



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

WRIT PETITION NO. 3051 OF 2024

1) Hifatzatali s/o Abid Ali,
Aged about 76 years,
Occ. Retired,
R/o. Aseer Colony, Walgaon
Road, Amravati Dist.,
Amravati

2) Sy. Afzal Hussain s/o Mohd
Siddique,
Aged about 81 years,
Occ. Business,
R/o Near Bilal Masjid,
Shaheen Colony,
Popat Kheda Road,
Akot, Distt. Akola

3) Liyakat Hussain s/o Mohd.
Siddique (Dead through legal
heirs),

a) Bano Bi Syed Liyaqat
Husain,
Aged about 81 years,
Occ. Household,
R/o Jawahar Road, Akot,
Tq. Akot, Distt. Akola

b) Saiyyad Irfan s/o Sy.
Liyakar Hussain,
Aged about 51 years,
Occ. Labour,
R/o Nav Gazi Plot, Akot,
Tq. Akot, Distt. Akola

4) Batulbee w/o Abdul
Khalique,
Aged about 65 years,
Occ. Household.
R/o Satranji Pura,
Akot, Tq. Akot, Distt. Akot

....PETITIONERS

....**VERSUS**....

1) Sharifbano Mohd. Arif,
Aged about 76 years,
Occ. Household,

2) Mujibur Raheman Mohd.
Arif,
Aged about 46 years,
Occ. Business

3) Ataur Rahman Mohd. Arif,
Aged about 46 years,
Occ. Labour,
All R/o Ghaseti Pura,
Nayakwadi, Akot,
Tq. Akot, Distt. Akola

4) Mahejbin Sultana w/o
Zulfkar Ali,
Aged about 51 years,
Occ. Household,
R/o Wadali Satwai, Tq. Akot,
Dist. Akola

5) Shagufta Mahejbin w/o
Azim Jamadar,
Aged about 41 years,
Occ. Household,
R/o Yeoda, Tq. Daryapur,
Dist. Amravati

6) Kamarjaha Mohd. Sharique,
Aged about 37 years,

Occ. Household.
R/o Takli Purna,
Tq. Daryapur, Distt. Amravati

7) Salma Firdos w/o Sajique
Ali Mir Saheb.
Aged about 38 years,
Occ. Household,
R/o Hiwarkhed, Tq. Telhara,
Dist. Akola

8) Mumtaj Begum Sy. Daood,
(Deceased through legal heirs)

A) Sy. Faizur Raheman Sy.
Daood.
Aged about 59 years,
Occ. Medical Practitioner,
R/o Khair Mohammad Plot,
Akot, Tq. & Dist. Akola
A) Sy. Fiazur Rheman Sy. Daood,
Aged about-53 years, Occu.- Business,
R/o Near Dr. Faiz clinic Muzaffarnagar Akola
**(Amendment carried out as per
Court order dated 06/03/2025)**

B) Sy. Shafiqur Raheman Sy.
Daood,
Aged about 53 years,
Occ. Business,
R/o Khatibpura, Akot
Dist. Akola

C) Sabiya Sultana w/o Abdul
Haque,
Aged about 62 years,
Occ. Household,
R/o Shaukat Ali Chowk,
Akot. Tq. Akot, Distt. Akola

D) Saleh Sultana Mohd.
Tarique Uzer,
Aged about 49 years,
Occ. Household,
R/o Ziya Colony Masjid,
Khamgaon, Tq. Khamgaon,
Dist. Buldhana

E) Sy. Hifzur Rahman Sy.
Daoood,
(Deceased through legal
heirs),

a) Seema Sadiya wd/o Sy.
Hifzur Raheman,
Aged about 43 years,
Occ. Household

b) Azra Ume Hani Sy. Hifzur
Rahman,
Aged about 23 years, Occ.
Household

c) Sidrat Zoha Sy. Hifzur
Rahman,
Aged about 21 years,
Occ. Household

d) Faiza Rahin Sy. Hifzur
Rahman,
Aged Minor,

e) Umama Salehin Sy. Hifzur
Rahman,
Aged Minor

f) Zufera Batul Sy. Hifzur
Raheman,
Aged Minor

No. d to f minor through natural
guardian mother Seema Sadiya

wd/o. Hifzur Raheman

All R/o Khatibpura, Akot.
Tq. Akot, Distt. Akola

9) Fahimuddin s/o Gulam
Mohinnudin Inamdar,
Abed about 62 years,
Occ. Business,
R/o Opp. Kidwai Ground,
Lashkari Bag,
Nagpur, Dist. Nagpur

