

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.4861 OF 2018

Chandrakala w/o Sidramappa Belgunde,
Age-77 years, Occu:Household & Agril.,
R/o-Degaon, Tq-South Solapur,
Dist-Solapur.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through District Collector,
Collector Office, Latur,
- 2) The Land Acquisition Officer/
Sub-Divisional Officer, AUSA,
Tq-AUSA, Dist-Latur,
- 3) Project Director National Highway
Authority, Nanded,
Tq. & Dist-Nanded,
- 4) Ganpati Dnyanoba Somvanshi
Died,
- 5) Prayagbai Namdeo Somvanshi
Died

Respondent Nos.4 & 5 through L.Rs.
Resp. No.6 to 9

- 6) Manohar Namdev Somwanshi,
Age-80 years, Occu:Agril.,
R/o-Wanavada, Tq-Ausa,
Dist-Latur,
- 7) Indrajit Namdeo Somwanshi,
Age-75 years, Occu:Agril.,
R/o-Wanavada, Tq-Ausa,
Dist-Latur,
- 8) Keshav Namdev Somwanshi,
Age-72 years, Occu:Agril.,
R/o-Wanavada, Tq-Ausa,
Dist-Latur,
- 9) Sojarbai Shahajirao Yadav,
Age-73 years, Occu:Agril.,
R/o-Wanavada, Tq-Ausa,
Dist-Latur.

...RESPONDENTS

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Mr.S.P. Urgunde Advocate for Petitioner.

Mrs.R.P. Gaur, A.G.P. for Respondent
Nos.1 & 2.

Mr.D.S. Manorkar Advocate for Respondent
No.3 (Absent).

Mr. B.N. Patil Advocate for legal heirs of
Respondent No.4 and for Intervenors.

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**CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATE OF RESERVING JUDGMENT : 24TH NOVEMBER, 2018

DATE OF PRONOUNCING JUDGMENT: TH DECEMBER, 2018

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. It is the case of the Petitioner that Respondent Nos.4 to 9 herein were the objection petitioners in Special Darkhast No.37 of 1995. According to the objection petitioners, one Dulapa Nigude was the owner of Survey No.27/B admeasuring 12 H. 27 Gunthas all situated at village Wanwada, Tq-Ausa, Dist-Latur. Dulapa Nigude died on 7th February, 1958, leaving behind the widow Ratnabai and daughters Saraswatibai, Mukhtabai and Chandrakalabai. Said Chandrakalabai is the respondent for the purpose of this objection petition.

3. It is the case of the Petitioners that the objection petitioner No.1 Ganpati and one Namdeo Hariba, the husband of objection petitioner No.2 and father of objection petitioner Nos.3 and 6, were the tenants in possession of Survey No.27/B and 89/4. After the demise of Dhulappa, one Sharnappa Baswanappa Wale represented himself to be the adopted son of Dhulappa. Said Sharnappa, in 1964, decided to sell the aforesaid lands. Ganpati and Namdeo came to know about it and hence they approached him and disclosed that being tenants, they have preferable rights to purchase the lands. After negotiations the price was settled and application under Section 38-A was filed before Tenancy Tribunal at Ausa. The Tribunal allowed the application and issued the certificate under Section 38(6) of the Hyderabad Tenancy and Agricultural Lands Act in favour of Ganpati and Namdeo on 23th May, 1965. Ganpati was in possession of 2/3rd portion of Survey No.27/B

and 39/B. Namdeo was in possession of 1/3rd portion in Survey No.27/B and western 1/3rd portion in Survey No.39/B. The Tenancy Tribunal transferred the ownership of those lands upon Ganpati and Namdeo.

