

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11946 OF 2015

1. Kondabai w/o Santaram Kotwad,
Age: 89 years, Occ: Household,
R/o Harangul (Bk) Tq. & Dist. Latur
At present R/o Sham Nagar,
12 No. Patil, Latur, Dist. Latur.
2. Gayabai w/o Sambhaji Ailane,
Age: 70 years, Occ: Household,
R/o Sham Nagar, 12 No. Patil,
Latur, Dist. Latur.
3. Nivrati s/o Pandu Nagmode,
Age: 30 years, Occ: Agril,
R/o Renapur, Tq. Renapur,
Dist. Latur.
4. Ravi s/o Pandu Nagmode,
Age: 24 years, Occ: Education,
R/o Renapur, now at 12 No. Patil,
Sham Nagar, Latur, Dist. Latur. ... Petitioners

Vs.

1. Surekha Nagnath Khot,
Age: 53 years, Occ: Household,
R/o Kotachiwadi, Tq. Mohal,
Dist. Solapur.
2. Santram s/o Bapu Kotwad,
Since deceased. **Deleted**
3. Daivshala Prabhakar Kotwad,
Age: 33 years, Occ: Agril,
R/o Harangul (Bk)
Tq. & Dist. Latur.
4. Dnyanoba Prabhakar Kotwad,
Age: 33 years, Occ: Agril,
R/o Harangul (Bk)
Tq. & Dist. Latur.

5. Shivkanya Rajkumar Patewad,
Age: 30 years, Occ: Household,
R/o Ahmedpur, Tq. Ahmedpur,
Dist. Latur.

6. Machindra Santaram Kotwad,
Age: 38 years, Occ: Agril,
R/o Harangul (Bk)
Tq. & Dist. Latur.

... Respondents

Mr. S.S. Manale, Advocate for the petitioners.

Mr. S.C. Swami, Advocate for respondent no.1.

Mr. A.N. Irpatgire, Advocate for respondents no. 3 to 5.

Mr. V.D. Gunale, Advocate for respondent no.6.

CORAM : SUNIL P. DESHMUKH, J.

DATE : 22-07-2016.

ORAL JUDGMENT :

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

2. Regular civil suit no. 278 of 2011 has been filed by present respondent-plaintiff seeking declaration that, she is entitled to 1/7th share in suit properties and also entitled to compensation payable in L.A.R. No. 456 of 1999 and 632 of 1999 and further for recovery of her 1/7th share in the award amount received by defendants no. 3 and 6, as well as, it be declared that she is entitled to compensation in the decreetal amount in special L.A.R. darkhast no. 181 of 2010. The petitioners are original defendants no. 2, 7, 8 and 9 in special civil suit no. 278 of 2011 pending in the court of Civil Judge, Senior Division at Latur.

3. Learned counsel for the petitioners submits that, the plaintiff is daughter of defendants no.1 and 2, Land bearing block no. 284 situated at village Harangul ad-measuring about 8 hectar, 43 Are is ancestral property. Defendant no.1 purported to partition aforesaid land retaining an area of 3 Acre, 56 Are for himself and rest of the land was shown to have been given to defendants no. 3 and 6. From area of 3A, 56R retained by defendant no.1, an area of 1 acre 13 Are land was acquired for M.I.D.C. The lands shown to have been allotted to defendants no. 3 and 6 were also acquired for M.I.D.C.

4. Defendant no.1 had filed L.A.R. bearing no. 632 of 1999 under section 18 of Land Acquisition Act, 1894 seeking enhancement of the award amount. Defendants no. 3 and 6 also filed L.A.R. No. 456 of 1999 seeking enhancement in compensation, L.A.R. bearing no. 632 of 1999 had been allowed. The plaintiff, as such, has claimed partition and declaration of her entitlement to 1/7th share in the acquired lands and compensation payable in L.A.R. proceedings to the extent of her share.

