



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9131 OF 2023

District : Osmanabad

Shri Mohan Baburao Gadade
Since deceased hence
Through Legal Representatives

1. Shri Padmaraj Mohan Gadde
Age: 45 year's, Occupation: Agriculture
2. Shri Rajkumar Mohan Gadade
Age: 55 year's, Occupation: Agriculture
3. Shri Mahaveer Mohan Gadade
Age: 52 year's, Occupation: Agriculture
4. Shri Ajit Mohan Gadade
Age: 40 year's, Occupation: Agriculture
5. Smt Savarna Anand Bhasme
Age: 50 year's, Occupation: Agriculture
6. Smt Surekha Mahaveer Ghole
Age: 48 year's, Occupation: Agriculture
7. Smt Sunita Satish Agarthade
Age: 38 year's, Occupation: Agriculture
8. Smt Subhadrabai Mohan Gadade
Age: 75 year's, Occupation: Agriculture

All Resident of: Kakramba,
Taluka Tuljapur, District Osmanabad.

...PETITIONERS

VERSUS

1. The Competent Authority
Land Acquisition Officer,
Deputy Collector Land Acquisition,

Manjara Project, Osmanabad.

2. Shri Kamlakar Devidas Gadade,
Age: 55 year's, Occupation: Agriculture
Resident of: Kakramba, Taluka Tuljapur,
District Osmanabad.

...RESPONDENTS

Mr. Mukul Kulkarni i/b. Mr. Umesh Mitkar, Advocate for the Petitioners
Mr. K. B. Jadhavar, AGP for Respondent-State

CORAM : AJIT B. KADETHANKAR, J.
RESERVED DATE : 11.08.2026
PRONOUNCED DATE: 21.08.2026

JUDGMENT :-

. The Petitioner has put-forth his substantive prayer at prayer clause 'A' which reads thus:

"A. The Hon'ble High Court may be pleased to issue a writ of certiorari or any other appropriate writ, direction or order in the nature of writ and thereby quash and set aside the judgment and order passed by the Respondent No. 1 in proceeding No. 2015-16/Bhu.San./Ra.Ma.Ma.-361/Ati/Pu.Aa.-1/La.Va.D/C R – 05, 05-1 dated 31.03.2023 (ANNEXURE I) and may further be pleased to reject the objection of the Respondent No. 2 dated 23.03.2022 (ANNEXURE F) and issue appropriate order for the said purpose;"

Subject-matter: With a grievance that the land record which is varied during implementation of consolidation scheme erringly showed his land in the name of the Petitioner, the Respondent No.2 prayed to the Respondent no.1 to remit the dispute to the Civil Court u/s 3H-4 of the National Highways

Act 1956. Feeling aggrieved by such relegation of the dispute to the District Court, the Petitioner is before this Court.

Facts in brief:

- a) The issue involved in this petition is very short, and also no more *res-integra*.
- b) Deceased Petitioner Mohan Gadade and Respondent No.2 – Kamlakar Gadade are cousin brothers. Mohan was owner and possessor of agricultural land comprised in Gut No.745 situated at Village Kakrambha, Taluka Tuljapur, District Dharashiv. Out of his holding, an area admeasuring 3900 sq.mt. was acquired by the acquiring body for expansion of the national Highway No.361. Mohan Gadade received award compensation against his acquired land.
- c) Respondent No.2 – Kamlakar owns his agricultural land at Gut No.746 at village Kakrambha.
- d) For the purpose of expansion of the national Highway No.361, lands of the Petitioners as also the land of Respondent No.2 situated in Gut no.746 came to be acquired.
- e) Entire procedure was followed for the acquisition. Joint measurement was conducted. It was also re-conducted. At no point of time the Respondent No.2 ever raised any dispute or objection on any point.

- f) In due course, the award came to be passed and the award compensation was also determined for both the parties by the acquiring body.
- g) Feeling dissatisfied with the award compensation, deceased Mohan filed Arbitration Proceeding No.CR-313 before the Arbitrator. The Arbitrator declared award on 26-08-2019 enhancing the compensation to the tune of Rs. 16,26,300/-.
- h) In the meantime, deceased Mohan raised objection to the compensation granted to the Respondent no.2, for which the Respondent no.1 referred the dispute to the Civil Court.
- i) In turn, the Respondent no.2 filed an objection with the Respondent no.1 complaining that his 24 R land was shown in the name of deceased Mohan by mistake in the Consolidation process itself. He prayed that until the consolidation proceedings for correction were concluded, parties be relegated to Civil court for determination of title and the amount may not be disbursed to the Petitioner.
- j) Respondent no.1 conducted hearing, and noted that the objection was not a rightful. Hence the authority recommended disbursement of the amount to deceased Mohan.
- k) However, by order dated 31-03-2023, Respondent no.1 referred the dispute to the Civil Court u/s 3H-4 of the National Highways Act, 1956. Feeling aggrieved thereby, the Petitioner is before this Court.

