

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4027 OF 2010

The Executive Engineer,
Irrigation Department,
Zilla Parishad, Latur,
District Latur
Through its Authorized Officer,
Shri Vyankatsingh Bharatsingh Chavan,
Sub Divisional Engineer,
Irrigation Department, Latur

.. PETITIONER

VERSUS

1. Mahadev s/o Baswantrao Bidwe,
Age Major, Occ.: Agriculture,
2. Udhav s/o Raosaheb Magar,
Age Major, Occ.: Agriculture,
3. Vasant s/o Raosaheb Magar,
Age Major, Occ.: Agriculture,
4. Gyanoba s/o Nivarti Nagargoje,
Age : Major, Occ.: Agriculture,
5. Ramrao s/o Ganpati Magar
(Since deceased through L.Rs.)
 - 5A) Mahadeo Ramrao Magar,
Age Major, Occ.: Agril,
R/o. Ramegaon, Tal. and
Dist. Latur
6. Mukund s/o Sadashiv Nagargoje,
(Since deceased through L.Rs.)
 - 6A) Nandkumar Mukund Nagarsoge,
age Major, Occ.: Agril,
 - 6B) Sanjay Mukund Nagarsoge,
age Major, Occ.: Agril,
Both r/o. Ramegaon, Tal. and
Dist. Latur

7. Sukhdeo s/o Aba Nagargoje,
Age Major, Occ. Agriculture,

All R/o. Ramegaon,
Tq. and District Latur

.. RESPONDENTS

(Amendment made as per Court's
Order dated 10.02.2014)

Mr. A.V. Hon, Advocate holding for Mr. V.D. Hon, Senior
Advocate for the Petitioner

Mr. V.D. Gunale, Advocate for respondent Nos. 1 to 4,
5A, 6A, 6B and 7

CORAM : SANGITRAO S. PATIL, J.

RESERVED ON : 13th JANUARY, 2017

PRONOUNCED ON : 1st FEBRUARY, 2017

JUDGMENT :

Rule, returnable forthwith. With the consent of
the learned counsel for the contesting parties, heard
finally.

2. The petitioner (original defendant No.3 in
Special Civil Suit No.135 of 2002), has challenged the
order dated 11.03.2010, passed by learned Civil Judge,
Senior Division, Latur, in Special Darkhast No.06 of
2005 and also judgment and order dated 24.06.2004 passed
by 2nd Joint Civil Judge, Senior Division, Latur, in

Special Civil Suit No. 135 of 2002.

3. The lands of the respondents were acquired for construction of a percolation tank at village Ramegaon. The petitioner obtained possession of the said land by private negotiations with the respondents on 23.02.1978. The respondents were assured that they would be paid rental compensation. The Government also passed Resolutions dated 01.12.1972, 17.11.1973, 02.08.1997 and 03.01.2004 and made a provision for payment of rental compensation to the land holders, whose lands were acquired by private negotiations. There is no provision in the Land Acquisition Act, 1894 ("the Act of 1894", for short) for payment of rental compensation. Since the respondents were not paid the rental compensation, they filed the above-numbered Special Civil Suit for recovery of the rental compensation of Rs.7,34,916.00 with interest at the rate of Rs.12% per annum.

4. The petitioner, though duly served with the suit summons, remained absent and therefore, the suit proceeded ex parte against the petitioner. The learned Civil Judge considered the facts of the case as well as the evidence on record, including the resolutions passed

by the Government of Maharashtra, referred to above and decreed the suit against the petitioner on 24.06.2004 directing the petitioner to pay rental compensation of Rs.7,34,916/- to the respondents with interest at the rate of Rs.12% per annum from 29.04.1999 to 01.04.2000 and then at the rate of Rs.6% per annum from 01.04.2000 till realisation of the said amount. The respondents filed Special Darkhast No. 06 of 2005 for execution of the decree. The petitioner appeared before the Executing Court and filed reply challenging the judgment and decree dated 24.06.2004, on the following grounds:-

- (i) The exparte judgment and decree passed against the petitioner is unjust, wrong and against the principles of natural justice and therefore, it cannot be executed.
- (ii) The respondents miscalculated the amount of compensation and made excessive claim towards the rental compensation.
- (iii) Though it is admitted that the compensation of the land taken by private negotiations on 23.02.1978, it was contended that the amount of Rs.31,914.92 was paid to the respondents towards compensation and moreover, since the year 2006 the respondents were cultivating the land which

were acquired and therefore, they were not entitled to claim any compensation.

It seems that while making submissions before the learned Executing Court, it was contended that the Civil Court had no jurisdiction to decree the suit.

5. The learned Civil Judge, after hearing the parties, overruled the objections raised by the petitioner on the ground that the same could not be agitated before the Executing Court and that the petitioner should have challenged exparte decree by filing an appeal.

6. The learned counsel for the petitioner submits that the impugned exparte decree has been passed by the learned Civil Judge without jurisdiction. Therefore, it is a nullity. Consequently, it was not executable. He further submits that the rental compensation claimed by the respondents was in connection with their lands which were acquired under the Act of 1894. Since the said Act is a complete Code in itself, it was not open for the respondents to approach the Civil Court for claiming rental compensation. According to him, the suit for rental compensation was not at all maintainable before

the Civil Court. In support of this contention, he relied on the cases of ***State of Bihar Vs. Dhirendra Kumar & others 1995 (2) Mh.L.J. 340, Commissioner, Bangalore Development Authority & Another Vs. Brijesh Reddy & Another (2013) 3 SCC 66*** and ***Laxmi Chand Vs. Gram Panchayat, Kararia (1996) 7 SCC 218***. The learned counsel submits that since the decree sought to be executable was a nullity, the Executing Court should not have entertained the execution proceedings and should have disposed of the same considering the objection raised by the petitioner. He, therefore, prays that the impugned order dated 11.03.2010 as well as the impugned exparte judgment and decree dated 24.06.2004 may be quashed and set aside.