4. It is further the case of the Petitioner that in Survey No.27/B, the area in possession of Ganpati is the western portion of 8 Acres and 11 Gunthas. While objection petitioner Nos.2 and 6 are in possession of eastern portion of 4 Acres and 4 Gunthas of land. After the demise of Namdeo, his portion is mutated in the name of objection petitioner No.4. In respect of disputed land and other properties of Dhulappa, there were various litigations. Some of the suits were compromised. Thereafter, Saraswati filed Special Civil Suit No.92 of 1969 for partition. It was dismissed by the trial Court. However, the High Court allowed First Appeal bearing No.411 of 1976 vide Judgment

and order dated 17th November, 1980. Then Saraswatibai filed Special C.S. No.92 of 1984 for final decree, which was compromised on 1st March, 1984. By virtue of the compromise, the properties therein were partitioned and the present respondent was allotted Survey No.27/B. Thereafter the respondent has filed the execution petition on the basis of compromise decree. The objection petitioners have raised objection for delivery of possession of Survey No.27/B contending that they were not parties to the former litigation, hence the Judgment and decree passed in the suits and appeals are collusive. The respondent was fully aware that the objection petitioners are in possession of Survey No.27/B. The respondent has no concern with Survey No.27/B as ownership certificate has been granted in regard to that land by the Tahsildar in favour of the objection petitioners. Hence, objection petitioners have prayed for dismissal of execution petition.

Learned 3rd Joint Civil Judge, Senior Division, Latur considering the objection filed by the objection petitioners and rival contention of the parties, dismissed the objection petition vide Judgment and Order dated 28th February, 2012 and directed that the Collector, Latur be informed about the vacation of stay and be intimated to proceed with the execution of decree. The Petitioner has placed on record the copy of the Judgment and order dated 17th November, 1980 in First Appeal No.411 of 1976, copy of objection to execution of decree in Special Darkhast No.37 of 1995 and say filed by the original decree holder, and also the order in Special Darkhast No.37 of 1995.

5. It is the case of the Petitioner that the suit land was acquired for the purpose of National Highway bearing No.361 at Tuljapur and respondent authority passed an award in favour of objection

petitioner and therefore the Petitioner has filed an objection petition praying therein not to disburse the amount in favour of Respondent Nos.4 to 9. In spite of the objections, the acquiring body neither transferred the said amount to the Principal Civil Court of original jurisdiction to deal with issue nor transferred objection petition to the pending suit. Therefore, the Petitioner has prayed to transfer the dispute to the Principal Civil Court of original jurisdiction to deal with the issue, as per the provisions of Section 3-H(4) of the National Highway Act.

6. Learned counsel appearing for the Petitioner has submitted that there is a dispute as regards entitlement of the parties to receive the amount of compensation determined by the Land Acquisition Officer in respect of the acquisition of the property for the National Highway by the Central Government. Learned counsel further

submitted that Section 3-H(4) of the National Highway Act provides that if any dispute arise as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of Principal Civil Court of original jurisdiction within limits of whose jurisdiction the land is situated. In support of his submissions, learned counsel placed reliance upon the exposition of law in the case of Ashok Ramling More vs. Union of India and others¹. Therefore, the learned counsel submits that the Petition deserves to be allowed.

7. Learned counsel appearing for the legal heirs of Respondent No.4 and also the intervenors, referring to the reply filed on behalf of legal heirs of Respondent No.4 submits that deceased Ganpati s/o Dnyanoba Somwanshi was the tenant

¹ 2017(2) ALL MR 792

along with Namdeo Hariba of Survey Nos. 27/B admeasuring 12 Acres 15 Gunthas and 39/B admeasuring 15 Acres 2 Gunthas, which are now converted into Gut Nos. 87, 88 (Old Survey No.27/B) and 122 and 123 (Old Survey No.39/B) of village Wanwada. It is submitted that deceased Ganpati Dnyanoba Somwanshi was having 2/3rd share and deceased Namdeo Hariba was having 1/3rd share in the above referred land and they were declared statutory owners and after deposit of price of land the ownership certificate was issued by the Chairman, Land Tribunal, Tq-Ausa, on 27th May, 1965. It is submitted that the said ownership certificate was issued under Section 38(6) of the Hyderabad Tenancy and Agricultural Lands Act and it is final and conclusive. It is submitted that the said certificate is conclusive proof of ownership of deceased Ganpati Dnyanoba Somwanshi to the extent of 2/3rd share of Survey No. 27/B and 39/B of village Wanwada, Tq-Ausa, Dist-Latur to

