



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

WRIT PETITION NO.3083 OF 2024

Abdul Samad Abdul Gani Vs. Shekh Mukhtyar Abdul Jabbar and others

WITH

WRIT PETITION NO.3084 OF 2024

Abdul Samad Abdul Gani Vs. Shekh Mukhtyar Abdul Jabbar and others

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

Court's or Judge's orders.

Shri S.M. Vaishnav, Advocate for petitioner.
Shri Sawan Alaspurkar, Advocate for respondent no.1.
Shri P.R. Agrawal, Advocate for respondent nos.6&7.
Shri Anand Shinde, Advocate for respondent nos.8 to 11.

CORAM : M.W. CHANDWANI, J.

DATE : 04.02.2026.

1. Both petitions challenge the order dated 10.04.2024 passed by the 4th Joint Civil Judge Senior Division, Amravati (for short "Executing Court") on Exhibit 1 and 107 in Special Darkhast No.12/2014 and on Exhibit 1 and 90 in Regular Darkhast No.135/2012 respectively; accepting the Court Commissioner report dated 23.02.2023 alongwith map Exhibit 63 and 75 respectively mainly on the ground that at the time of execution no notice was given by the Commissioner to the petitioner or his advocates.

2. Before proceeding to deal with the contentions raised in the present petitions, it would be appropriate to mention that after filing of the Court Commissioner's report, the Executing Court passed an order on Exhibit-1 in both petitions. After considering the Court Commissioner's report, the Executing Court carved out the share of each party in the suit building. The said order was challenged by the present

petitioner before this Court in Writ Petition No.81/2024 on the ground that, the Executing Court without making any observation of either accepting, varying, or setting aside the Commissioner's report, passed the order on Exhibit-1 in both petitions, thereby carving out the shares.

3. In the said writ petition, no ground was raised by the present petitioner, who was also the petitioner therein, that no notice was given before execution of the commission. Pending the said petition, another objection of non-issuance of notice alongwith other objection was raised. Ultimately, this Court remanded the matter to the Executing Court to take a fresh decision on the Commissioner's report dated 23.02.2023 vide the order dated 01.04.2024 passed in the said writ petition.

4. After remand, the matter was under consideration before the Executing Court. The Executing Court, by the impugned order, decided the objection and overruled them and accepted the Court Commissioner's report. The said orders passed by the Executing Court has been challenged in the present petition on the ground of non-issuance of notice to the petitioner or his counsel.

5. Having heard learned counsel for the respective parties and upon perusal of the impugned orders, it is revealed that the learned Executing Court has specifically observed that the Court Commissioner informed the petitioner as well as his counsel to remain present on 13.11.2022, and accordingly, the petitioner was present.

Again, on 11.02.2023, the Court Commissioner intimated the counsel for the petitioner. The counsel for the petitioner remained absent; however, the measurement was carried out by the Court Commissioner in presence of all the parties, including the petitioner. In view of the specific findings recorded by the learned Executing Court, the submission of the petitioner cannot be accepted. That apart, this objection was not taken in earlier Writ Petition No.81/2024.

6. The petition is devoid of merit and rather appears to be an abuse of the process of law. It is palpable that the petitioner has been raising objections repeatedly. Having found that the ground raised in the petition is incorrect and rather, taken belatedly with sole intention to hinder the proceedings, it is appropriate to dismiss the petition with costs of ₹5,000/- on the petitioner in each petition, to be deposited in Public Welfare Account maintained with Union Bank of India, High Court Branch, Civil Lines, Nagpur bearing Account No.129712010001014 and IFSC Code UBIN0812978, within two weeks.

7. It appears that since long the matter is pending therefore the Executing Court shall decide the execution petition as early as possible within three months from the date of receipt of this order.

8. The petitions are disposed of accordingly.

(M.W. Chandwani, J.)

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