

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APEAL FROM ORDER NO. 6 OF 2016
WITH CA/1461/2016 IN AO/6/2016

MURLIDHAR S/O YESHWANT KULKARNI
VERSUS
SONAJI S/O DAJI DHOLE (DIED) THROUGH LRS

...
Advocate for Petitioner : Mr. Vilas P. Savant
Advocate for Respondents : Mr. M.M. Patil (Beedkar)

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CORAM : V. K. JADHAV, J.
DATED : 30th MARCH, 2016

PER COURT:-

1. With consent of the parties, heard finally at admission stage.
2. Being aggrieved by the order passed by the learned District Judge-3, Beed below Exh.21 in R.C.A. No.72 of 2014, the appellant-original defendant has preferred this appeal to the extent of certain observations made by the learned District Judge in para 8 and 9 of the impugned order.
3. Brief facts, giving rise to the present appeal, are as under:-
 - a) The appellant, by way of registered sale deed, purchased the suit land for valuable consideration from deceased Sonaji, however, after death of vendor Sonaji, legal

representatives of Sonaji instituted the suit bearing R.C.S. No. 58 of 2012 (Special Civil Suit No. 24 of 2009) before learned C.J.S.D. Beed seeking relief of declaration of title and decree of perpetual injunction. The appellant original defendant has strongly resisted the said suit by filing his written statement. Learned Judge of the trial court, by its judgment and decree dated 22.4.2014, dismissed the suit with costs.

b) Being aggrieved by the same, the respondent-original plaintiff preferred an appeal bearing R.C.A. No. 72 of 2014 and the same is pending before the District Court at Beed. Pending the appeal, the appellant original plaintiff has filed an application Exh. 21 under Order 39 Rule 1 r.w. Section 151 of C.P.C., praying therein to restrain the respondent (present appellant) from withdrawing the amount of compensation of a portion of disputed land till decision of appeal. It has to be mentioned here that in the meanwhile, probably during pendency of the appeal, the State of Maharashtra initiated acquisition proceedings in respect of certain portion of suit land and accordingly land was acquired and award was also passed. Consequently, during pendency of the appeal, present respondents/original appellants filed an application Exh.21 for restraining the present appellant/original defendant from

withdrawing the amount of compensation till decision in appeal. Learned District Judge-3, Beed, by impugned order dated 10.12.2015, dismissed the said application with certain observations in paragraph Nos. 8 and 9 of the order. Aggrieved by the said observations, the appellant-original defendant has preferred this appeal.

4. Learned counsel for the appellant submits that the lower appellate court has made certain observations in paragraph Nos. 8 and 9 of the impugned order in accordance with the provisions of Section 77 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter, for the sake of brevity, referred to as "the Act of 2013"). By referring the said provisions, the lower appellate court has rightly observed that the provisions of Act of 2013 does not allow the Land Acquisition Officer to make payment other than the person interested and the authority is required to act as per the provisions of Section 77 of the Act of 2013. Learned counsel submits that the lower appellate court erroneously observed that the original plaintiff Sonaji Dhole is held to be the interested person by the Land Acquisition Officer, Beed within the meaning of the Act of 2013 and thus, the authority is bound to act as per the provision of Section 77 of the Act 2013. Learned counsel submit shat the said observations are

unwarranted and uncalled for.

5. Learned counsel for the respondents-original plaintiffs submits that the lower appellate court has made observations in paragraph Nos. 8 and 9 of the impugned order by referring the provisions of Act of 2013. Thus, no prejudice is likely to be caused and in view of the provisions of section 77(2) r.w. Section 64 of the Act of 2013, the Collector is required to deposit the amount of compensation before the authority to which reference under Section 64 would be submitted and accordingly, the said authority, as prescribed under Section 51 of the Act of 2013, would decide the dispute in view of the provisions of Section 69 of the Act of 2013. Learned counsel submits that no interference is required in the impugned order and the appeal is thus liable to be dismissed.

6. The provision of Section 77 of the Act of 2013 are reproduced as under:-

“77. Payment of compensation or deposit of same in Authority.-

(1) On making an award under Section 30, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them by depositing the amount in

their bank accounts unless prevented by someone or more of the contingencies mentioned in sub-section (2).

(2) If the person entitled to compensation shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Authority to which a reference under section 64 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided further that no person who has received the amount otherwise than under protest shall be entitled to make any application under sub-section (1) of section 64:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation award under this Act, to pay the same to the person lawfully entitled thereto."

7. In view of the provision of Section 64 of the Act of 2013, any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for determination of the Authority with regard to the objection of measurement of land, the amount of compensation, the

person to whom it is payable etc. It thus appears that if there is any dispute as to the title to claim compensation or as to the apportionment of it, the Collector shall deposit the amount of compensation in the authority, to which Reference under Section 64 would be submitted. In the light of these provisions, learned counsel for the appellant submits that the Collector has issued notice to the appellant and the respondents herein, and the matter is pending before the Collector and inquiry is going on before the Collector. Learned counsel for the respondent has also not disputed the same. It is not clear in what way the lower appellate court has come to the conclusion that the original plaintiff Sonaji is held to be interested person for the purpose of payment of compensation and therefore, the authority is now required to act under Section 77 of the Act 2013. It appears that the observations made in paragraph Nos. 8 and 9 in this regard are unwarranted and uncalled for.

8. The lower appellate court has rightly rejected the application Exh.21, however, the said observations in paragraph Nos. 8 and 9 of the order are liable to be quashed and set aside. The authority may proceed to decide the objection in view of the provisions of Section 77 r.w. 64 of the Act of 2013. Hence, the following order:-

ORDER

- I. The appeal is hereby partly allowed.
- II. The impugned order dated 10.12.2015 passed below Exh.21 in R.C.A. No. 72 of 2014 to the extent of observations made in paragraph Nos. 8 and 9 of the said order, as discussed above, are hereby quashed and set aside.
- III. The rest of the impugned order dated 10.12.2015 passed below Exh. 21 in R.C.A. No. 72 of 2014 stands confirmed.
- IV. Appeal is accordingly disposed of.
- V. In view of disposal of appeal from order, pending civil application No. 1461 of 2016 is also disposed of.

(V. K. JADHAV, J.)

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