

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

WRIT PETITION NO. 9999 OF 2018

RAMBHAI JAGANNATH GADHARI AND OTHERS
VERSUS
RAJENDRA RAMDAS AHIRE GADHARI AND OTHERS

...
Advocate for the Petitioners : Shri Tripathi Sushilkumar H..
AGP for Respondents 11 and 12 : Shri S.R.Yadav.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 03rd September, 2018

Per Court:

1 The Petitioners are aggrieved by the order dated 03.04.2018 passed by the Trial Court by which, the application (Exhibit-84) filed by the Petitioners (original Defendant Nos.1A to 1D) in RCS No.821/2012 seeking framing of an issue as to whether, the suit is barred by res-judicata, has been rejected.

2 The learned Advocate for the Petitioners strenuously submits that in LAR Reference No.28/1993, the issue as regards the exchange of Gat Nos.348 and 349 has been dealt with and by the award dated 02.08.2011, the LAR proceedings have been decided and the rights of the claimants to the extent of the land acquired, have been settled. The compensation amounts have been apportioned and there is no further

litigation to the extent of such apportionment.

3 The grievance is that the Respondents/ Plaintiffs have now moved the Trial Court in RCS No.821/2012 seeking possession of the suit property. There is no dispute that the suit property is not part of the land that was acquired in the acquisition proceedings. It is, however, contended that the present suit is apparently based on the premise of there being an exchange of the said lands and such exchange of lands has already been dealt with by the LAR Court.

4 The Trial Court has rejected the application Exhibit-84 by observing that in the Written Statement filed by Defendant No.1B (Exhibit-29) it is vaguely pleaded that in the reference proceedings bearing LAR No.28/1993, the father of the Plaintiffs has taken several objections and they have been decided by the LAR Court. The Trial Court, therefore, observed that there are no pleadings by the Defendants that the issue raised in the suit and the claim put forth in the suit was ever directly and substantially adjudicated upon in the LAR proceedings.

5 I do not find that the said conclusions of the Trial Court could be faulted as the LAR Court considered the dispute as regards apportionment of the compensation amount to the extent of the land acquired, notwithstanding that some portion of the acquired land may have been in either of these gat numbers. The issue as regards res-judicata could be raised if the subject matter of the suit has been substantially and

directly dealt with and the verdict on that count would lead to the dismissal of the suit. The Trial Court has already framed an issue as to whether, the Plaintiffs are entitled to get possession of the suit property. While deciding the said issue, the Trial Court is bound to consider the rival contentions of the parties.

6 In view of the above, I do not find that the impugned order could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)

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