Submissions:

- a) Mr. Mukul Kulkarni i/b Mr. Mitkari, learned advocate for the petitioner would submit that apparently, the only reason for referring the dispute to the Civil Court is 2nd respondent's contention that he shall go to the Consolidation authorities for correction of the land record. That the proceedings under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act 1947 (for brevity "the Act of 1947") have attained finality. The limitation to file such challenge even under the Act of 1947 is lapsed long back, and hence the order of referring dispute was absolutely unwarranted.
- b) Neither there was any cause of action to file the objection nor the record even remotely suggests any water in 2nd respondent's contention. That, where there is no cause of action itself i.e. in the absence of any order correcting the record, it would not be justifiable to refer the dispute to the civil court and to withhold the disbursement.
- c) The last but not the least submission advanced by Mr. Mukul Kulkarni is that the objection raised by the 2nd respondent is merely to counter his objection. Mr. Kulkarni submits that his claim against Respondent No.2 is altogether different, and not based upon incorrect land record as is raised by the 2nd respondent in his objection. With these submissions, learned advocate for the Petitioner concludes his arguments.

- d) On 03rd August 2023, this court issued notices to the parties indicating that the Writ Petition shall be heard for final disposal at admission stage.
- e) Pursuant to the notice issued by this Court, Mr. Amol Patale, learned advocate marked his presence for Respondent no.1. Since earlier notice was not served on the Respondent no.2, this court re-issued notice to him on 18th July 2024.
- f) The office remark show that the notice issued to the Respondent no.2 was served personally as per the bailiff report. However no one caused appearance for 2nd respondent. On 12th January 2026, this court observed that despite having been served the 2nd respondent did not appear. A fresh notice was directed to be issued to the 2nd respondent. The Petitioner was set at liberty to serve the Respondent no.2 by private mode of service, and to file an affidavit of compliance.
- g) The Record depicts that the court notice was served on the 2nd respondent. The Petitioner also served him by speed post, and filed service affidavit in the court.
- h) It further appears that 2nd respondent opted not to engage any lawyer to represent him in the court nor appeared personally. Instead, he sent his reply by postal services. Vide order dated 29-07-2026, this Court recorded receipt of the reply and a copy was directed to be given to the learned advocate fore the Petitioner. It is thereafter today, the matter is listed for arguments.

i) Today also none appeared for the 2nd respondent. Hence this is court is left with no option than to proceed on merits of the case hearing the learned advocate for Petitioner, and on considering the reply received from the 2nd respondent. The reply is considered as submission of the 2nd respondent.

Discussion and consideration:

a) I have heard Mr. Mukul Kulkarni, learned advocate for the Petitioner. His sole reliance is upon Section 36-A of the 1947 Act, and the text of Respondent no.2's complaint.

b) I have cautiously gone through the reply received from Respondent No.2. He records his objection to the Petition. It is submitted that the Petitioner suppressed the land record in the land acquisition proceeding. He further submits that he raised objection before Respondent No.1, and at his instance the matter is referred to the Civil Court. He submits that two proceedings i.e. one at the behest of the Petitioner, and another at the behest of him are pending before the Court, and the District Court be directed to expedite the proceedings. There is nothing more in the reply affidavit. The reply affidavit do not explain as to how the Court would have jurisdiction to resolve the issue.

c) Considering the submissions of the rival parties, I find that the only issue before this Court is "the jurisdiction of Civil Court to adjudicate the dispute raised by or sought to be raised by the 2nd respondent with reference

to the correction in the land record pertaining to the Fragmentation and Consolidation proceedings”.

d) For the sake of convenience, Section 36 A of the Act of 1947 is reproduced as below:

36A. Bar of jurisdiction.

(1) No Civil Court or Mamlatdar's Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the State Government or any officer or authority.