the extent of 12 Acres 15 Gunthas and 15 Acres 2 Gunthas respectively. As per the ownership certificate, deceased Ganpati Dnyanoba Somwanshi became absolute owner to the extent of 2/3rd share. Remaining 1/3rd share was of deceased Namdeo Hariba Somwanshi, father of Respondent Nos.7 and 8. It is submitted that Respondent No.7 is no more. It is submitted that the ownership of land stands transferred in favour of Ganpati Dnyanoba Somwanshi and Namdeo Hariba Somwanshi by virtue of operation of law and thereafter the alleged land holders and/or any person claiming on their behalf, is not owner of the suit lands. The possession of Respondent No.4 is continuous and uninterrupted till date from 1958-1959. After the death of Respondent No.4, the names of present legal heirs are recorded in revenue record in respect of Gut Nos.88 and 123, and land Gut No.235 is their ancestral land. Learned counsel further submits that the claim of the sister of the

Petitioner, namely, Saraswatibai Mahalongappa Murumkar to record her name was negatived by the revenue authorities and the appeal bearing No. 2001/ROR/A-107 was also dismissed by the Additional Collector, Latur by order dated 31st October, 2002. It is submitted that Revision Application No.282 of 2002 challenging the Judgment and order passed by the Joint Collector, Latur in File No.2001ROR/A-107 was dismissed in default on 14th July, 2015.

8. Learned counsel appearing for legal heirs of Respondent No.4 further submitted that the present Petitioner or any other person has no right in the suit land to the extent of 2/3rd share, and share of deceased Respondent No.4 out of Survey Nos. 29/B and 39/B is now converted into Gut Nos.88 and 123 of village Wanwada. It is submitted that some portion of the said land has been acquired for widening of National Highway,

Ratnagiri to Nagpur and the award has been passed in the name of deceased Ganpati Dnyanoba and his name appears at Sr. Nos. 25, 28 and 29 in the statement of the award. It is submitted that after holding enquiry, the award has been passed in favour of deceased Respondent No.4 by the authorities. It is submitted that the claim of the Petitioner is false and frivolous and the so called decree in Special Civil Suit No.92 of 1984 is not binding on deceased Respondent No.4 or his legal heirs, as Respondent No.4 was not party in the said suit. Moreover, before filing the said suit, deceased Respondent No.4 was declared owner and ownership certificate was issued in favour of deceased Respondent No.4 and Namdeo Hariba Somwanshi to the extent of 2/3rd and 1/3rd share respectively. There was no land available for partition in the family of plaintiff and/or defendant and therefore, decree passed by Civil Court in Special Civil Suit No.92 of 1984 is

redundant and not executable against deceased Respondent No.4 and deceased Namdeo Hariba Somwanshi. The objection was raised to the execution of the decree and it was rejected by learned 3rd Joint Civil Judge, Senior Division, Latur by order dated 28th February, 2012, on technical ground that there is no dispossession of the objection petitioners. The other issues were answered in favour of Respondent No.4. the appeal was preferred by Respondent No.4 bearing No.144 of 2012 and same is allowed as per Judgment and order dated 3rd September, 2015 by District Judge-2, Latur. It is submitted that the Petitioner has suppressed this fact of partly allowing the appeal and remanding the matter to the lower Court for deciding the objections afresh.

9. Learned counsel further submits that Respondent No.4 and after the death of Respondent No.4, the legal heirs are legal and absolute

owners and possessors of the land and they are entitled for the compensation of the acquired land for the National Highway. The award has been passed in their favour by the competent authority. The objection of the Petitioner is false, frivolous and without any substance and it is filed to delay the payment of compensation of the acquired land to the legal heirs of deceased Respondent No.4. Respondent No.4 and legal heirs are agriculturists and they have right to receive the compensation of their acquired land. It is submitted that there is no triable dispute to refer the matter for adjudication to the competent Court. It is submitted that Respondent No.8 – son of deceased Namdeo Hariba Somwanshi has been paid compensation by the competent authority of the acquired land of his share and in such circumstances, the heirs of deceased Respondent No.4 are also entitled for payment of compensation by the authorities. Lastly, it is submitted that

there is no substance in the Writ Petition and the same is liable to be dismissed.