5. The plaintiff had purportedly alluded to that, there had been a partition in the year 1989, however, the same had been denied by present petitioners in their written statement. Defendant no.6 had filed consent written statement supporting plaintiffs

accepting her 1/7th share in the suit properties and amount of compensation. The plaintiff in collusion with defendant no.6, in the circumstances had filed an application at exhibit-5 pursuant to order 39, rules 1 and 2 of Civil Procedure Code seeking restraint on defendant no.1 from withdrawing the amount of compensation deposited by M.I.D.C. in the high court. The trial court had allowed the application and restrained the defendant no.1 from withdrawing amount of compensation. However, before the order of restraint had been passed/served the original defendant is stated to have withdrawn the amount.

6. It appears that L.A.R. No. 456 of 1999 filed by defendants no. 3 and 6 was allowed against which M.I.D.C. has filed First Appeal 2802 of 2012 in this court and the high court had granted stay to the execution of the award on deposit of the amount awarded under land acquisition reference. Pursuant to the same the amount came to be deposited in this court. Defendants no. 3 and 6 had thereupon applied for withdrawal of the amount and had also withdrawn the amount under the orders in civil application no. 1471 of 2014 permitting the petitioners to withdraw 50% of the amount.

7. Defendants no. 3 and 6 had been before the supreme court for withdrawal of the rest of the amount and the supreme

court has allowed the withdrawal of the balance of the 50% amount.

8. It is submitted that, the plaintiff in collusion with defendants no. 3 and 6 had not deliberately sought any injunction against defendants no. 3 and 6 and had obtained injunction only against defendant no.1, seriously jeopardising the rights of the parties to the suit.

9. It was after the orders of the supreme court came to the knowledge of petitioners, they had filed an application exhibit-67 in special civil suit no. 278 of 2011 pursuant to order 39, rules 1 and 2 of Civil Procedure Code seeking restraint on defendants no.3 and 6 from withdrawing the remaining amount till the decision of the suit, since it would be difficult for petitioners to recover the amounts of their share and entitlement while the suit for partition would be decreed

10. It appears that, defendants no. 3 and 6 did not file any say in the application, however, yet the trial court rejected the application on the ground that the amount was directed to be paid by the supreme court / high court which had been lying in the high court.

11. It further appears that, against the aforesaid rejection by the trial court an appeal from order bearing no. 72 of 2015 had been preferred before the high court along with application for interim relief, in which the high court had placed restraint on defendants no. 3 and 6 from withdrawing the amount. Subsequently before the matter could come up for admission pecuniary jurisdiction of the district court had undergone enhancement and as such the appeal from order was transferred to district court. In the district court the matter was registered as Misc. Civil Appeal No. 66 of 2015,

12. The district court in its order dated 06-11-2015 has observed that the conduct of the plaintiff was not reasonable and that in the event of withdrawal of the amount of compensation by defendants no.3 and 6, it will be difficult to recover the amount from them, however, it had been considered by the appellate court, since the defendants were allowed to withdraw the amount under order of high court / supreme court, it would not be proper to grant injunction and as such the petitioners are before this court.

13. It transpires that neither in the first appeal nor in the Special Leave to Appeal in the apex court, the present petitioners had been party nor it had ever been drawn attention to that the proceedings for partition in respect of entitlement to land

acquisition compensation of the parties to the suit, had been going on. Since defendants no. 3 and 6 were to withdraw the amount of land acquisition compensation, wherein, the petitioner who are defendant nos. 2, 7, 8 and 9 would also have stake, they had moved an application for injunction in the suit seeking restraint on withdrawal of the land acquisition compensation deposited. Said request was declined by the trial court considering that the high court and the supreme court had seisin over the matter and, under the circumstances, it would not be proper to pass any order in respect of the same. For the very same reasons the order came to be confirmed by the district court in the miscellaneous civil appeal and as such the petitioners are before this court.

14. Learned counsel for the petitioners Mr. Manale states that, the reasons for which the request of petitioners has been declined are not only not germane but also are un-sustainable. He submits that the orders have been passed by the high court and the supreme court were not apprised of the stakes involved in the same of the plaintiff and other parties to the suit are for their entitlement to compensation and that the petitioners would have right and share in compensation and they are party defendants. This fact and relevant aspects were not divulged to the high court and the supreme court by defendants no. 3 and 6 and orders of withdrawal of compensation in the circumstances were passed. It is being

submitted that the suit which is pending is intrinsically a partition suit in its nature and character and as such the application ought to have been treated, accordingly and allowed.

