

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

CIVIL APPLICATION NO.3427 OF 2013 IN
FIRST APPEAL NO.140 OF 2009

Amol s/o Gundgir Giri ... APPLICANT

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

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Shri R.J. Nirmal, Advocate for applicant
Shri Shri Y.G. Gujarathi, A.G.P. for State
Shri S.S. Dande, Advocate for respondent No.2
Shri V.D. Gunale, Advocate for respondents No.3 and 4

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CORAM: R.D. DHANUKA AND
 SUNIL K. KOTWAL, JJ.

DATED: 22nd September, 2017.

ORAL ORDER:

1. By this Civil Application, the applicant seeks intervention in First Appeal No.140/2009 filed by the acquiring body against the judgment and order passed by the Reference Court, increasing the claim for compensation and other reliefs.

2. The learned counsel for the applicant invited our attention to the decree dated 18/10/2012 passed by the learned Jt. Civil Judge, Senior Division, Latur in Regular Civil Suit No.191/2012 in favour of the applicants in a suit for partition,

granting decree to the extent of 1/16th share each. He submitted that, based on the decree passed by the learned Civil Judge, Senior Division in favour of the applicants (original plaintiffs to the Regular Civil Suit No.1912012), the applicants would be necessary party to this First Appeal filed by the acquiring body.

3. Learned counsel for the applicant placed reliance on the judgment of Punjab & Haryana High Court in the case of **Bagh Singh & ors. Vs. The Special Land Acquisition Officer, Jalandhar & anr. [AIR 1984 Punjab & Haryana 177]**.

4. Learned counsel for the acquiring body, on the other hand, submits that, the applicants herein were neither party to the land acquisition proceedings nor were parties to the Reference under Section 18 of the Land Acquisition Act, 1894 before the learned District Judge and thus, cannot apply for intervention in this appeal filed by the acquiring body. He invited our attention to the order passed by this Court on 14/10/2009 in Civil Application No.10886/2009 in this First Appeal, which was filed by the applicants herein for intervention in the First Appeal. He also invited our attention to the order dated 7/12/2012, passed by this Court in Civil Application No.14137/2010. He submits that, these intervention applications filed by the applicants herein have been rejected by this Court. He submits that, within 7 days of the last order passed by this Court i.e.

order dated 7/12/2012, rejecting the intervention applications, the applicants have filed fresh Civil Application for the same reliefs. He submits that, the Division Bench of this Court, in the said order dated 7/12/2012 has made clear that it would be open for the applicants to avail of appropriate remedy for protecting their interest. He submits that, the partition decree relied upon by the applicants, dated 18/10/2012 was passed when the order dated 7/12/2012 was passed by this Court in Civil Application No.14137/2010. Learned counsel placed reliance on the judgment of the Supreme Court in Smt. Ambey Devi Vs. State of Bihar & anr. [AIR 1996 SC 1513] and judgment of this Court in case of **Shri Dattaram Deu Desai & ors. Vs. Shri Rirakar Devasthan of Palolem through its Attorney & ors. [2000 (2) Bom.C.R. 100]** and would submit that, since the applicants were not parties to the proceedings before the Land Acquisition Officer and also before the Reference Court, applicants cannot seek impleadment in this appeal filed by the acquiring body.

5. Perusal of the record indicates that the application for intervention bearing No.10886/2009 was already rejected by this Court on 14/10/2009. Second application for similar relief came to be rejected by this Court on 7/12/2012. Perusal of the order dated 7/12/2012 indicates that, this Court has granted liberty to the applicants to avail of the appropriate remedy for protecting their interest. The partition decree relied upon by the applicants

was already passed by the learned trial Judge prior to the order dated 7/12/2012 passed by the Division Bench of this Court.

6. It is not in dispute that the applicants were not parties to the land acquisition proceedings as well as before the Reference Court. So far as the reliance placed by the learned counsel for the applicants on the partition decree is concerned, it is for the applicants to seek execution of the said decree and to protect their own rights based on such decree. The liberty has been already granted by this Court on 7/12/2012 to the applicants to avail of the appropriate remedy for protecting their interest. Instead of filing appropriate proceedings to protect the interest of the applicants, the applicants, however, have chosen to file this Civil Application for seeking impleadment once again.

7. Insofar as the case of Punjab & Haryana High Court in case of Bagh Singh, relied upon by the learned counsel for the applicants is concerned, this Court, in case of Shri Dattaram Deu Desai and others, has taken a contrary view and has rejected the application of the applicants under Order I Rule 10 of the Code of Civil Procedure on the ground that the applicants were not party to the land acquisition proceedings before the Reference Court. In our view, the judgment of this Court in case of Dattaram (supra) would not apply to the facts of this case.

8. In our view, no case is, thus, made out for seeking

intervention in this First Appeal filed by the acquiring body. The presence of the applicants would be neither necessary nor proper for adjudication of the disputes which are subject matter of this Appeal. The Civil Application is accordingly dismissed. It is, however, made clear that, this Court has not expressed any view insofar as the rival claims by the applicants in the subject matter of the First Appeal is concerned and the said issue is kept open, which shall be determined in the appropriate proceedings, if any, filed by the applicants. No order as to costs.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE

fmp/