7. On the other hand, the learned counsel for the respondents submits that rental compensation was not relatable to the Act of 1894. There is no provision in the said Act for payment of rental compensation. The rental compensation was claimed by the respondents on the basis of the resolutions passed by the Government of Maharashtra on 01.12.1972, 17.11.1973, 02.08.1997 and 03.01.2004. The respondents were entitled to claim

rental compensation as provided in those resolutions independent of the provisions of the Act of 1894. Since the claim of the respondents for rental compensation was not covered under the provisions of the Act of 1894, the Civil Court had jurisdiction to entertain and try the suit claiming such compensation. Relying on the judgment in the case of ***State of Maharashtra and others Vs. Maimuma Banu and others (2003) 7 SCC 448***, he submits that the suit filed by the respondents was quite maintainable before the Civil Court. He then submits that the petitioner, though duly served with the suit summons, remained absent and therefore, the suit came to be decreed exparte. Relying on the judgment in the case of ***Balvant N. Viswamitra Vs. Yadav Sadashiv Mule (d) through L.Rs. AIR 2004 SC 4377***, he submits that the exparte decree passed by the court having jurisdiction would be binding on the petitioner, as long as it was not set aside. He submits that the petitioner could have challenged the said exparte decree by filing an appeal against it or an application before the Trial Court for setting it aside. According to him, the present writ petition challenging the said exparte decree is not at all maintainable. On these grounds, he

submits that the Writ Petition may be dismissed.

8. In the case of ***State of Maharashtra and others Vs. Maimuma Banu and others*** (supra), cited by the learned counsel for the respondents, it has been specifically observed in paragraph No. 7 of the judgment that the rental compensation is not relatable to the Land Acquisition Act, 1894 and that the claimants are entitled to claim such compensation on the basis of the Government Resolutions. It is further observed in paragraph No. 8 of the judgment that the provisions of the Act of 1894 do not provide for payment of any rental compensation and such rental compensation does not have its source under the said Act, 1894. If that be so, the respondents were entitled to claim rental compensation in pursuance of the above referred Government Resolutions by approaching Civil Court. Since the rental compensation was not relatable to the Act of 1894, the contention of the learned counsel for the petitioner that the Civil Court has no jurisdiction to entertain and try the suit for rental compensation, can not be accepted.

9. In the case of ***State of Bihar Vs. Dhirendra Kumar & others*** (supra), cited by the learned counsel for the petitioner, the question for consideration was, whether a civil suit is maintainable and whether interim injunction could be issued where proceedings under the Land Acquisition Act were taken pursuant to the notice issued under section 9 of the Act and delivered to the beneficiary. It was held that the Act is a complete Code in itself and is meant to serve public purpose and therefore, by necessary implication, the power of the Civil Court to take cognizance of the case under section 9 of the Code of Civil Procedure, would stand excluded and the Civil Court would have no jurisdiction to go into the question of validity or legality of the notification under section 4 of the Land Acquisition Act and declaration under section 6 of the Act.

10. In the case of ***Commissioner, Bangalore Development Authority & Another*** (supra), cited by the learned counsel for the petitioner, the point for consideration was whether a Civil Court has jurisdiction to entertain the suit when the scheduled lands were acquired under the Land Acquisition proceedings. It was

held that the scheme of the Act is complete in itself and thereby the jurisdiction of the Civil Court to take cognizance of the case arising under the Act, by necessary implication, stood barred. It is further observed that the Civil Court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act.

11. In **Laxmi Chand** (supra), the validity of acquisition and of the award was challenged by filing a suit for declaration that the land could not be acquired. It was, therefore, held that the jurisdiction of the Civil Court to take cognizance of the cases arising under the Act, by necessary implication, stood barred and the Civil Court would be devoid of jurisdiction to give declaration on the invalidity of the proceeding contemplated under the Act.

12. In the case at hand, as stated above, the claim for rental compensation is not relatable to the Act of 1894. The dispute in respect of the payment of rental compensation pursuant to the above referred Government Resolutions does not arise under the Act of 1894. Consequently, the above referred three cases, cited by

the learned counsel for the petitioner would not be applicable to the facts of the present case and it could not be said that the Civil Court had no jurisdiction to entertain and try the suit for rental compensation.

13. If the petitioner was aggrieved by the exparte decree passed by the Civil Court, it was open for him either to file an application before the Trial Court for setting aside the exparte decree and for restoration of the suit for trial or to file an appeal against the exparte decree. It was not open for the petitioner to challenge validity of the said exparte decree before the Executing Court. It is well settled that the Executing Court cannot go behind the decree. In the circumstances, in my view, the Executing Court rightly did not entertain the contention raised by the petitioner about the invalidity of the judgment and decree passed by the Trial Court granting the relief claimed by the respondents for rental compensation.

14. In view of the above facts and circumstances as well as the legal position discussed above, I do not find any substance in the present Writ Petition. It is liable to be dismissed and accordingly dismissed.

However, the parties are directed to bear their own costs. The Rule is discharged accordingly and the Writ Petition is disposed of.

[SANGITRAO S. PATIL]
JUDGE

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