10. We have carefully considered the submissions of the learned counsel appearing for the respective parties. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto, and the affidavit in reply filed on behalf of legal heirs of Respondent No.4.

11. It is the case of the Petitioner that one Dhulapa Nigude was the owner of Survey Nos.27/B, 39/B and Survey No.181 situated at village Wanwada, Tq-Ausa, Dist-Latur. Said Dhulapa died on 7th February, 1958, leaving behind the widow Ratnabai and daughters Saraswatibai, Mukhtabai and Chandrakalabai. Chandrakalabai, daughter of Dhulapa Nigude is the present Petitioner. It appears that in respect of disputed land and other

properties of Dhulapa, there were various litigations and some of the suits were compromised. It appears that by virtue of the compromise, the properties were partitioned and the Petitioner – Chandrakalabai was allotted Survey No.27/B. After the demise of Dhulappa, one Sharnappa Baswanappa Wale represented himself to be the adopted son of Dhulappa, and Respondent Nos.4 to 9 are the tenants of said Sharnappa Wale. It appears that Respondent Nos.4 to 9 are the protected tenants. It appears that Petitioner Chandrakalabai filed Special Civil Suit No.92 of 1984 for execution of decree. Thereafter, present Respondent Nos. 4 to 9 claiming themselves to be in possession of land Sruvey No.27/B of village Wanwada, filed Special Darkhast No.37 of 1995 praying therein to dismiss the execution petition. The said objection petition was dismissed on 28th February, 2012 by 3rd Joint Civil Judge, Senior Division, Latur. Being aggrieved with the

dismissal of Special Darkhast No.37 of 1995, Respondent Nos.4 to 9 filed Regular Civil Appeal No.144 of 2012. By order dated 3rd September, 2015, District Judge-2 Latur partly allowed the appeal. Order passed by 3rd Joint Civil Judge, Senior Division Latur in Special Darkhast No.37 of 1995 below Exhibit 45, was quashed and set aside and the matter was remanded, directing the lower Court to decide the objections afresh.

12. The suit land was acquired for the purpose of National Highway bearing No.361 at Tuljapur and the authorities have passed an award in favour of Respondent Nos.4 to 9. Therefore, the present Petitioner has filed an objection Petition praying therein not to disburse the amount in favour of Respondent No.4 to 9. Thus, it appears that there is a dispute as to the apportionment of the amount.

13. Learned counsel appearing for the Petitioner has referred to the provisions of Section 3-H (4) of the National Highways Act, 1956, which reads as under:

"3-H (4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated."

14. Learned counsel appearing for the Petitioner has submitted that the Petitioner has already filed an objection petition before the competent authority praying therein not to disburse the amount in favour of Respondent No.4 to 9, which is pending for decision. Therefore, it is desirable that the objection raised by the Petitioner before the competent authority shall be referred to the concerned Civil Court in

accordance with the provisions of Section 3-H(4) of the National Highways Act, 1956.

15. In the facts of the present case, without entering into the merits of the matter, we direct Respondent No.2- competent authority to refer the objection raised by the Petitioner to 3rd Joint Civil Judge, Senior Division, Latur, together with the amount of compensation for appropriate decision. Necessary Reference shall be made within contemplation of National Highways Act, 1956, as expeditiously as possible and preferably within a period of six weeks from today. 3Rd Joint Civil Judge, Senior Division, Latur shall decide the said Reference/objection Petition as expeditiously as possible, however, within twelve weeks from the date of receipt of such Reference. It would be open for the Petitioner and/ or other parties to approach the concerned Civil Court for seeking appropriate orders as regards withdrawal of the

amount of compensation or as regards determination of the entitlement of the parties to receive the amount of the compensation.

16. Till the issue is decided finally by the concerned Civil Court, the interim relief granted by this Court by order dated 20th June, 2018, regarding observance of status-quo, shall remain in force.

17. It is clarified that this Court has not examined the merits of the contentions of the parties and it would be open for the concerned Civil Court to deal with the matter in accordance with the provisions of the law.

18. Rule is made absolute in above terms. The Writ Petition stands disposed of, accordingly.

[K.K. SONAWANE, J.]

asb/DEC18

[S.S. SHINDE, J.]