

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

WRIT PETITION NO. 170 OF 2015

Bhimrao Mahadu Solunke (died)
Through L.R.'s

... Petitioners

VERSUS

Dhondiba S/o Sidram Solunke (died)
Through L.R.'s

... Respondents

.....
Mr. T.G. Gaikwad, Advocate for petitioner

.....

CORAM : RAVINDRA V. GHUGE, J.

DATED : 7th JANUARY, 2015

PER COURT :

1. The petitioner seeks to challenge the order below Exhibit 164 dated 24-07-2014 by filing this petition on 07-01-2015. The matter was mentioned today on the ground that on 08-01-2015, the petitioners would be dispossessed of the concerned property land survey No. 91-C admeasuring 5 Acres and 9 Gn. LR 8=35. would be taken in possession of. In view of the said submission, this Court has granted circulation on the production board.

2. The respondents filed application Exhibit 164 in execution proceedings No.22 of 2008. The petitioner-Judgment Debtor has

not filed say on the said application despite the said application having been filed on 05-05-2014. By the impugned order dated 24-07-2014, application Exhibit 164 is allowed and the office in-charge of Aurad (Sh.) Police Station is directed to provide police aid to execute the decree as and when applied for by the Decree Holder.

3. Despite the said order having been passed, the petitioner has not challenged the said order for five months. The objection application under Section 47 read with Order 21 Rule 99 of the Civil Procedure Code has been preferred by the petitioner only on 20-12-2014 which is practically five months after passing of the impugned order and six years after lodging of the execution proceedings.

4. The petitioner concedes that the Judgment and Decree dated 17-11-1999 in R.C.S. No. 525 of 1986 was challenged in R.C.A. No. 30 of 1999 which was dismissed on 05-05-2000. The petitioner preferred Second Appeal No. 265 of 2007 which was dismissed by this Court on 19-11-2007. Special Leave Petition 5524 of 2008 was also dismissed by the Apex Court on 14-03-2008. The decree as regards land survey No. 91-C has thus been upheld up to the Apex Court.

5. The petitioner submits that land survey No. 91-C has been erroneously mentioned by the original plaintiff in the suit and it should have been 91-D. It is stated that both these land survey numbers 91-C and 91-D belong to the petitioner. It is stated that land survey No. 91-C is more fertile and better than land survey No. 91-D.

6. It is, therefore, submitted that the Executing Court is proceeding on wrong premise. By inadvertence, land survey No. 91-C would be handed over to the Decree Holder and in fact land survey No. 91-D should have been part of the plaint, the part of the decree and, therefore, should have been handed over to the Decree Holder.

7. I find that there is no explanation forthcoming as to why this aspect was not pointed out initially to the Appeal Court when R.C.A. No. 30 of 1999 was filed. Similar is the case with Second Appeal No. 265 of 2007 and Special Leave Petition No. 5524 of 2008.

8. The petitioner has waited till 07-01-2015 and has moved this Court only when he has gathered knowledge that the

Judgment holder would arrive with the police aid and implement the order dated 24-07-2014. Laxity and complacency on the part of the petitioner is writ large from the sequence of events as they emerge from the proceedings.

9. The petitioner has not even cared to file his objection application under Section 47 read with Order 21 of 99 which he could have filed promptly six years ago in execution proceedings in R.D. No. 28 of 2008. In the light of the facts recorded as above, the petitioner alone has invited the said situation.

10. The petitioner has relied upon the judgment of this Court in the matter of **Narayan s/o Govind Rekhawar Vs. Abhijit s/o Manikrao Deshmukh**, *reported at 2013 (6) ALL MR 204*. Contention is that a person who is selling the property as regards the sale transaction which is covered by the Maharashtra Project Affected Persons Rehabilitation Act, 1999, necessarily needs to take permission from the Collector. When this issue was not before the Executing Court, I need not deal with this contentious issue. It is left for the petitioner to deal with the said issue as may be permissible in law. In the light of the above, I do not find that the petitioner is entitled for any relief in this matter. The petition is, therefore, dismissed.

11. The petitioner submits that the objection petition is filed on 28-12-2014 and is pending adjudication. Needless to state, the Executing Court shall deal with the said application in accordance with law and as per procedure.

(**RAVINDRA V. GHUGE, J.**)

SDM* JANAURY-2015