

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8905 OF 2014

Bhanuds Rangnath Tapkir	.. Petitioner
V/s	
Narayan Damu Kad and ors	.. Respondents

...

Mr.Saurabh Butala i/b Mr.Sachin Chandan, Advocate for the petitioner.

Mrs.M.P. Thakur, AGP for the State.

**CORAM: DR. MANJULA CHELLUR, CJ. &
G.S. KULKARNI, J.**

DATED: 28th FEBRUARY, 2017

P.C.:-

1 The petitioner before this Court is a Power of Attorney holder of second respondent, and also claims to have an agreement of sale in his favour in respect of the properties which became the subject matter of acquisition which are situated in the district of Pune at village Bhambeli. Apparently, the lands were standing in the name of one Chandrabhaga - mother of the second respondent who died on 2nd November 2007. The petitioner claims that second respondent succeeded as a sharer to the property of said Smt.Chandrabhaga from whom he has purchased the properties, and also got a Power of Attorney in his favour executed by second respondent. When respondent nos.1 and 2

received notice from the Special Land Acquisition Officer (SLAO), the same came to the knowledge of the petitioner and according to him, the valuation of the property was decided at Rs.40 lakhs per hectare by the Special Land Acquisition Officer.

2 The petitioner seems to have approached the Special Land Acquisition Officer on 1st February 2010 claiming a portion of compensation to be paid to him in terms of agreement of sale which was entered into between him and second respondent. According to the petitioner, in spite of such objection, the payment was made to respondent no.1 by the respondent nos.3 and 4. According to the petitioner, he has interest to an extent of 50% share accrued to the share of the second respondent. Aggrieved by the said silence on the part of the respondent authorities, and further paying the amounts to first respondent without considering the claim of the petitioner, he is before this Court.

3 According to the petitioner, the first respondent is none other than the step-brother of Smt.Chandrabhaga and second respondent is the daughter of said Chandrabhaga.

4 It is needless to say that unless second respondent is entitled to a share in the property, she will not be able to convey any right, interest in the property to third parties, including the petitioner. If the entire compensation is paid to the first respondent, step-brother of Chandrabhaga, then daughter of Chandrabhaga first has to establish her right to the property, or the petitioner has to fight on behalf of the second respondent on the

ground of acquiring whatever interest or right seems to be with the second respondent on the death of her mother Chandrabhaga.

5 When the Writ Petition came to be filed, neither Section 30 of the Land Acquisition Act, 1894 was pleaded, nor any claim was made u/s.76 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act of 2013). In a case having the above facts and circumstances, we fail to understand what apportionment exercise can be undertaken by the Collector when amount has already been paid to the first respondent. As observed above, second respondent and the petitioner have to proceed against the first respondent seeking payment of money to the extent of alleged share of second respondent, but it cannot be decided in a petition filed under Article 226 of the Constitution. Since no amount is yet to be paid to the owners of the land, we are of the opinion that there cannot be any inquiry or decision u/s.76 of the Act of 2013.

6 With these observations, petition is disposed of.

(G.S.KULKARNI, J)

(CHIEF JUSTICE)