

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2334 OF 2024

Mr.Vinod Kishan Baney,
Age : 53, Occupation : Business,
Devi House, 37, Shivaji Nagar,
Pune – 411 005.

...Petitioner

Versus

1. **State of Maharashtra,**
Through the Revenue and Forest
Department, Mantralaya, Madam
Cama Road, Mumbai – 400 032.
 2. **Add. Chief Secretary (Revenue),**
Revenue and Forest Department,
Mantralaya, Madam Cama Road,
Mumbai – 400 032.
 3. **The Deputy Superintendent of Land Records,**
Mulshi (Paud), Taluka Mulshi, District – Pune.
 4. **The Superintendent of Land Records,**
Mulshi (Paud), Taluka Mulshi,
District – Pune.
 5. **The Deputy Director of Land Records**
(Pune Division), New Administrative
Building, Opposite Council Hall,
Pune – 411 001.
 6. **Office of the Settlement Commissioner**
& Director of Land Records (M.S.) Pune,
2nd Floor New Administrative Building,
Opposite Council Hall, Pune – 411 001.
- ...Respondents

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Mr.Abhishek Salian a/w Mr.Mayuresh Ingale and Ms.Kinnari Raut i/b.
Mr.Venkatesh Shinde, Advocates for Petitioner.

Mr.N.C.Walimbe, Addl.G.P. a/w Smt.R.M.Shinde, AGP for
Respondents – State.

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CORAM : M.S.KARNIK AND
S. M. MODAK, JJ.

DATE : 16th APRIL 2026

ORDER : (PER : S.M.MODAK, J.)

1. The issue involved in this Petition is, “*whether the Respondents can be directed to measure Pot Hissa of the land belonging to the Petitioner on his application*”. Some basic facts need to be stated. The Petitioner applied for measurement of the Pot Hissa vide his application dated 19th April 2023 and the Surveyor visited the spot on 20th September 2023. However, he could not carry out the measurement of the Pot Hissa for the reason, the Phalni Nakasha was not available. Accordingly, his application was rejected and it was informed to him vide letter dated 30th January 2024. The Petitioner is disputing about receipt of this letter.

2. This Court as per the order dated 23rd January 2026, called upon the Additional Chief Secretary (Revenue), Revenue and Forest Department i.e. Respondent No.2 to file a detailed reply. Affidavit-in-

Reply, Rejoinder to the Affidavit and even Surrejoinder is filed.

3. On this background, we have heard learned Advocate for the Petitioner and learned Addl.G.P. for Respondents at length. Respondent No.1 is State of Maharashtra, Respondent No.2 is Additional Chief Secretary (Revenue), Revenue and Forest Department, Respondent No.3 is Deputy Superintendent of Land Records, Mulshi, District : Pune. The Respondent No.4 is Superintendent of Land Records, Mulshi, District, Pune, the Respondent No.5 is Deputy Director of Land Records (Pune Division) and Respondent No.6 is the Settlement Commissioner & Director of Land Records (M.S.), Pune.

4. The procedure laid down as per Maharashtra Land Revenue Code, 1966 (“**MLR Code, 1966**”), the relevant Rules and the Circular has to be followed. It is settled law that *Writ of Mandamus* can be issued when there exists a right in favour of the Petitioner and there is corresponding duty cast on the Respondents which they are not fulfilling.

5. There is one more objection raised on behalf of the Respondents about maintainability of the Writ Petition. It is for the reason, the

alternate remedy provided about Appeal as per the provisions of Section 247 of MLR Code, 1966 is not followed. The Petitioner submitted that the Respondents on the face of the record have not followed the procedure laid down.