(2) No order of the State Government or any such officer or authority made under this Act shall be questioned in any Civil, Criminal or Mamlatdar's Court.

e) The objection application filed by 2nd respondent before the 1st respondent stands at page No.79 (Exh.F) of the Writ Petition compilation. The applicant i.e. present Respondent No.2 has clearly stated that after consolidation, his area is reduced and such area has fallen to the share of the Petitioner. It is further submitted that the applicant proposed to approach the Consolidation authorities for record correction, and till then the amount may not be disbursed. It was further prayed to refer the issue to the Civil Court u/s 3H-4 of the 1956 Act to decide title.

f) Petitioner has descriptively objected the application demonstrating the position of law.

g) At paragraph No.4 of the impugned order, Respondent No.1 observed that since the objector i.e. present Respondent No.1 was to lodge his grievance before the Consolidation officer for correction in the land record, the dispute

deserved to be referred to the Civil court u/s 3H-4 of the 1956 Act.

h) Section 3H-4 of the 1956 Act reads thus:

3H. Deposit and payment of amount.—(1)

(2)

(3)

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5)

(6)

(5)

i) It is Respondent No.2's case that he has title over the land which had gone to Petitioners' record due to errors committed while preparing the record during consolidation scheme. He therefore candidly submitted that he proposed to get the record corrected from the Consolidation authorities. On this backdrop request was made to refer the matter to the Civil Court u/s 3H-4 of the Act of 1956.

j) Apparently, the observations in the impugned order are hit by Section 36-A of the 1947 Act. 2nd respondent's objection is as regards to the land record which is changed after implementation of the 1947 Act in his area. As of now, the land record in respect of the 3900 sq.mt. land in Gut No.745 stood in the name of the deceased Mohan until it was acquired. Entire record of

acquisition shows the same record. At no point of time before the impugned application, the Respondent No.2 ever disputed over the land area. The decision of fragmentation and consolidation done by the authorities is holding field. The land record was prepared in of it. In view of this, it is only within the domain of the appropriate authority under the 1947 Act to resolve any controversy arisen out of implementation of the consolidation Scheme, subject to statutory limitation, if any.

k) Neither the Civil Court i.e. District court in this Case, has any jurisdiction to resolve any issue under the 1947 Act, nor unless the dispute is resolved under the provisions of 1947 Act, the Civil court has any jurisdiction to decide any controversy arising out of or in reference to the implementation of the Consolidation Scheme.

l) On the contrary, Section 31-A and Section 33 of the 1947 Act provide for the appropriate remedy for correction in the record arising out of implementation of the consolidation Scheme. For the sake of convenience, text of both provisions is reproduced as below:

Section 31A :

31A. Correction of clerical and arithmetical mistakes in scheme.

- If, after a scheme has come into force, it appears to the Settlement Commissioner that the scheme is defective on account of any clerical or arithmetical mistake or error arising therein from any accidental slip or omission, and he is satisfied that the correction of such mistake or error would not vary the scheme in any material particular, he may by order in writing correct such mistake or error and publish his order in the prescribed manner.

33. Power to vary or revoke scheme.

- A scheme for the consolidation of holdings confirmed under this Act may at any time be varied or revoked by a subsequent scheme prepared, published and confirmed in accordance with this Act.

m) Thus, 2nd respondent's application for referring the matter to the Civil Court and the impugned order of Respondent No.1 referring the dispute to the District Court, both are misconceived. A beneficial reference can be made to the Judgment and Order passed by a co-ordinate bench of this Court in the case of **Nagendra Kesur Vs. the Competent Authority and ors.** (Writ Petition No.6463 of 2024 decided on 21-03-2025). In the very identical set of circumstances, it is held that Civil Court has no jurisdiction to settle such controversy.

Conclusion:

For the reasons recorded, I conclude that,

- (i) 'A dispute referring to correction in the land record created, formed or recorded in the fragmentation and consolidation proceeding under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act 1947 stands outside the jurisdiction of Civil Court;
- (ii) Assertion of title and dispute of title, based upon an allegation of incorrect land record created in the implementation of Bombay Prevention of Fragmentation and Consolidation Act 1947, does not fall u/s 3H-4 of the National Highways Act 1956 *ipso facto*, unless

and until the controversy is decided by the competent authority u/s 31-A or 33 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act 1947.

Hence, I record my finding that the impugned order dated 31-03-2023 passed by Respondent No.1 is illegal, and is liable to be struck down. This is a fit case wherein directions are needed to be issued to Respondent No.1 in exercise of the power under Article 227 of the Constitution of India. Hence I pass following order :

ORDER

- I. Writ Petition is allowed;
- II. The impugned order dated 31-03-2023 passed by the Competent Authority @Deputy Collector, Land Acquisition -Manjra Project, Osmanabad (Dharashiv) in file No. २०१५-१६/भूसं/राममा-३६१/अति/पू.आ./पू. आ.-१/लवाद/सीआर -०५,०५-१, is quashed and set aside;
- III. The Respondent no.1 i.e. the Competent Authority @Deputy Collector, Land Acquisition -Manjra Project, Osmanabad (Dharashiv) shall disburse to the Petitioner, the award amount within a period of Four weeks from the date of receiving this order; provided that petitioners satisfy respondent No.1 as to their status as legal representatives of deceased Mohan Baburao Gadade.
- IV. No costs.

[AJIT B. KADETHANKAR, J.]