

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

WRIT PETITION NO. 2219 OF 2016

Vyankat Govind Haridas
Age: 62 years, Occu. Agri.,
R/o. Pangaon, Tal. Renapur,
Dist. Latur.

... Petitioner
(Ori. Objection Petitioner)

Versus

1) Shriram Govind Haridas
Age: 60 years, Occu. Agri.,
R/o. Pangaon, Tal. Renapur,
Dist. Latur.

2) The State of Maharashtra
Through its Collector, Latur,
Dist: Latur

3) The Executive Engineer,
Medium Project, Latur,
Tal and Dist: Latur.

... Respondents
(R.1: Ori. Decree Holder
R.2 & 3 Judgment Debtors)

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Mr. V. D. Gunale, Advocate for the petitioner
Mr. V. D. Hon, Senior Advocate i/by Mr. A. V. Hon, Advocate
for respondent No.1
Mr. S. K. Tambe, Assistant Govt. Pleader for respondent No.2

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 23rd JUNE, 2016

ORAL JUDGMENT :

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

2. The petitioner, purportedly, aggrieved by rejection on 12th January, 2016, of his request to adduce evidence under application Exhibit-21 in Special Regular Darkhast No. 221 of 2012 pending before the 3rd Joint Civil Judge, Senior Division, Latur, is before this court.

3. The facts of the matter can briefly be referred to that, petitioner and respondent No.1 and one Jagannath (who is not party to the writ petition), are three real brothers. They are the sons of Govind and Sitabai Haridas. While land acquisition proceedings were initiated, some land holdings were in the name of petitioner and his two other brothers, and accordingly, the proceedings have been prosecuted, which culminated into the award by Special Land Acquisition Officer and further enhanced award by reference court.

4. While respondent No.1 had been prosecuting aforesaid execution petition for realisation of the enhanced award amount, the petitioner had lodged some proceedings in the executing court, bearing Exhibit-12, objecting to the payment of entire award amount to respondent No.1. This objection had been lodged, contending that partition among the brothers and the parents had taken place in 1999, which

makes reference to that the land acquisition compensation be shared equally by all the three brothers referred to above, and that was unlikely to happen as respondent No.1 had shown reluctance to be bound by the partition-deed and as such the objection petition has been lodged. It is with reference to this objection at Exhibit-12, an application had been moved by petitioner at Exhibit-21 seeking leave from the court to allow him to lead evidence in respect of the contended partition, which leave had been refused to be granted by the court under impugned order.

5. Mr. Gunale, learned counsel for the petitioner submits that, having regard to the undisputed events and the partition, which he relied on, the application, ought to have been considered properly and the petitioner ought to have been allowed to lead evidence. He submits that executing court under section 47 of the Code of Civil Procedure, 1908, was required to be moved in this respect as the executing court is empowered to decide the dispute about the representation.

6. Learned counsel for the petitioner further purports to support his submissions by citing two judgments - one in the

case of *Gangabai Gopaldas Mohata vs. Fulchand and others* reported in 1997(3) *MH.L.J.* 561. Perusal of the judgment would show that the context of said matter with which petitioner had been concerned, has no nexus to the present factual situation.

7. Another decision of this court relied on by Mr. Gunale is in the case of *Sushila Sadanand Borkar d/o Sadanand Ladu Borkar and others vs. Maria Exaltacao Vaz alias Elasso Vaz and another* reported by *Manupatra*, a copy of which has been tendered across, shows that it too does not have any nexus to factual position and same relates to immovable property and not to the subject matter under impugned order on Exhibit-21.

8. Learned senior advocate Mr. Hon appearing on behalf of respondent No.1 submits that, as a matter of fact lodging of objection before the executing court itself is untenable and further refers to that the impugned order sufficiently takes care of the interest of the petitioner, in the way in which the same can be taken care of.

9. He further submits that as has been observed above that the decisions relied on, have no relevance in the present controversy. He further purported to point out that Section 47 shows pre-requisite for invoking it is that the person should

be party to the *lis /* suit and that primary requirement does not get satisfied in the present matter. The case sought to be contended by petitioner, has no relevance to section 47 and much less to sub-section (3) thereof.

10. Under the circumstances, no indulgence under the extra-ordinary powers of this court is at all required in the present matter.

11. Section 47 of the Code of Civil Procedure, which reads as under;

" 47. ***Question to be determined by the Court executing decree***
– (1) *All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.*

[]

(3) *Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purpose of this section, be determined by the Court."*

12. The proceedings of acquisition as far as the present award is concerned, had been between the respondent No.1 and the State and petitioner had not at all been a party to the same. It does not appear to be a case that the situation would be covered under sub-section 3 of Section 47 of the Code of Civil Procedure. In the circumstances, it would not have any

implication. As such, no fault can be found in the order impugned.

13. Having regard to above, I am not inclined to give any indulgence requested by the writ petitioner.

14. Writ petition, as such, stands dismissed. Rule is discharged.

15. However, it would be open for the petitioner, to prosecute other remedies as may be available.

(SUNIL P. DESHMUKH, J.)

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