6. The relevant facts needs to be stated. They are as follows:-

- (a) The Petitioner claims to be the owner of the portion of land admeasuring 01H.,17R., situated at village Warak, Taluka : Mulshi, District : Pune. This part of the land is forming part of larger piece of land admeasuring 06H.,80R., and numbered as Survey No.274, Hissa No.15.
- (b) The Petitioner applied for measurement of part of the land possessed by him by making an application dated 19th April 2023 to the Office of District Superintendent of Land Records. He has also paid the necessary fees.
- (c) The District Superintendent of Land Records had issued a notice dated 8th September 2023 thereby fixing 20th September 2023 as the date of measurement.
- (d) The Surveyor did visited the spot. However, as mentioned above, he could not do the measurement due to non-availability of Phalni Nakasha. The Surveyor has recorded the statement of the Petitioner on the same date. The Petitioner has denied giving of such statement.
- (e) The District Superintendent of Land Records as per letter dated 30th January 2024 has informed to the Petitioner about the happenings of the events on 20th September 2023.
- (f) He was granted liberty to apply again on payment of necessary fees.

7. On this background, the Petitioner has filed present Petition for issuance of direction to the Respondents to measure his area of the land purchased by him. According to him, the excuse offered for not measuring the land that Phalni Nakasha is not available is a false excuse. Because, according to him, in fact, Akarbandh Patrak for that village is already prepared prior to 1970. He wants to suggest that when Akarbandh Patrak is already in existence, Phalni Nakasha ought to have been prepared. He wants to lay emphasis on the procedure followed by the Survey Department, that is to say, first Phalni Nakasha has to be prepared and then Akarbandh Patrak is prepared. He contends that it is the duty of the Office of District Superintendent of Land Records to maintain the Phalni Nakasha and if they have not maintained, then the Petitioner cannot suffer. Because, he contends that once he has purchased the land by way of valid legal document and once the land is mutated and shown on 7X12 extract in his name, he has got every right to demarcate his portion of the land with the help of Survey Office.

8. There is Surrejoinder filed by the Deputy Superintendent of Land Records – Mulshi. He has tried to clarify what has happened

when the Akarbandh Patrak is prepared. According to him, at that time, Phalni Nakasha was not prepared. On Page No.60 of the Surrejoinder, it is stated that the Akarbandh Patrak was prepared and measurement was done as per the Vahivat/Possession shown by respective holders/co-holders. He wants to suggest that actual measurement work has not been done as per Phalni map. According to him, it was done in the year 2018 and hence, the contention of Petitioner that Phalni map ought to have been prepared cannot be accepted.

9. Considering the above facts, question before us is whether the Respondents can be directed to do measurement of only Pot Hissa of the land purchased by the Petitioner. It is very well true that 7X12 extract is separate document and maps are separate documents. 7X12 extracts are maintained by the Revenue Officers whereas maps are maintained by Survey Officials. On the basis of 7X12 extract, one can know the name of the possessor, the area and the assessment, and the crops cultivated. Whereas, as per survey record, we can understand what are the boundaries of the land and how much is the area of the land. Merely because, land is mutated in the name of purchaser, it does

not mean that on site, there is exact area of the land available belonging to purchaser. The measurement needs to be done.

10. It is very well true that the measurement can be carried out for several purposes. One is for ascertaining exact area of the land, one is for fixing of the boundaries and another is for the purpose of ascertaining whether the adjoining possessor has encroached on the land or not. In this case, the measurement is sought for the purpose of division of the land into Pot Hissa. That is to say, the Petitioner wants the Survey Department to demarcate the land which is actually purchased by the Petitioner.

11. When we have read the pleadings filed on behalf of the Respondents, what we find is the only reason why the measurement of the Pot Hissa belonging to the Petitioner was not carried out is the consent of all the co-holders were not obtained by the Petitioner. It needs to be seen what is the necessity of obtaining the consent of other co-holders. The present case does not involve the purchase of entire area of the survey number but it contains purchase of part of that survey number. Now it may be true that there is consensus amongst the Petitioner as a purchaser and his vendor about the land which is

actually sold and purchased. However, when the land needs to be measured, for that part of the land, the Survey Department needs to ascertain from other co-holders. Because it may happen that the land which the Petitioner claims to have purchased may belong to other co-holders or they may be having some right, title and interest which needs to be recorded. There cannot be any dispute about necessity of obtaining consent of other co-holders. Because it is required by law and it is for the benefit of the Petitioner only.

