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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2516/2016

Damu S/o Bhika Patil.
Age:64 Years, Occ. Agri and Labour,
R/o. Piloda, Tq. Shirpur, Dist. Dhule.
...Petitioner..

Versus

1. The Deputy Collector Acquisition No.1,
Land Acquisition Officer,
Appointed for Lower Tapi Project,
Office at Dhule.
2. The State of Maharashtra,
Through the Secretary,
Irrigation Department,
Mantralaya, Mumbai-32.
3. Special Recovery Officer,
Dhule Vikas Sahakari Bank Ltd., Dhule,
Alankar, Garudbag, Dhule,
Tq. and Dist. Dhule.

...Respondents...

.....

Shri B.R. Waramaa, Advocate for petitioner.
Shri A.S. Shinde, AGP for respondent nos.1 and 2.
Shri A.S. Sawant, AGP for respondent no.3.

.....

**CORAM: V.M. KANADE &
SANGITRAO S.PATIL, JJ.**

DATE: 24.01.2017

ORAL JUDGMENT (Per V.M. Kanade, J.) :

1] Heard learned counsel appearing for the parties.

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Rule. Rule made returnable forthwith and with the consent of learned counsel for the parties, the petition is taken for final disposal at this stage.

2] This Court had framed the following question for consideration, namely -

"Whether the amount deposited by the Government towards compensation payable under the Land Acquisition Act, 1894, can be withheld on account of any charge created by any bank on the property, which is under acquisition ?

3] Learned counsel for the petitioner submitted that the respondent no.3 - bank did not raise any objection at the stage of issuance of Sections 6 and 9 of the Land Acquisition Act, 1894, and, therefore, now it is not open for the bank to raise any objection for withdrawal of money by the petitioner. He invited our attention to the provisions of Sections 6 and 9 of the Act. Secondly, he submitted that even u/s 30, application by interested person is to be made with reference to Section 9 of the Act. He submitted that no application was filed u/s 9. It is not now open for the bank to raise that objection u/s 30. He submitted that the Government had issued a circular No.1687/288/

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(3993)/A-2 dated 6.7.1987, which in terms, stated that only 1/5th of the amount can be paid to the bank. He submitted that, therefore, at the most 1/5th amount would be taken by the bank and remaining amount has to be paid to the person whose land is acquired.

4] Learned counsel for the petitioner relied on following three judgments -

1] *Smt.Ambey Devi v. State of Bihar and another*
(AIR 1996 SC 1513)

2] *Hafix Ismail Shaikh & others v. Special Land Acquisition Officer & others*
(2005 (4) Bom.C.R. 185)

3] *Pandurang D. Rane & others v. Vijabai V. Rane Sardessai & others*
(2010 (1) Bom.C.R. 58)

5] It was submitted that the bank, therefore, had no right to have a claim over the compensation amount since the charge was on the land, which was already acquired by the Government.

6] On the other hand, learned counsel appearing on behalf of the respondent no.3 - bank, submitted that the petitioner had taken loan and the house property was mortgaged. When the petitioner was unable to pay the loan amount, the bank initiated proceedings u/s 101 of the Maharashtra Cooperative Societies Act and obtained a

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recovery certificate. In the process of recovery of the amount, the bank attached the house property on account of charge of the bank. He submitted that the learned Civil Judge (S.D.), after examining the submissions made by both the parties, was pleased to grant stay and restrain the petitioner from withdrawing that amount. He submitted that the judgments, on which reliance is placed by the petitioner, are not applicable to the facts of the present case.

7] After having heard all the parties at length, we are of the view that no case is made out by the petitioner for setting aside the impugned order passed by the 2nd Joint Civil Judge (S.D.), Dhule, on 11.11.2014.

8] Before examining the rival contentions, it will be necessary to have a brief look at the provisions of the old Land Acquisition Act, 1894. Section 3(b) thereof defines the words "interested person". Section 3(b) reads as under:-

"3(b) The expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is

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interested in an easement affecting the land."