15. It is further being submitted, since getting impleaded in the land acquisition proceedings at the instance of the petitioners would not have been possible having regard to decisions in the case of **Hafix Ismail Shaikh & Ors. V/s. Special Land Acquisition Officer & Ors.** reported in **2005(4) Bom. C.R. 185**, yet the suit by such person to recover the share from person who had received compensation is competent, for said proposition reliance has been placed on the division bench judgment in the case of **Shri Deo Sansthan Chinchwad and Ors., Appellants V/s. Chintaman Dharnidhar Deo and Anr.** reported in **AIR 1962 Bom. 214 (V49 C 46)**.

16. Aforesaid submissions are being resisted by learned counsels Mr. Gunale and Mr. Swamy appearing for respondents no. 6 and 1 in the writ petition.

17. Mr. Gunale, refers to a reported judgment of this court in the case of **Machindra S/o Santaram Kutwad** (defendant no. 1 in the suit) **v/s. Sharad S/o Khanderao Survase and Ors.** reported in **2014 LAC 156 (Bom)**, stating that it has been held

that, it is the claimant alone who would be entitled to maintain darkhast application and claiming enhancement in the amount of compensation and that impleading of third party is not possible. Other judgments have also been relied on this very point. However, looking at the dispute that has arisen these judgments may not be relevant in the context in which the writ petition and or the application before the trial court has been moved.

18. Learned counsel Mr. Irpatgire submits, as a matter of fact, the plaintiff has referred to that, there had been a partition earlier in the year 1989 and according to him in such a case, the claim being made in the suit in all probability is likely to result in failure. In the circumstances, the application seeking restraint on withdrawal of the compensation amount which has been declined by the courts may not be for the reasons as are contained in the orders and/or as canvassed by him but the decision in its ultimate outcome is proper and sustainable. Learned counsel further purports to refer to some other factual aspects.

19. Having regard to aforesaid and rulings relied on, on either side, the apprehension under which the courts have decided the application filed by the petitioners seeking restraint on withdrawal of compensation does not appear to be sustainable for the suit itself has been instituted for entitlement of the property,

which has its genesis in the land in which the petitioners and the plaintiff appear to claim to have right. The courts will have to consider that it is only the change in form of property. The right is claimed by plaintiff and other persons who are parties to the suit and the matter will have to be viewed accordingly.

20. The high court or for that matter supreme courts order had been passed mainly, having regard to the dispute as had been placed before them and litigation pending in respect of rights over that very property had not been drawn attention to and that same had been the subject matter of the suit. These aspects were not before the courts while passing the orders. As such, it does not appear that since the orders have been passed by the high court and the supreme court, the powers of the civil court to decide on the rights claimed in respect of the property, in any way, would be affected, restricted and/or hampered. The courts will have to decide the matter having regard to rights claimed vis-a-vis facts, circumstances and including the cases sought to be canvassed by the parties.

21. In view of aforesaid, it is deemed appropriate that, the impugned orders would be set aside for consideration afresh of the application exhibit-67 filed by the petitioners, leaving it open for the parties to take up all contentions as are deemed appropriate.

Interim relief hitherto operating in the present matter would continue to operate till the decision on the application which is restored under this order. It is further been made specifically clear that the observations herein before in this order are meant for this order and shall not affect and influence decision on the restored application.

22. Learned counsel for the respondents urge to indulge into their request and to direct the trial court to dispose of the application within a short period of time. As such, impugned order dated 03-08-2015 passed by Civil Judge, Senior Division, Latur in Special Civil Suit No. 278 of 2011 on exhibit-67 and the order dated 06-11-2015 passed by District Judge-1, Latur in Misc. Civil Appeal No. 66 of 2015 are set aside. The application exhibit-67 is restored for condonation afresh. As such, the trial court to decide the application afresh within a period of four weeks from the receipt of this order. Interim order passed by this court to continue to operate till disposal of the application.

23. Rule is made absolute in aforesaid terms. Writ petition stands disposed of.

(SUNIL P. DESHMUKH)
JUDGE

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