pursuance to a letter from the Collector issued notice to the concerned in precept in Reg.C.S. No.85/2012. However, order nowhere discloses that any notice was given to the petitioners as their name were there on 7/12 extract. It is also not mentioned anywhere as though notice was given to the petitioners, they remain absent. It appears that the Naib Tahsildar has not exercised his power and not followed the procedure. Without granting any opportunity of hearing to the petitioners, passed the impugned order dated 28/11/2023 (page 105 of the petition). Admittedly, the petitioners herein are claiming their ownership on the basis of registered sale deed. Before deleting their names, the Naib Tahsildar not given any notice to the petitioners. As such, the impugned order passed by the learned

Naib Tahsildar is against the principle of natural justice and passed without following due procedure, contrary to the provisions of the MLR Code. As such, the impugned order is liable to be quashed and set aside.

20. As such, the writ petition is **allowed**.

21. The order dated 28/11/2023, passed by the Naib Tahsildar is hereby quashed and set aside. The Naib Tahsildar is hereby directed to restore the original entry mutated in the revenue record as well as 7/12 extract and conduct a fresh inquiry before deleting the name of the petitioners herein by granting due opportunity of hearing to the petitioners as well as any interested party.

22. The petitioners to appear before the Naib Tahsildar, Saoner, District Nagpur on **24.03.2025** at **11.00 am**.

The writ petition stands disposed of in the above terms. No order as to costs.

(Smt. M.S. Jawalkar, J.)

Kirtak