12. Now the contention of the Petitioner is when Akarbandh Patrak is available which is always preceded by Phalni Nakasha, there is no need of obtaining consent of other co-holders. About existence of Akarbandh Patrak, there is no dispute. Dispute is only about the existence of Phalni Nakasha. There is a serious dispute amongst both of them. Now the issue is whether the Respondents are hiding or concealing the existence of Phalni Nakasha. Ultimately, all of them are Public Officers. In fact, they have said on Affidavit that in the year 2018, the measurement was not done on the basis of map, but it was done on the basis of Vahivat/Possession. Question is whether these Respondents will file Affidavit containing false facts. The Officers are

aware what are the consequences of filing an Affidavit containing false facts. Even the Petitioner is not claiming that Phalni map is hidden or concealed by the Respondents. What the Petitioner contends is that it is the responsibility of the Respondents to maintain the Phalni map. We find the explanation given in the Surrejoinder filed by Deputy Superintendent of Land Records affirmed on 4th December 2024 as possible explanation.

13. It will be relevant to consider certain provisions of law and rules which are referred in the pleadings filed on behalf of the Respondents.

They can be summarized as follows:-

- (a) Section 85 of MLR Code, 1966. It empowers the Collector to partition the land. This can be done in two contingencies. One, on the basis of decree of Civil Court and another, if the application of co-holders for partition is filed. However, this power is given to the Collector and it can be exercised when one co-holder applies for partition. Even there are certain restrictions on the power of the Collector on partitioning the land. If there is dispute about the title, he cannot exercise that power.
- (b) The Petitioner can apply for measurement of the entire land of which the portion purchased by him is part. According to them, if the measurement of the entire land is done, then the

land purchased by the Petitioner can be identified. The Petitioner is not ready to accept this suggestion because it involves huge expenses and according to him, why he should do it.

- (c) In the Affidavit filed by learned Additional Chief Secretary, (Revenue) Shri.Vikas Kharage, he has annexed certain circulars. There is a circular dated 13th December 2011 issued by the Settlement Commissioner. There is further order issued by the Settlement Commissioner on 11th October 2024 so as to simplify the procedure for measuring the land.
- (d) There is also circular dated 29th September 2018 issued by Settlement Commissioner. It lays down the procedure about measuring the land with the consent of the co-holders and also lays down the procedure when the co-holders are not consenting or if there is any objection, then what is the procedure followed by the survey officer.

14. The Additional Chief Secretary (Revenue), in his Affidavit, has emphasized on the lapse on the part of concerned Officials from the Office of Deputy Superintendent of Land Records. According to him, the Survey Officials ought to have verified whether the Phalni Nakasha is available or not prior to accepting the fees and prior to visiting the spot. According to him, the concerned Officials have visited the spot without verifying about the said procedure and there is lapse on their

part. We make it clear that this Court never meant that Additional Chief Secretary (Revenue) should initiate some action against the Officials when direction was given on 23rd January 2026 to file an Affidavit by him. This Court was having concern about the inconvenience caused to the Petitioner while taking follow up with Survey Officials. Now on the basis of various replies filed by the Survey Officials, it is clear as to why the survey of Pot Hissa belonging to the Petitioner was not carried out. The reason is obvious. A Pot Hissa cannot be measured unless there is consent of other co-holders. Unfortunately, in this case, it has not happened and even the Petitioner is not ready to measure the entire land.

15. For the above circumstances, we are not inclined to issue a *Writ of Mandamus* as prayed for without the Petitioner exhausting the efficacious remedy of approaching higher authorities as suggested in the affidavit.

16. The Petitioner is at liberty to take appropriate steps as suggested in the Affidavits and Surrejoinder filed on behalf of the Respondents. In fact, this issue pertains to the compliance of the procedure by the Survey Officials. It is the higher Authorities of District Superintendent

of Land Records who are in a better position to understand the intricacies of the survey of Pot Hissa and for this reason, it was more advisable for the Petitioner to prefer an Appeal.

17. Keeping the contentions open, the petition is disposed of with the aforesaid liberty.

(S. M. MODAK, J.)

(M. S. KARNIK, J.)