

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

WRIT PETITION NO.2996 OF 2014

Razzak s/o Mannu Patel,
Age 70 years, Occu. Agriculture
Rajarai Takli, Taluka Khultabad,
District Aurangabad

.. Petitioner

Versus

1. Zahir Razzak Patel,
Age 33 years, Occu. Agri.,
R/o Rajarai Takli,
Taluka Khultabad,
District Aurangabad
2. Rajiya w/o Azimuddin Shaikh,
Age 33 years, Occu. Household,
R/o Sajapur, Taluka and District
Aurangabad
3. Anis Mehboob Shaikh,
Age 53 years, Occu. Agri.,
R/o Sajapur, Taluka and District
Aurangabad
4. Arifa Shaikh Sandu,
Age 49 years, Occu. Household,
R/o Galli No.2, Ambikanagar,
Mukundwadi, Aurangabad

.. Respondents

Mr Mobin H. Shaikh, Advocate for petitioner

Mr Ashfaq Patel, Advocate h/f Mr G.M. Patel, Advocate for respondent
No.1

Mr Abhijit Choudhary, Advocate h/f Mr V.V. Deshmukh, Advocate for
respondents No.2 to 4

CORAM : N.W. SAMBRE, J.

DATE : 13th April 2015

PER COURT

1. The petitioner-plaintiff filed R.C.S.No.103 of 2011 in the Court of Joint Civil Judge, Junior Division, Khultabad. The petitioner also filed application Exh.5 for grant of injunction praying an order of restraint against respondents from interfering the peaceful possession of the

present petitioner over the suit property, which came to be rejected by order dated 28th June 2013.

2. Being aggrieved by the said order, the present petitioner had filed Misc. Civil Appeal No.154 of 2013, which also came to be rejected by the District Judge-2, Aurangabad vide judgment and order dated 18th January 2014, as such the present petition.

2. Based on the title, the petitioner sought relief of declaration in his favour, as according to him, he being legal representative of late Mannu Bhiku was entitled to hold 38-R of land.

3. Learned Counsel for the petitioner would urge that the petitioner had also placed on record the award statement pointing out the acquisition of 1.28 hectare of land, 3.70 hectare of land, 1.70 hectare of land and 1.21 hectare of land from Gut No.216. In addition to above, he has also placed reliance upon the various sale-deeds executed before filing of the suit by his brothers, Hasan Mannu and Ibrahim Mannu. According to him, both the Courts below have failed to consider the entries in the award statement *qua* the measurement of the land acquired so also the transfer of title of the land mentioned in the sale-deeds. He would further urge that before the trial Court and the lower appellate Court, the statement of award was very much filed and was taken into account by the trial Court, however, the lower appellate Court has lost sight of the same *qua* the measurement of land acquired out of Gut No.216. In addition to above, he would urge that the sale-deeds dated 8th June 2011, 26th August 2011 and 27th January 1994 were placed before the learned District Judge, however, the learned District Judge has failed to apply his mind to the said fact,

i.e. transfer of title. In support of his contention, he has invited attention of this Court to the recitals of the sale-deeds which are part and parcel of the present record, so also the award statement in the form 'E' so as to demonstrate the extent of acquisition of land.

4. Based on the above referred iota of evidence, learned Counsel for the petitioner would urge that the order delivered by the learned lower appellate Court in not considering the said factual matrix goes contrary to the revenue entries, particularly, the revenue entries No.1899 and 1995. He would urge that the failure on the part of the learned lower appellate Court, the above referred documentary evidence has resulted into causing great injustice to the petitioner, as the petitioner has sought to canvass that there is strong prima facie case in his favour, and also balance of convenience. He claimed that he would suffer irreparable loss if injunction is not granted as according to him, he will lose the possession.

5. Mr Patel, learned Counsel for respondent No.1 would urge that as both the Courts have concurrently held against the petitioner, this Court, in its writ jurisdiction should be very slow in interfering the orders passed by the Courts below. He would urge that the suit is filed by the petitioner without measuring his land and without placing the map on record to the scale. According to him, the factual matrix was rightly appreciated by both the Courts below while rejecting the claim for grant of injunction.

6. If we peruse the order passed by learned District Judge in the light of submissions made by learned Counsel for the parties, it is

required to be noted that learned lower appellate Court has rejected the injunction and confirmed the order passed by the trial Court, mainly on three grounds, (a) that there was no measurement, (b) there was no map placed on record to the scale, issued by the competent authority; and (c) to what extent the land was acquired was not established.

7. If we analyse the above referred observations of the learned lower appellate Court or the trial Court, what is required to be noted is the lower appellate Court or the trial Court were required to appreciate the prima facie case in favour of the parties. The documentary evidence that is to say acquisition statement in the form 'E' depicts acquisition of the land with a specific endorsement as regards area of gut numbers, including that of owner thereof. The said fact could have been taken to its logical end while giving finding as to the extent to which land was subjected to acquisition out of Gut No.216.

8. The lower appellate Court though was aware of the fact as is apparent from narration of the factual matrix of its order about placing on record the sale-deeds, the consideration of the same is conspicuously absent in the reasons given by the learned lower appellate Court. The said documents are required to be taken into account so as to appreciate the transfer of holdings by the real brothers of the present petitioner.

9. As such, in my opinion, the non-consideration of above referred strong evidence in favour of the present petitioner has caused a great prejudice to the petitioner.

10. In the light of above observations, in my opinion, it will be appropriate to remit back the matter to the lower appellate Court.

11. Accordingly, the order dated 18th January 2014 passed by the District Judge-2, Aurangabad is hereby set aside and the matter is remitted back to the Court of District Judge-2, Aurangabad with a direction to appreciate the above referred evidence and the documents placed by the respective parties on record and to pass appropriate order after hearing the parties.

12. The observations herein above are without going into the merits of the matter and the lower appellate Court should independently evaluate the facts and evidence brought before it.

13. The parties to the present proceedings undertake to appear before the learned District Judge-2, Aurangabad on 27th April 2015 along with written notes of arguments.

14. The learned lower appellate Court shall make every endeavour to decide the said appeal within eight weeks from the date of communication of this order.

15. Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

vvr