10) Saifuddin s/o Allauddin,
Aged about 41 years,
Occ. Business

11) Shahaboddin s/o
Allauddin,
Aged about 30 years,
Occ. Business

R-10 & 11 Both R/o Bada Alawa, Akot,
Tq. Akot, Dist Akola

12) Sy. Mohammad Hussain
s/o Mohd. Siddique,
Aged about 76 years,
Occ. Business
R/o. Vivek Apartment, Flat No. 424
I Wing CST Road Santacruz East Kalina
Mumbai

13) Shabana Parveen w/o
Mohammad Rafique Bachoo,
Aged about 45 years,
Occ. Household,
R/o Crawford Market,
Mandavi, B.P. lane,
Mumbai-400003

....RESPONDENTS

Shri V.A. Lohia, Advocate for petitioners.
Shri V.P.Ghayal, Advocate for respective respondents.

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

DATE : 05/04/2025

ORAL JUDGMENT

Heard the learned counsel for the petitioners and learned counsel for the respondent(s).

2. The present petition is filed challenging the order dated 17/11/2021 passed by learned Civil Judge, Senior Division, Akot, District Akola below Exh. 65 in Special Darkhast No. 53/2018.

3. The present petition is filed by the petitioners who are the purchasers of the various plots. The plaintiff and some of the defendants sold various plots to various persons including the petitioners as per the description in para 2 of the plaint. It is the contention of the petitioners that, at the time of sale deed, it was specifically agreed that, the adjoining roads thereto would be enjoyed by the purchasers as access to their plots. The Special Civil Suit No. 212/1995 for partition,

separate possession and injunction came to be decreed in respect of the property described in paras 1(i), (ii) and (iii) of the plaint excluding the area shown in paras 2(a), (b) and (c) of the plaint and preliminary decree was ordered to be drawn accordingly.

4. In the First Appeal, the learned Appellate Court reversed the decree passed by the learned Trial Court. Then, the plaintiff filed Second Appeal. This Court allowed the Second Appeal and restored the decree passed by the learned Trial Court.

5. The plaintiff had filed execution proceedings bearing Special Darkhast No. 53/2018 before the learned Civil Judge, Senior Division, Akot. It is the contention of the petitioners that, it was specifically agreed that, the adjoining roads thereto would be enjoyed by the purchasers as access to their plots. The execution application was filed in respect of the entire land including portion of the adjacent roads. Therefore, the petitioners filed application below Exh. 65 raising their objections under Order 21 Rule 97 r/w. Section

47 of the Code of Civil Procedure . The learned Civil Judge, Senior Division, Akot by its order dated 17/11/2021 rejected the application only on the ground that, in view of the execution application, the execution has also been sought only for the property admeasuring area 1 H 28½ R. excluding the property to 15½ gunthas sold by the plaintiff and the defendant. The Executing Court held that the property purchased by the applicants as alleged in the application is already excluded from the suit property, in view of this fact, the application came to be rejected. However, there is no consideration to the objection raised in the application by the Executing Court.

6. The only issue involved is even if the same property is excluded, whether there is any approach road to the said layout. It is contention of the petitioners that, even the open space in the layout is put for partition, the learned Executing Court to consider all objections on the basis of supporting documents and requires to pass the appropriate order. It appears that there is no reasoning given for

objections raised by the Executing Court. As such, the order passed by the learned Civil Judge, Senior Division, Akot below Exh. 65 is liable to be set aside. The learned C.J.S.D., Akot needs to be directed to hear the matter afresh and decide the application after due consideration to the objections.

7. The present petitioners also challenged the order dated 01/02/2025 passed below Exh. 116 by the learned C.J.S.D., Akot in Spl. Darkhast No. 53/2018.

8. In view of the order passed below Exh. 65 is not sustainable, the sending precept for partition needs to be kept in abeyance till the decision of objections.

9. The learned Executing Court if needs direct the Collector to decide the issue of approach road to the plots.

10. As such, the petition is **allowed**. The order dated 17/11/2021 passed by learned Civil Judge, Senior Division, Akot, District Akola below Exh. 65 in Special Darkhast No. 53/2018 is hereby quashed and set aside.

11. The matter is remitted back to the learned Civil Judge, Senior Division, Akot to give afresh hearing and

consider the objections raised by the applicants as per provision of law.

12. The learned C.J.S.D., Akot is hereby directed to issue precept after deciding the objections raised by the applicants and if requires, give necessary directions to the Collector to decide issue of approach roads and open space if the layout is sanctioned.

Accordingly, the petition stands disposed of.

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

B.T.Khapekar