

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3854 OF 2016
WITH CA/14113/2016 IN FA/3854/2016

KALYAN DATTATRAYA GORE AND ANR
VERSUS
SUBHAS NARAYAN GORE

...
Advocate for Appellants : Mr. Jayabhar Dattatraya R.
Advocate for Respondent : Mr. M.S. Karad
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CORAM : V. K. JADHAV, J.
DATED : 8th FEBRUARY, 2017

PER COURT:-

1. With consent of parties, heard finally at admission stage.
2. Being aggrieved by the judgment and award dated 19.9.2016, passed by the Adhoc District Judge-1, Beed in L.A.R. No. 67 of 2012, the original opponents have preferred this appeal.
3. Brief facts giving rise to the present appeal are as follows:-
 - a) The Special Land Acquisition Officer, Jaikwadi Project No.2, Beed had acquired 18 Hectare 81 R land for the purpose of Ahmednagar – Beed - Parli Railway line, by notification issued under Section 4(1) of the Land Acquisition Act, published on 18.12.2008 and award was passed on 20.7.2010. By virtue of said award, the

S.L.A.O. determined the compensation of Rs.5,55,007/- in respect of land survey No. 75(AA) 2 admeasuring 25 R land, 4 mango trees and 160 neem tress. In the acquisition proceeding, said acquired land is shown belonging to original applicant Subhash Narayan Gore and when the actual amount was being disbursed, the appellants/original opponents raised objection on the ground that their names are exist in possession column. Consequently, the disbursing authorities have made reference under the provision of Section 30 of Land Acquisition Act.

b) The respondent-original applicant claimed that land survey No. 75(AA) 2 belongs to Satish Kundlik Gore and on 14.11.2003, he had purchased 86 R portion under registered sale deed for valuable consideration. Out of land admeasuring 86 R from the land survey No. 75/22(A), land admeasuring 25 R, 4 mango trees and 160 neem tress came to be acquired for the aforesaid purpose. Being exclusive owner and possessor of the said land, the respondent-applicant Subhash is entitled to receive compensation of Rs.5,55,007/- and the appellants/opponents have no concerned with the said land.

c) The appellants/opponents contends that land survey Nos. 75, 75/1 and 75/2 belong to the appellants/opponents. In the year 1974, the partition took place between the predecessors of appellants/

opponents. Since the father of appellants/opponents was illiterate, the land survey No. 75(AA) 2 was not mentioned in said partition, when in fact it was allotted to the share of opponents. According to the appellants/opponents, even respondent-original applicant Subhash executed one affidavit in their favour acknowledging thereby their title and possession over the said portion of land. Even in the joint measurement report, the opponents have been shown in possession of the said portion of land.

d) Both the parties led their oral as well as documentary evidence in support of their rival contentions. Learned Adhoc District Judge-1, Beed, by judgment and award dated 19.9.2016 directed that the said compensation amount pending in the court, shall be paid to the respondent-original applicant Subhash Narayan Gore as per its matured value and rejected the objection raised by the appellants/opponents. Hence, this appeal.

4. Learned counsel for the appellants/opponents submits that there was partition in the year 1974 between the predecessors of parties and land survey No 75(AA) 2 was not included in the said partition. As a matter of fact that said land was allotted to the appellants/opponents in the partition and it is in their possession since long, however, name of the respondent-applicant remained in

the revenue record and he is taking undue advantage of the same. The respondent-original applicant Subhash had executed one affidavit and acknowledged the ownership and possession of the appellants/opponents over the suit land. Learned counsel submits that in the year 2004, joint measurement was carried out in furtherance of acquisition proceeding and a report of joint measurement is at Exh.54. There is entry about acquisition of 25 R land, one drip irrigation, 4 mango trees and 170 Neem trees. In the last column of 'remarks', names of opponents are shown as possessors. The Adhoc District Judge 1, Beed has not considered all these documents and rejected objection Exh.13 preferred by the appellants/opponents.

5. Learned counsel for the respondent-original applicant submits that the land survey No. 75(AA) 2 admeasuring 2H 55R in total belongs to one Satish Kundlik Gore. It was not part of ancestral estate of the parties. In the alleged partition of the year 1974, there was no question to mention this land. On 14.11.2003, said Satish Gore sold the land 86R to respondent-applicant and from the land admeasuring 86R, the land admeasuring 25 R alongwith drip irrigation and trees, as mentioned above, are acquired by the Government. Learned counsel submits that in the said sale deed executed by Satish Gore in favour of respondent-original applicant

Subhash, one of the opponent stood as attesting witness. Learned counsel submits that the affidavit of the year 2004 allegedly executed by respondent-original applicant Subhash, cannot be termed as conveyance and it does not confer any right, title and interest in the said property to the appellants/opponents. Learned counsel submits that learned Adhoc District Judge-1, Beed has therefore, rightly allowed the application Exh.10 and paid the amount to the respondent-applicant and rejected the objection Exh.13 raised by the present appellants/original objectors. No interference is required.

6. On perusal of contents of applications Exh.10 and 13 and the oral as well as documentary evidence led by respective parties in support of their rival contentions, it appears that in the year 2003, respondent-original applicant Subhash had purchased land admeasuring 86 R out of land survey No. 75(AA)2 from its original owner Satish Kundlik Gore under registered sale deed for valuable consideration. It is not disputed that out of said 86 R land, land admeasuring 25 R alongwith drip irrigation and trees, as mentioned above, came to be acquired by the Government for the aforesaid purpose. The learned District Judge, has rightly observed that since the land was purchased by the respondent-applicant in the year 2003, from its original owner Satish Gore, by any stretch of imagination, it cannot be said that the said land is ancestral land of

the parties to the dispute and the predecessors of respondent-original applicant, by taking undue advantage of illiteracy of the predecessor of appellants/opponents, purposefully not mentioned the aforesaid land in the partition and in fact the said land was allotted to the appellants/original opponents.

7. So far as the claim on the basis of affidavit is concerned, the appellants/original opponents have set up exactly contrary story of partition and stated that on the basis of affidavit submitted before the authorities, the respondent-original applicant has acknowledged their title and possession over the disputed portion of the land. By way of affidavit, right or title in respect of said property cannot be conferred upon the appellants/opponents and the learned Adhoc District Judge has rightly discarded the said affidavit from consideration. So far as the joint measurement report Exh.54 is concerned, only on the basis of remarks, it cannot be said that the appellants/opponents conferred with title in respect of aforesaid land acquired by the Government. Further, it is a matter of record that the respondent-original applicant Subhash Gore was not present at the time of said measurement and only the appellant/opponent Vitthal was present during the course of joint measurement. The said authority, while carrying out the joint measurement, only on the basis of photo copy of aforesaid affidavit, has taken entry in the remark column, as aforesaid. The learned

District Judge has therefore, rightly ignored the said remarks.

8. In view of above discussion, I do not find any substance and merit in the appeal. Hence, I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby dismissed with costs.
- II. Appeal is accordingly disposed of.
- III. Record and proceedings be returned to the concerned court forthwith.
- IV. In view of disposal of first appeal, pending civil application is also disposed of.

(V. K. JADHAV, J.)

rlj/