

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

**WRIT PETITION NO. 11663 OF 2014
WITH
CIVIL APPLICATION NO. 1789 OF 2015
IN
WRIT PETITION NO. 11663 OF 2014**

Ramesh S/o Waman Sonar,
Age: 44 years, occ.: Agriculturist,
R/o Narayanwadi, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon.

...PETITIONER

versus

1. The State of Maharashtra,
Through its Secretary,
Revenue Department,
Mantralaya, Mumbai-32
2. Special Land Acquisition Officer,
Collector Office, Jalgaon,
Tq. & Dist. Jalgaon.
3. The Executive Engineer,
Public Works Department,
Jalgaon, Tq. & Dist. Jalgaon.
4. Kawarlal S/o Kewalchand Oswal,
Age: 57 years. Occ. Agri.,
R/o Chalisgaon, Tq. Chalisgaon,
Dist. Jalgaon.

...RESPONDENTS

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Mr. R.M. Deshmukh , Advocate for Petitioner
Mr. V.G. Shelke, A.G.P. for respondents No. 1 to 3
Mr. Ajit Kale, Advocate for respondent No. 4
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CORAM : SUNIL P. DESHMUKH, J.

DATED : 13th APRIL, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally with consent of learned counsel for the parties.

2. In the proceedings of execution of award rendered in Land Acquisition Reference No. 1463 of 1998 dated 15-01-1989, the petitioner had moved an application Exhibit-27, on 10-04-2014, praying for apportionment and payment of land acquisition compensation along with interest in respect of portion of the land, as claimed to have been acquired under the land acquisition proceedings.

3. Mr. Deshmukh, learned counsel appearing for petitioner-original applicant contends that, as a matter of fact, compensation has been awarded to respondent No. 4 in respect of 39 Aar land belonging to the petitioner, which was also acquired in the acquisition proceedings. According to him, respondent No. 4 is not owner of said portion of the land and is not entitled to compensation and interest thereon, and as such, application of the petitioner should have been entertained with reference to Order XXI, Rule 97 of the Code of Civil Procedure. He further contends that rejection of his application is improper and illegal.

4. Mr. Deshmukh, learned counsel appearing for petitioner relies on the judgment in the case of *Kuber Housing Investment and Finance Private Limited Vs. TCI Finance Limited and ors.* reported in 2013(6) All MR 342 and submits that the objection of the nature as has been filed by the petitioner should not have been disposed of in summary manner. Executing Court is required to adjudicate upon the title of such objector after taking into account all the requisites. Learned counsel for the petitioner purports to state that claim of this nature cannot be asserted by way of an independent suit but has to be raised in the course of the execution proceedings pursuant to Order XXI, Rule 101 of the Code of Civil Procedure. He further relies on the decision of Supreme Court in the case of *Ashan Devi and another Vs. Phulwasi Devi and others* reported in (2003)12 Supreme Court Cases, 219.

5. Mr. Kale, learned counsel appearing for respondent No. 4 contends that right being sought to be asserted by the petitioner is too belated and the acquisition proceedings had been pending for twenty five years. After the collector had taken possession of the land, no objection at the relevant time had been taken by the petitioner. Amount of compensation had been received by respondent No. 4 pursuant to land acquisition proceedings. Award by Reference Court had been passed in 2009, even thereafter till 2014 the petitioner had not objected to the same

and only at the time of disbursement of amount of compensation, has mischievously moved this application. Apart from denying the claim raised by the petitioner about his holding of 39 Aar land been acquired, compensation being received by his client, he submits that if the petitioner is really aggrieved, Rule 97 or for that matter Rule 101 of the Order XXI of Code of Civil Procedure would hardly have any application in the present matter. There is no execution for delivery of immovable property. The property has changed its form long back. Order XXI, Rules 97 and 101 of the Code of Civil Procedure cannot be invoked in the present circumstances.

6. Mr. Kale, learned counsel appearing for respondent No. 4 in order to buttress his submission relies on the citation in the case of *Shyamali Das V. Illa Chowdhry and ors* reported in *AIR 2007 Supreme Court, 215*. In paragraph No. 19 of said judgment, it has been observed by the Supreme that-

“19. The Act is a complete code by itself. It provides for remedies not only to those whose lands have been acquired but also those who claim the awarded amount or any apportionment thereof. A Land Acquisition Judge derives its jurisdiction from the order of reference. It is bound thereby. Its jurisdiction is to determine adequacy or otherwise of the amount of compensation paid under the award made by the Collector. It is not within its domain to entertain any application of pro intersse suo or in the nature” thereof.”

7. Proceedings for acquisition of land under section 4 of the Land Acquisition Act were initiated in the year 1989, possession of the land under acquisition proceedings was taken in the year 1992 itself and award came to be passed by the Collector in the year 1992 and pursuant to award, amount had been withdrawn by respondent No. 4. Respondent No.4 had thereafter filed Reference under section 18 of the Land Acquisition Act, immediately. Reference Court had passed its decision and award in the year 2009. Amount was deposited in the court in 2014. Thereafter, purportedly the petitioner has moved the application seeking relief as referred to hereinabove.

8. In present circumstances, it can hardly said that the petitioner under Rule 97 of the Civil Procedure Code has any case. There is no immovable property involved, where its possession is concerned. Petitioner claims apportionment in respect of compensation of the land, contended to be owned by him and acquired by the State. In such a case, proceedings under Exhibit-27 had can hardly be said to be maintainable. As such, no fault can be found with the impugned order. Writ petition, as such, stands dismissed. It may, however, would be open for the petitioner, if he wants to assert his right in respect of the claim as has being made, to prosecute such remedies as would be available in law.

9. Writ Petition stands dismissed. Rule stands discharged.

10. In view of disposal of writ petition nothing further survives for consideration in civil application No. 1789 of 2015 and the same stands disposed of accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK