

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2121 OF 2018

PRAVIN SITARAM GADILKAR AND OTHERS
VERSUS
THE COLLECTOR AHMEDNAGAR AND OTHERS

Advocate for Petitioners : Mr. A.K. Gawali.
AGP for Respondent No. 1 & 2 : Mr. S.R. Yadav.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 12th March, 2018

PER COURT :

1. It is pointed out that the name of the father of petitioner Nos. 1 and 2, who is the husband of petitioner No. 3 is wrongly mentioned as Sitaram, instead of Santram. Leave to correct the names of petitioner No. 1 to 3 is granted.

2. The petitioners are aggrieved by the order dated 29/01/2018, passed by the SDO, by which, the objections raised by the petitioners under Section 35 of the Maharashtra Industrial Development Act, 1961, have been dealt with by the SDO without jurisdiction. By the impugned order, he has rejected the objections raised by the petitioner. He could not have dealt with the aspect of dispute with regard to the apportionment of the amount of compensation settled under Section 33

and should have referred the dispute to the Civil Court.

3. Learned counsel for the petitioners further submits that these petitioners and respondent Nos. 3 to 8 are close relatives. Rabhaji was the original landlord, who had four sons namely Pandurang, Sitaram, Santram and Bhausahab and one daughter Deobai. Petitioner Nos. 1 & 2 and 4 & 5 are the sons and married daughters of Santram. Petitioner No. 3 is the widow of Santram. There are several lands held by the family members from Rabhaji. Four properties and gat No. 160, out of which 01 Hectare and 70 Ares land has been acquired by the acquiring body, is shown in the name of Sitaram and Bhausahab as per the mutation entry No. 114. Bhausahab has already sold his share and the share shown in the name of Sitaram has been acquired.

4. Grievance is that as there was no formal partition of the shares amongst the family members, Sitaram alone cannot take the compensation of Rs. 60 lakhs. It is stated that these petitioners would get at least half of the compensation amount amongst themselves. The SDO should have referred the matter to the Civil Court and could not have adjudicated upon the said issue. A

Civil Suit bearing R.C.S. No. 167/2017, has been preferred by these petitioners praying for 1/3rd share in the entire suit property. The application for temporary injunction has been rejected on 28/11/2017. No appeal has been filed for challenging the said order.

5. The SDO has gone through the record and especially the mutation entry No. 114 and finds that the revenue record indicates that gat No. 160 has been allotted to Sitaram and Bhausahab as per the partition. Bhausahab has already sold his share in gat No. 160. Gat No. 205 is allotted to Pandurang and gat No. 197 is allotted to Santram.

6. Apparently, I find that merely because the LR.S. of Sitaram are now getting a substantial amount of compensation for the land that has been acquired, that the LR.S. of Santram have now raised an objection. There is nothing to indicate that when Bhausahab sold his share of land in gat No. 160, there was no any objection by these petitioners for the reason, as is stated by the learned advocate, that Bhausahab sold that portion of the land and got other portion of land in the joint name of the family members.

7. Considering the above, I do not find that the impugned order of the SDO could be termed as being perverse or erroneous, since there is nothing placed before him to indicate that these petitioners have any share in the said property. Nevertheless, R.C.S. No. 167/017, is pending in which all these aspects are bound to be gone into by the Trial Court. Hence, the disbursement of the compensation amount by the competent authority to respondent Nos. 3 to 6, would be subject to the result in R.C.S. No. 167/2017. This petition, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

S.P.C.