9] Perusal of the said section clearly reveals that any person, who is interested in the apportionment of the said amount, can apply for recovery of that amount, which is to be paid to the person whose land is acquired.

10] It is not possible to accept the submission of the learned counsel for the petitioner that only if a person raises an objection at the stage of notification u/s 6 or u/s 9, he can raise an objection u/s 30. The said submission is without any substance. Firstly, Section 6 is a notification, which is issued by the Special Land Acquisition Officer declaring the intention of the State to acquire the land. Section 9 speaks about a public notice, which is to be given stating the Government's intention to take possession of the land and at that stage, the claims for compensation for all interested persons in such amount can be made. At both these stages, obviously the bank did not have any objection because it was interested in recovering the amount from the petitioner for non-payment of its dues. The interest of the bank, therefore, was in the

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apportionment of the amount, which was to be paid to the petitioner.

11] The learned Civil Judge (S.D.), Dhule, therefore, in our view, has rightly held that the petitioner was not entitled for the release of the amount, which was deposited in the bank.

12] The judgments on which reliance is placed by the learned counsel for the petitioner, in our view, have no application in the facts of the present case. In the case of *Ambey Devi* (supra), the question, which fell for consideration before the Apex Court, was whether one of the co-sharers could claim enhancement of compensation without seeking reference u/s 18 of the Land Acquisition Act in a reference at the instance of one of the co-sharers. The Apex Court held that since the appellant had not made any application u/s 18 and, therefore, could not make an application for impleadment in the reference by filing an application under Order I Rule 10 of the Code of Civil Procedure. The contention of the appellant, therefore, was not accepted. The Apex Court, therefore, in paragraph no.4 of the judgment observed as under:-

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"4. We accept the finding of the High Court that the appellant had not made any application under Section 18 though the appellant has asserted that she did make an application but no evidence has been placed before the High Court or in this Court. Thus, it is difficult to accept that such an application was in fact made before the Land Acquisition Officer within the limitation prescribed under Section 18(2) of the Act. Accordingly, we hold that the appellant had not filed any application, as required under section 18(1) read with Section 18(2) of the Act. Section 53 does not apply to the facts of the case. The procedure prescribed under section 18 and 30 is inconsistent with the procedure prescribed under Order 1, Rule 10, C.P.C. Order 1, Rule 10 C.P.C. would apply to implead a necessary or proper party to effectuate complete adjudication of all the disputes having arisen between all the necessary or proper parties who may be bound by the decision. The question does not arise since inconsistent procedure has been prescribed under the Act. As held earlier, making an application in writing under sub-section (1) and within the limitation prescribed under sub-section (2) of Section 18 are conditions precedent for the Land Acquisition Officer to make a reference under Section 18; only on its receipt, under Section 20 Civil Court gets jurisdiction to issue notice and thereafter to

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conduct enquiry as contemplated under the Act. At that stage, the procedure of trial etc; as contemplated under the C.P.C. would apply and Section 53 of the Act would become applicable. It is an admitted position that the co-owner filed an application and had sought reference under Section 18 in respect of his share only. So, it is, as a fact claims for compensation in specie and was paid towards 1/4th share to all the claimants. By no stretch of imagination, the application under Section 18 (1) by one of the co-sharers would be treated as one made on behalf of all the co-sharers. Accordingly, we hold that the appellant is not entitled to lay and higher compensation pursuant to an award made by the reference court under Section 26 at the instance of one of the co-owners."

13] It is obvious that the issue, which fell for consideration before the Apex Court, was whether one co-sharer could apply for impleadment under Order I Rule 10 of the Code of Civil Procedure in a reference made by the claimant and in that context, the Apex Court held that an application has to be made u/s 18 of the said Act within the period of limitation and such application not being made, he could not then apply in the reference Court under Order I Rule 10 of the Code of Civil Procedure.

