

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

CIVIL APPLICATION NO.13972 OF 2017

**VIJAYKUMAR RAMJILAL KEDIA
VERSUS
GOVIND BANSI CHAVAN AND OTHERS**

**IN
WRIT PETITION NO. 6613 OF 2017**

**GOVIND BANSI CHAVAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Applicant :- Shri S. S. Bora
AGP for Respondent Nos.1, 3 and 12 in WP : Shri S. K. Tambe
Advocate for the Petitioner in WP : Shri D. P.Palodkar
Advocate for Respondent No.4 in WP : Shri D. M. Shinde
Advocate for Respondent Nos. 5 and 6 in WP : Shri A.P.
Bhandari
Advocate for Respondent No.13 in WP : Shri Saeed S. Shaikh
Advocate for Respondent No. 2 in WP : Shri A. D. Raut
Advocate for Respondent Nos. 8A, 9A, 10 and 11 in WP : Shri
A. K. Raut.
Advocate for Respondent No.8B : Shri S. B. Chavan

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 11th DECEMBER, 2018.

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PER COURT :

1. This is an application made by respondent No. 7 in the Writ Petition No. 6613/2017. Prayer clause 11-a, b and c set out in the application read as under :-

"a. *This application may kindly be allowed.*

b. *That the order dated 17.05.2017 passed by this Hon'ble court in Writ Petition No. 6613/2017 thereby granting interim order in terms of prayer clause 'D' of the Writ Petition i.e. restraining the respondent No.12 Sub Divisional Officer from releasing the payment of compensation in pursuance of order dated 26.04.2017 may kindly be vacated or suitably modified to the extent of present applicant.*

c. *That the respondent No.13 Sub Divisional Officer – Paithan – Phulambri (DMIC) Aurangabad may kindly be granted to release the payment of compensation to the extent of applicant immediately."*

2. Shri Palodkar, learned Advocate for the original petitioner Govind Bansi submits, only to the extent of Civil Application filed by the applicant Vijay Kumar represented by Shri Bora learned Advocate, that the applicant claims 5 Acres of land out of Gat No. 155 situated at Jambhali, Taluka Paithan, District Aurangabad. He, however, submits that he has settled the dispute with the applicant and the applicant agrees to take the compensation for 4 Acres of land. As regards the fruit bearing trees, he states that the original

petitioner is present in the Court. He identifies him and submits, on instructions, that the compensation towards 4 acres of land and towards the fruit bearing trees may be handed over to the applicant, provided the applicant does not object to the payment of compensation for 1 Acre land to the original petitioner.

3. Shri Bora, learned Advocate appearing on behalf of the applicant submits that the statement made by the petitioner through Shri Palodkar is acceptable to his client. He would have no objection for disbursement of compensation towards 1 Acre of land, out of the 5 Acres of land at issue, to the petitioner.

4. The learned AGP appearing on behalf of respondent Nos.1, 3 and 12 submits that the disbursement of compensation will be made by the SDO in view of the communication that he has received on 10/12/2018 from the concerned SDO which is as regards the amounts towards compensation for the land area, fruit bearing trees and the constructed area. He submits that this total land of 2 Hectors

and 2 R. which is approximately 5 Acres 2 Gunthas, belongs to the applicant Vijaykumar as per the records of the revenue authorities. The SDO would have no voice to express a view if the original petitioner and the applicant have settled the issue amongst themselves to the extent of sharing of the compensation.

5. Shri Chavan, learned Advocate appearing on behalf of respondent No.8B in the Writ Petition. He, however, concedes that there is no order in his favour, by which, he can claim any share in the land claimed by the applicant herein.

6. Shri Raut, learned Advocate appearing on behalf of respondent Nos. 8A, 9A, 10 and 11 in the Writ Petition submits that his restoration application is pending as his suit was dismissed in default. RCS No. 293/2017 has been preferred before the Civil Court claiming a share in the applicant's property. However, no orders have been passed, by which, any injunction could be granted with regard to the compensation to be disbursed to the applicant and the original petitioner.

7. Shri Shinde, learned Advocate appearing on behalf of respondent No.4 in the Writ Petition submits that he has no issue with the claim of the original petitioner and the applicant to the extent of the 5 Acres land.

8. Shri Bhandari, learned Advocate appearing on behalf of respondent Nos. 5 and 6 submits that they have no issue with regard to the land for which the compensation is to be disbursed to the petitioner and the present applicant.

