



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

918 WRIT PETITION NO. 795 OF 2022

Bhanudas Laxman Mulay

....Petitioner

VERSUS

The Sub Divisional Officer & others

.....Respondents

.....

Mr. A. A. Nimbalkar, Advocate for the Petitioner.

Mr. S. W. Munde, Standing Counsel for Union of India.

Mr. D. R. Jayabhar, Advocate for Respondent Nos. 4A, 4D, 4F and 4G.

CORAM : R. M. JOSHI, J.

DATE : 12th MARCH, 2025.

PER COURT :

1. Contesting Respondents/claimants make a grievance that filing an application raising objection to the apportionment of compensation by Petitioner is abuse of process of law. In order to support said submission, attention of the Court is drawn to the fact that admittedly in the year 1985, there was partition effected between Petitioner and contesting Respondents in respect of properties inherited by the. In this regard, reference is also made to the mutation entries effected indicating the properties which went to the shares of parties so also on subsequent partition of property effected by Plaintiff/Petitioner himself in favour of his sons. Thus, it is the contention of the contesting Respondents that the provisions of the

National Highways Act in respect of apportionment are being abused by the Petitioner in order to blackmail the Respondents and to get undeserving share in the compensation.

2. Petitioner takes exception to the order dated 13.12.2021 passed by the Sub-Divisional Officer/competent authority in the Acquisition Complaint Application no. 47/2021. Petitioner raised objection for apportionment of compensation on the ground that the Petitioner has share to the extent of 23 R in Gat No. 169. Though Petitioner accepts the fact that there was already partition, now he claims after 30 years that it was oral partition and in the said partition 23R land went to the share of Petitioner. Said objection came to be rejected by the competent authority by passing impugned order. Hence this petition.

3. Learned counsel for Petitioner submits that once objection is raised with regard to the apportionment, the authority has no right to determine the said dispute with regard to the apportionment and the only option available for the authority is to refer the said dispute to the competent Civil Court for its adjudication. To support his submission, he placed reliance on

judgment of coordinate bench of this Court in case of Bhanudas s/o Bhagwan Gote vs. Vitthal Haribhau Gote, **2020 (5) ABR 92**. He also referred to the judgment of Division Bench of this Court in case of Arun s/o Trimbakrao Lokare vs. State of Maharashtra and others, **2017(6) Mh.L.J. 612** which dealt the issue of jurisdiction of the authority under Section 3-H(4) of the Act. According to him, since the suit is filed for seeking partition and separate possession of the 23 R land, consequential compensation is granted by the authorities on account of acquisition of Survey No. 169. It is his contention that irrespective of the fact that there is rejection of interim injunction sought in Special Civil Suit No. 81/2021, it was not open for the authority to direct apportionment when the same is disputed.

4. Learned counsel for contesting Respondents supported the impugned order. It is contended that this is nothing but abuse of process of law. In this regard attention of the court is drawn to the pleadings in Special Civil Suit no. 81/2021 admitting partition being effected in 1985 and being implemented too. Reference is also made to the mutation entries indicating implementation of partition and Gat No. 169 being allotted to the share of the contesting Respondents. Reference is also made to mutation entry No. 2232

indicating that the Petitioner himself after accepting previous partition, has partitioned his property between his sons. Thus, it is their contention that the dispute which is not genuine in nature, need not be referred to the Civil Court. He further contends that the suit filed by the Petitioner for seeking share in compensation, would not be maintainable as the partition effected 30 years back and implementation is sought to be challenged. Learned counsel for Respondent No. 4 placed reliance on judgment of coordinate bench of this Court in case of Balbhim s/o Vishwanath Tawaskar and another vs. Competent Authority and Deputy Collector, Land Acquisition, Medium Project No. 2, Osmanabad and another, 2017(1) Mh.L.J. 279.

5. Though this Court finds apparent substance in the contention of contesting Respondents with regard to the suit filed by Petitioner being Special Civil Suit No. 81/2021 after 30 years of partition, however, no findings can be recorded by this Court thereon and it would be for the Respondents to satisfy the Court dealing with Special Civil Suit No. 81/2021. Suffice it to say that now there is a suit pending before the competent Court wherein the Petitioner has sought share in Gat No. 169 to the extent of 23 R land and

compensation to that extent. In the light of these facts, the order impugned indicates that the competent authority under Section 3-H(4) of the Act presumed jurisdiction to determine the dispute with regard to the apportionment. The Division Bench of this Court in case of Bhanudas Gote (supra) has dealt with the issue and observed in paragraph Nos. 16 and 17 thus :

“16. Although the learned counsel appearing for the respondent Nos. 1 to 3 has vehemently contended that the Civil Court before whom the aforesaid suit has been filed by the petitioners rejected the application for temporary injunction by observing that not even a prima facie case was made out, that in itself cannot be a ground to justify the impugned order passed by the respondent No. 4. There cannot be any two opinions about the fact that a dispute indeed exists and that the suit filed by the petitioners is pending before the aforesaid Court.

17. Although the learned counsel for the petitioners has relied upon number of judgments, a bare perusal of section 3-H(4) of the aforesaid Act and applying the same to the facts of the present case would show that the error committed by the respondent No. 4 is obvious. In one of the judgments relied upon by the petitioners i.e. judgment and order dated 12/03/2018 passed by a Division Bench of this Court (Aurangabad

Bench) in Writ Petition No. 1454 of 2018 (Rushikesh Kashirao Deshmukh v. State of Maharashtra and others), it is found that in similar factual situation, it was held that the Competent Authority ought to have referred the objections as to apportionment to a Competent Civil Court. In the said case also a suit was already pending before the Civil Court and consequently not only was a direction given to the Competent Authority to refer the dispute raised by the petitioner therein to the Principal Court of civil jurisdiction, it was directed that the pending suit and the proposed reference by the Competent Authority shall be allotted to the same Court for appropriate disposal.

6. This Court is bound by the said observations of Division Bench. In such circumstances, order impugned cannot sustain and hence it is set aside. The Sub-Divisional Officer is directed to refer the said objection raised by the Petitioner for its decision to the Civil Court. Since Special Civil Suit No. 81/2021 is already pending, it would be in the interest of the parties that the said objection is referred to and decided by the same Court.

7. This Court is informed that Special Civil Suit No. 81/2021 is at the stage of evidence of Defendants i.e. contesting

Respondents herein. Both the parties agree for direction to the Trial Court for expeditious disposal of the said suit. In the result, petition is allowed. Special Civil Suit No. 81/2021 is directed to be disposed of within a period of six months from today. The Sub-Divisional Officer is directed to refer the said dispute forthwith to the Civil Court before whom Special Civil Suit No. 81/2021 is subjudice.

8. Before parting, this Court needs to observe that prevailing trend as it appears from the litigation fought before the Court that the parties after acquisition of lands and expecting the monetary benefits, initiate litigation, often unmerited. Now, time has come that in case such frivolous litigation is found aimed at blackmailing other side, the Courts must take strict view of such attempt and deal with the same with iron hands. Thus, when any Court discovers such objection or suit as initiated is frivolous, the same must be dismissed with exemplary costs which would be in proportion to the amount of compensation involved in the case.

(R. M. JOSHI)
Judge