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14] So far as the second judgment is concerned, namely, in the case of *Hafix Ismail Shaikh & others* (supra), there also a similar question has arisen namely the application under Order I Rule 10 was made and the learned Judge, therefore, held that provisions of Order I Rule 10 of the Code of Civil Procedure are inconsistent with the provisions of Sections 18 and 30 of the Act and in fact followed the judgment of the Apex Court in *Ambey Devi's case*. The ratio of this case, in our view, is not applicable in the facts of the present case.

15] The last judgment on which reliance was placed by the learned counsel for the petitioner was in the case of *Pandurang D. Rane & others* (supra). Here also, an application was made under Order I Rule 10. That party was not before the Collector in the proceedings. The question was whether he could be allowed to intervene u/s 30 of the Land Acquisition Act. The learned Single Judge held that the said party was not a party to the reference and hence could not make an application for impleadment at a subsequent stage. Again the issue raised before the learned Judge was regarding impleadment at the stage of application u/s 30.

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16] In the present case, the respondent no.3 - bank had a charge on the land and is seeking recovery of loan, which was paid to the petitioner. Section 30 of the Land Acquisition Act, 1894, reads as under:-

"30. Dispute as to apportionment -

When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court."

17] In the present case, the petitioner made an application before the reference Court for release of the amount on the ground that he was suffering from heart ailment. The learned Judge, however, rejected his application. The learned Judge observed that the claimant should not be allowed to defeat the bank's claim while collecting compensation directly from the Court. The learned Judge also observed that so far as the Government circular is concerned, the Collector had to first satisfy himself before releasing the compensation amount that any outstanding loan amount against the

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acquired land has been satisfied and repaid, and if it is not repaid, the compensation amount should be utilized for the satisfaction of the loan in proportion to the area of land acquired and after the loan amount is satisfied, the remaining amount should be paid to the land owner. We are of the view that the learned Civil Judge (S.D.), Dhule, has rightly made the said observations in paragraph no.4 of the order in respect of the Government circular. The contention of the petitioner, therefore, that 1/5th of the amount should be paid to the bank, therefore, cannot be accepted.

18] The learned counsel for the petitioner then submitted that the petitioner is willing to handover the other land to the bank. However, the learned counsel appearing on behalf of the bank - respondent no.3, submitted that the petitioner had obtained two other loans from the Nationalized banks and the charge is created on the said property. The total amount which is payable by the petitioner to the respondent no.3 - bank is approximately Rs.2,71,982/-. Similarly, the petitioner is liable to pay Rs.12,43,453/- to other banks. The learned counsel for the petitioner, however,

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submits that those loans have been waived by the Government and therefore, there is no charge on the said property.

19] Taking into consideration these facts, we are of the view that at this stage, it will not be possible to accept the petitioner's contention for release of the compensation amount.

20] So far as health of the present petitioner is concerned, it seems that it has improved since he has undergone angioplasty. There is no record available before this Court in that respect. The only material, which is produced on record, is regarding his wife's illness and that too on the basis of a certificate given by a doctor. It is, therefore, not possible to accept the petitioner's contention in that regard.

21] However, it appears that the Government has announced loan waiver schemes for the farmers. Therefore, the Collector is directed to consider and decide whether the present loan can also be waived by making payment by the Government to the respondent no.3 - bank. The Collector may also verify whether the other two loans taken by the petitioner have been waived or

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not. This process shall be completed by the Collector within a period of four weeks from the date of receipt of this judgment. If the Collector comes to the conclusion that all loans of the petitioner have been waived and a certificate to that effect is given to the banks that the Government shall pay the said loan amounts to the banks, then the concerned bank/s shall give no due certificate/s to the petitioner and in that event only, the compensation amount may be released in favour of the petitioner.

22] We direct that the amount, which is deposited in this Court, shall be remitted to the Court of concerned Civil Judge (Senior Division), Dhule.

23] With these directions, the petition is disposed of. Liberty is given to the petitioner to apply. There shall be no order as to costs.

(SANGITRAO S.PATIL, J.)

(V.M. KANADE, J.)