9. Shri Shaikh, learned Advocate appearing on behalf of Respondent No. 13 submits that the entire land admeasuring 37 Acres in Gat No. 155 was originally owned by the deceased Shaikh Daud. The deceased had one wife and two daughters. Under the Mohammedan Law, with the demise of Shaikh Daud, the mother Janbi and two daughters, out of which one is respondent No.13, would be the owner of the entire land. Their shares would be definite and distinct under the Mohammedan Law. He submits that his mother Janbi has illegally sold the entire land to various persons. She received

the proceeds of such sale transactions which occurred prior to her demise in 1990. Such sale transactions occurred some time in 1978. He concedes that both the daughters did not question such sale transactions from 1978 till the demise of Janbi and for the first time, preferred RCS Nos. 594, 595, 596 and 597/2014. These four suits were dismissed on the ground that the Civil Court did not have jurisdiction.

10. It is stated that the litigation to the extent of such civil proceedings stopped at that stage and neither of the two daughters have taken the litigation to the higher Courts. It is then submitted that the SDO has referred the dispute to the competent Civil Court with regard to the acquired land admeasuring 15 Hectors and 39 R. in Gat No.155.

11. The learned Advocates for the petitioner and the present applicant jointly submit that it is anybody's guess that these two daughters have kept silent over the sale transaction of Janbi because they did not intend to oppose the same and after Janbi passed away, both have inherited the entire fortune of Janbi which includes such sale proceeds. They have enjoyed the sale proceeds from 1978 till 2014 which is a period of

about 36 years till the filing of the suit. Only after the lands were acquired under the Maharashtra Industrial Development Act, 1961, that these persons have jumped to their feet and have initiated litigation. Such litigation can be termed as being vexatious litigation.

12. In the above backdrop, the learned Advocate for the petitioner Govind Bansi and the learned Advocate for the applicant Vijaykumar Ramjilal submit that they are willing to tender their individual affidavit undertakings in this Court and the same may be recorded as statements made to the Court. They will undertake that if the amount is disbursed as per the understanding between the two persons recorded above, they would refund the amount to that extent if any civil Court may conclude that they have received excess amounts. Reserving their rights to litigate, they submit that if, at the end of the litigation, it is held that they have been paid excess amounts as compensation towards excess shares, they themselves or their dependents or assignees or legal heirs, would return the amounts within EIGHT weeks from the date of such adverse conclusion in the civil litigation.

13. I am intrigued by surprising factors emerging from the record in these proceedings. Until the land was acquired in a public project, there was no litigation and there was nobody before any Court to claim any right, title or interest in the 37 acres of land. Respondent No.13 who claims to be the daughter of Janbi and Shaikh Daud has not objected to the sale transactions executed by her mother in 1978 or any time thereafter for a period of 36 years. The moment it has appeared that such acquisition would lead to payment of substantial amounts as compensation, that there has been a mushroom growth of litigants, each one claiming to be, in some way, an owner or title holder of various parcels of the land at issue.

14. Respondent No. 8B is also one of such kind. Respondent Nos.2, 8A, 9A, 10 and 11 claim to be protected tenants under Section 38F of the Hyderabad Tenancy and Agricultural Lands Act. Neither of them have any document to indicate that they have been declared as protected tenants.

15. In view of the above, it appears that this litigation is triggered off by the sight of the compensation amounts and

several persons have, therefore, jumped into the fray to fan the fire that has been set on by such litigation.

16. In view of the above, this application is partly allowed. The order passed by this Court on 17/05/2017 would not operate in so far as the 5 Acres at issue to the extent of the land mentioned in the communication dated 10/12/2018 by the SDO addressed to the learned AGP, which is taken on record and marked as Exhibit 'X-2'.

17. The applicant Vijaykumar and the petitioner Bansi would accordingly approach the SDO for the release of their compensation amounts as per their mutual understanding recorded above subject to the following conditions :

(a) The applicant as well as the petitioner Govind shall enter an affidavit undertaking in this Court within ten days from today, stating therein the compensation amounts claimed by them to the respective shares of the land, the fruit bearing trees and the constructed area.

(b) They would further undertake that if they suffer an adverse order in any litigation before a Competent Court, they would deposit the amount to the extent of the excess amount that they are held to have withdrawn, at the end of the litigation, with the concerned SDO within

EIGHT weeks.

(c) They would mention in the affidavit that their legal heirs/assignees, who may inherit the shares of amounts, would be equally liable to repay the said amount in the event an adverse order.

(d) Both will mention in the affidavit their existing list of immovable properties with details of the revenue records.

(e) Each one of them will tender a recent photograph, a recent address proof of permanent residence, their Saving Bank Account and a copy of their Pan Card.

(f) The original affidavit undertaking shall be filed in this Court and the same shall be preserved, meaning thereby, that the said documents shall be maintained in this petition in accordance with the rules.

(g) A self-attested true copy of such affidavit with all annexures would also be tendered with the SDO alongwith an application for disbursement of the amount.

(h) This aspect shall be brought to the notice of the civil Courts where any litigation involving this applicant and the petitioner is pending.

(RAVINDRA V. GHUGE, J.)

shp/-