

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.360 OF 2015

RAJESH BANSILAL SHAH

PETITIONER

VERSUS

STATE OF MAHARASHTRA AND OTHERS

RESPONDENTS

Mr.D.K.Kulkarni, Advocate for the petitioner.

Mr.D.R.Jayabhar, Advocate for respondent Nos. 2 and 3.

Mr.D.R.Korde, AGP for respondent/State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 30/01/2015

PER COURT :

1. The petitioner is a third party, who had moved an application Exh.21 in R.D. No.1/2012, seeking stay on the disbursement of the payment in the light of order below Exh.18 dated 20/08/2014 in favour of the decree holder respondents. By the order dated 25/09/2014, the Executing Court stayed the payment for an amount of Rs.44,79,760/- till further orders. By the impugned order dated 12/12/2014 passed by the Executing Court, application Exh.21 has been rejected. Consequentially, the objection petition Exh.23 was also rejected on the same date.

2. The grievance of the petitioner is that an amount of compensation pursuant to acquisition of land was deposited by the judgment debtor Nos.1 and 2, for being disbursed in favour of the decree holder Nos. 1 and 2. The petitioner, by the said application Exh.21, sought

intervention in the matter. By the impugned order, the Executing Court considered the factual matrix and came to a conclusion that the petitioner has no share in the said compensation. Consequentially, the application was rejected with costs.

3. The petitioner submits that the Executing Court should have gone into the claim of the petitioner as regards the title to the property and consequentially the share in the compensation. By rejecting application Exh.21, the Executing Court has caused grave injustice to the petitioner.

4. The respondent has filed an affidavit in reply opposing the petition. It is contended that the property referred to by the petitioner herein has no connection with R.D. No.1/2012, which involves properties Survey No.111, 111/1, 111/2 and 110 admeasuring 13 acres, 30 R and 34 R respectively.

5. It is further submitted that the petitioner did not produce any documentary evidence which could have indicated that the petitioner has some share in the amount of compensation. All the revenue records stand in the name of the respondents. Special Civil Suit No.636/1998 is already pending before the 3rd Jt.Civil Judge, S.D. in which the properties mentioned are not those properties which are covered by LAR No.10/2000.

6. It is further submitted that the petitioner has initiated a vexatious litigation and consequentially, the Executing Court has imposed costs upon the petitioner. It is, therefore, prayed that the impugned order does not call for any interference.

7. Having heard the learned Advocates for the respective sides and

having gone through the impugned order, it appears that the petitioner/objection applicant had sought intervention in his capacity as a plaintiff in Spl.C.S.No.636/1998. In the said suit, there is no whisper as regards the acquired property with regard to which compensation is being sought to be paid to the respondents.

8. The respondent Smt.Shashikala Prataprao Deshmukh as well as the acquiring body were before this Court in Writ Petition No.2297/2013 and in First Appeal St.No. 31729/2012. Under orders of this Court, the compensation amount to be disbursed to the respondents was deposited by the acquiring body. Similarly, the acquiring body had sought to question the award of compensation in the Second Appeal wherein the civil application for condonation of delay was rejected, thereby declining registration of the second appeal.

9. I find from the impugned order that the petitioner could not place such material before the Executing Court so as to establish any relation of the suit properties mentioned in the special civil suit and the land acquired by the Government for the Nevapur Irrigation Project, which is covered by the award delivered in 1996. The Trial Court, verified from the record as well as going by the pleading of the parties that the acquired property situated at Karanjkheda had nothing to do with the suit property situated at Chincholi Nimbaji.

10. Considering the reported judgments in the matters of Pitambar Kanhayalal Khattar Vs. Sadanand Harishchanda Honawar, 2007 (Supp.) Bom.C.R. 728, Bhau Krishna Shinde Vs. Vatsala Bhau Shinde, 2000(1) Mh.L.J.55, Dattaram Deu Desai Vs. Nirakar Devasthan of Palolem, Goa, 2000(3) MH.L.J. 377, Sarvinder Singh Vs. Dalip Singh, 1997(1) Mh.L.J. 539 (SC), the Executing Court concluded that the petitioner was neither

a proper party nor a necessary party. Considering the claim of the petitioner in Spl. Civil Suit No.636/1998 and the contentions set out in application Exh.Nos. 21 and 23, the Executing Court was therefore convinced that the said applications deserve to be rejected.

11. I find that the impugned orders both dated 12/12/2014 passed below Exh.21 and 23, can neither be termed as perverse nor erroneous, much less causing grave injustice to the petitioner so as to cause any interference in the writ and supervisory jurisdiction of this Court. Writ petition is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)