

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

WRIT PETITION NO. 3278 OF 2009

- 1] Ramchandra Bhiwa Thool
through L.Rs
- (1) Bandu Ramchandra Thool
(absconding) aged about 47 years,
Occ. Service, represented through
his L.Rs
- (a) Smt. Maya w/o Bandu Thool,
Aged about 45 years, Occ. Household,
- (b) Sandip Bandu Thool,
aged about 22 years, Occ. Student,
- (c) Monu Bandu Thool,
aged about 18 years, Occ. Student,
- All R/o. Abhay Nagar, Near Suyog
Nagar, House of Shri Gawai, Wardha
Road, Nagpur.
- (2) Raju Ramchandra Thool,
aged about 45 years, Occ. Service,
R/o. Shankpur (Bodkhi),
Tah. And Distt. Nagpur.
- (3) Smt. Jijabai w/o Tarachand Kamble,
aged about 55 years, Occ. Household,
R/o. Plot No. 79, Ujwal Nagar,
Wardha Road, Nagpur.
- (4) Smt. Kantabai W/o Trambakrao Lokhande,
aged about 53 years, Occ. Household,
R/o Samta Nagar, Yavatmal Road, Near
Om Polytechnic College, Wardha.
- (5) Smt. Sheela w/o Tarachand Hajare,
aged about 50 years, Occ. Household,

R/o. Chandramani Nagar, Near
Buddha Vihar, Galli No. 309,
Nagpur...

- 2] Kartik Bhiwa Thool,
aged about 86 years, Occ. Agriculturist,
R/o. Shankarpur (Bodkhi),
Tq. And Distt. Nagpur...

PETITIONERS

...VERSUS...

1. Smt. Barubai Vitthal Patil (dead)
through L.Rs
- (a) Gulab Vitthal Patil,
aged about 60 years, Occ. Retired,
- (b) Natthu Vitthal Patil,
aged about 57 years, Occ. Service,
- (c) Chandramani Vitthal Patil,
aged about 52 years, Occ. Labourer,
- Nos. (a) to (c) R/o. Gumgaon, Tahsil
Hingna, Distt. Nagpur.
- (d) Smt. Chandrabhaga Nagsen Bhagat,
aged about 48 years, Occ. Household,
R/IO. Hudkeshwar, Near Madgi Nagar,
Post Pipla, Tah. And Distt. Nagpur
2. Smt. Kausalyabai Sonbaji Bansod
(deceased) through her L.Rs
- 2-a) Shri M.S.Bansod,
- 2-b) Shirsagar S. Bansod (deleted since dead)
- 2-c) S.S.Bansod
- 2-d) A.S.Bansod
- 2-e) Smt. Indu Sonarkar

- 3] Smt. Surabai Hari Dakhne
through L.Rs.
Sheshrao Hari Dakhane
(Deleted since dead)

All R/o. Nerw Shukrawari,
Ward No.18, Fawara Chowk,
Nagpur.

- 4] The Additional Commissioner,
Nagpur.

RESPONDENTS

Shri P.S.Sadavarte, counsel for Petitioners
Shri A.M.Pannase, counsel for Respondents

CORAM: R. K. DESHPANDE, J.
DATE : 18th APRIL, 2017 .

ORAL JUDGMENT

1] This petition challenges the order dated 23.01.2009 passed by the Additional Commissioner, Nagpur, confirming the order passed by the City Magistrate on 26.07.2005. By the impugned orders, the Sub Divisional Officer is directed to make an enquiry as to the procedure followed in recording the mutation entry in the name of the petitioners. The Additional Commissioner has held in the order that the question of inheritance and title cannot be gone into by the revenue Authorities, but only the procedural aspect can be considered.

2] There is a serious dispute regarding the rights of the respondents in the property in possession of the petitioners and unless such right is adjudicated in a duly constituted suit, the mutation entries of the year 1970-71 cannot be altered and the revenue Authorities will have to enter such a dispute in a 'disputed cases register' maintained under the provisions of the Maharashtra Land Revenue Code. The question of inheritance and title is required to be decided by the Civil Court and it cannot be decided by the revenue Authorities, as has been rightly held in the order impugned, passed by the Additional Commissioner.

3] The petition can be disposed of by setting aside that part of the order of the Additional Commissioner which directs fresh enquiry to be made in the matter, leaving it open for the parties to work out their legal rights by filing a civil suit in accordance with law.

4] The writ petition is partly allowed. The revenue Authority shall enter the properties in the 'disputed cases register' and a decision thereon shall depend upon the out

come of any civil proceeding to be filed by the parties concerned. It is made clear that none of the observations recorded by any of the Authorities below shall come in the way of the parties while adjudication before the Civil Court. The writ petition is accordingly disposed of.

JUDGE

Rvjalit