

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

WRIT PETITION NO.9475 OF 2015

Prabhakar s/o. Rambhau Dhait,
Age : 60 years, Occ. Agri.,
r/o. Ghansawangi,
Tq. Ghansawangi, Dist.Jalna ..Petitioner

Vs.

The State of Maharashtra,
Through Secretary,
P.W.D., Mantralaya,
Mumbai and ors. ..Respondents

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Mr.Suvidh Kulkarni, Advocate for petitioner

Mrs.Vaishali Patil, AGP for respondents

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**CORAM : S.V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

DATE : MARCH 14, 2017

ORDER :

Heard.

2. The petitioner claims directions against the respondents to pay compensation to the petitioner for an area ad-measuring 59 R land from Gat No.23 at Mauje Ramgavhan (Kh.), Tq. Ghansawangi, Dist. Jalna.

3. Mr.Kulkarni, learned Counsel for the petitioner states that one Dhondabai was the owner and possessor of the land Gat No.23 to the extent of 10 H 36 R at village Ramgavan. The said land came to be mutated in favour of the present petitioner along with his wife and son, as legal heirs of Dhondabai. The land to the extent of 2 H 80 R was transferred in the name of present petitioner; the land to the extent of 2 H was transferred in the name of the Dhondabai's daughter-in-law Meerabai; and to the extent of 2 H was transferred in the name of grand-son Radhesham. The remaining land to the extent of 3 H 56 R was kept in the name of the petitioner's mother. The partition was effected in the revenue record on 19.01.1991.

4. The petitioner has sold the land of his share by way of a registered sale deed dated 28.04.1994 in favour of Shaikh Gafur Shaikh Amir and Kaisar Baig Chand Baig. The land to the extent

of 59 R still remained in the name of the petitioner. The grand-son and the daughter-in-law of Dhondabai also sold the land of their share to Chand Baig Mehtaab Baig and Baliram Arjun Mohite, respectively.

5. According to the learned Counsel for the petitioners, 59 R land remained in the name of the petitioner which is being affected by road. The said land was acquired by the Public Works Department, Jalna for construction of road from Ghansawangi to Tirthpuri. The learned Counsel submits that for 59 R land, the petitioner has not been paid any compensation. The sale deeds filed on record would show that the land of 59 R still remains in the name of the petitioner and the petitioner is required to be paid compensation for the said land.

6. The learned Counsel for the petitioner submits that this Court under Article 226 of the

Constitution of India can interfere in the disputed questions of fact and consider the same, more particularly, when the public authorities are not acting in good faith. He relies on the decision in the case of **ABL International Ltd. and anr. Vs. Export Credit Guarantee Corporation of India Ltd. and ors, (2004)3 SCC 553**. He further submits that the right to property is a constitutional right of the petitioner and it is for the respondents to pay the compensation to the petitioner for the area acquired by them.

7. The learned AGP submits that in fact, the petitioner and other heirs of Dhondabai have sold the entire land belonging to them and now no land has remained with the petitioner. The petitioner has neither filed any copy of notice issued under Sections 4, 6 and 12 nor has filed copy of the award. According to the learned AGP, upon selling the entire land, now the petitioner cannot claim

any right. The petition also suffers from delay and latches.

8. We have considered the submissions canvassed by the learned Counsel for the respective parties.

9. There cannot be any blanket rule for the Courts, not to exercise the jurisdiction under Article 226 of the Constitution of India on the ground of involvement of disputed questions of fact. It would depend upon facts and circumstances of each case. The Court is required to consider the merits of the matter, the relevant scheme and the conduct of the parties.

10. It would appear from the sale deeds executed by the legal heirs of Dhondabai so also Dhondabai in the year 1994-1995 that while showing the boundaries of the land, they have shown the road in existence. The petitioner was aware of

existence of the road in the year 1994-1995 when the sale-deed was executed. The existence of the road also appears in the mutation entry effected on 21.05.1992. The said entry was recorded by the concerned Officer. It seems that prior to the said date, the road was constructed. No grievance seem to have been made by the petitioner even at the time of executing the sale-deed. For the first time, the grievance is made by filing present Writ Petition in the year 2015 after a long slumber almost of 25 years. Various sale deeds are placed on record by the petitioner to suggest that Dhondabai and also her legal heirs including the petitioner had sold their lands, wherein existence of the road is also shown. It will have to be shown that the area under the road which was acquired, was allotted to the share of a particular person. It does not appear from the record that the alleged road is passing through the lands belonging to the petitioner or any other

heirs of Dhondabai or Dhondabai herself. The sale deed executed by the petitioner in the year 1994 is also not on record to know the boundaries of the land sold. In fact, in other sale deeds executed by other heirs of Dhondabai, boundaries of the road are shown for which, mutation was effected in respect of the land of those heirs and not the petitioner's land.

11. Be that as it may, the same would involve intrinsic disputed questions of fact. Even no explanation is coming forward as to the inaction on the part of the petitioner for all these years. Considering all these aspects of the matter, it would not be possible for this Court to accede to the prayer of the petition.

12. In view of the above, the Writ Petition stands dismissed. No costs.

[SANGITRAO S. PATIL, J.] [S.V. GANGAPURWALA, J.]

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