

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10468 OF 2017

...
Muncherji Nusserwanji CamaPetitioner
V/S
The State of Maharashtra & Ors.Respondents

...
WITH
CIVIL APPLICATION NO.885 OF 2018
IN
WRIT PETITION NO.10468 OF 2017

...
Muncherji Nusserwanji CamaApplicant
IN THE MATTER BETWEEN
Muncherji Nusserwanji CamaPetitioner
V/S
The State of Maharashtra & Ors.Respondents

...
Mr. Anil Anturkar, Senior Counsel, Mr. Pankaj Sawant, Senior Counsel,
Mr. Yahya Goghani, Mr. Levi Ruben, Mr. Pratik V. Shah i/b M/s. Vigil Juris
for the Petitioner/Applicant.
Ms. Geetnjali Shinde, AGP for Respondent Nos.1 to 4/State.
Mr.G.D.Jadhav, Maintenance Surveyor is present in Court.

...
CORAM : A.A. SAYED &
SANDEEP K. SHINDE, JJ.

DATED : 2 NOVEMBER 2018**P.C.:**

On 3 October 2018, at the instance of the Petitioner, the following order was passed:

“1 Leave to add the District Superintendent of Police, Satara, as party-Respondent. Amendment to be carried out forthwith. Learned A.G.P. waives service on behalf of the newly added Respondents.

2 The only controversy in the Petition is which part of the subject land admeasuring 3 Acres 21 Gunthas belonging to the Petitioner is acquired. It is not dispute that out of the 3 Acres 21 Gunthas, only 1 Acre and 7 Gunthas is acquired.

3 Learned A.G.P. on instructions from Mr. Gorakhnath D. Jadhav, Surveyor, states that Petitioner may remain present at site on 15.10.2018 at 11.00 a.m. when the acquired portion of 1 Acre and 7 Gunthas shall be measured and the boundaries demarcated at site in presence of the Petitioner. A Report shall be filed by the said Mr. Gorakhnath D. Jadhav in the form of Affidavit before the next date.

4 List the Petition on 19.10.2018.

5 The ad-interim relief granted earlier to continue till then.”

2. Pursuant to the aforesaid order, a compliance Affidavit was filed by the Maintenance Surveyor, Office of the Deputy Superintendent, Land Records on 19 October 2018. In the said Affidavit in paragraph 3 it is stated as follows:

“3. I say that accordingly, the office of the Respondent No.3 issued notice dated 8-10-2018 to the Petitioners on their address requesting to attend the Joint Measurement on the spot on 15-10-2018 at 11.00 a.m. Hereto annexed and marked as Exhibit-I is the copy of the said Notice dated 8-10-2018. I say tht while conducting the said survey of land bearing Survey No.138 (CTS No.243) situated at Mahabaleshwar, District Satara, both Petitioners namely viz. Mucherji Nusserwanji Cama, Smt.Bno

Nusserwanji Cama and Shri Nusserwanji Muncherji Cama and Respondent State of Maharashtra viz.Dattraya Ganpat Nale, P.I., and also Panchas viz. Kalyan Bajirao Hirwe, Clerk, Vijay Sarjerao Jadhav, Talathi, were present on the spot. The said Panchas had also witnessed the survey conducted on 15-10-2018. As per the available records with this office relating to Survey No.138 (CTS No.243) area admeasuring 3 Acres and 21 Ars was also measured in the presence of Panchas, Petitioners and the Respondents. I say that the area admeasuring 1 Acre 7 Gunthas presently in possession of the Respondents was also measured. I say that accordingly statements of the Petitioners and the statements on behalf of Respondent and Panchas were also recorded by the deponent on the spot on 15-10-2018. I say that the said new joint measurement is recorded in the Report dated 15-10-2018 and boundaries are drawn and marked accordingly. “

3. The aforesaid Affidavit was tendered across the bar by the learned AGP on 19 October 2018, when the following order came to be passed:

“ A compliance Affidavit alongwith a map has been tendered by the learned AGP, copy whereof has been given to the other side.

2. Mr.Pankaj Savant, learned Senior Counsel for the Petitioner seeks time to go through the said compliance Affidavit and the map and to take instructions.

3. Stand over to 23 October 2018 (H.O.B.)”

4. On 23 October 2018, it was sought to be contended by the learned Senior Counsel for the Petitioner that the new Joint Measurement Plan, which was annexed alongwith Affidavit dated 19 October 2018 was not in conformity with the Joint Measurement Plan annexed at Exh.5 to the Award dated 29 March 1962.

5. In view of the aforesaid contention, this Court passed the following order on 23 October 2018:

“1 Pursuant to the order dated 3 October 2018 Compliance Affidavit dated 17 October 2018 has been filed by Mr. Gorakhnath D. Jadhav, Surveyor. The new joint measurement map is annexed to the said Affidavit.

2 Learned Senior Counsel for the Petitioner has pointed out that the said map is not in conformity with the joint measurement plan annexed at Exhibit 5 to the Award dated 29 March 1962.

3 Let the aforesaid Exhibit 5 to the Award dated 29 March 1962 be produced on the next date.

4 Stand over to 30 October 2018.

5 The ad-interim relief granted earlier to continue till then.”

6. Pursuant to the aforesaid order dated 23 October 2018, learned AGP sought to tender the old joint Measurement Plan, which is stated to be a copy of the plan annexed as Exh.5 to the Award dated 19-03-1962. Learned Senior Counsel for the Petitioner, however, submitted that the said plan should be part of Affidavit and not tendered across the bar. In these circumstances, we kept the matter back and directed the Maintenance Surveyor to file an Affidavit annexing therewith the old joint Measurement Plan.

7. Accordingly, the learned AGP has now filed an Affidavit annexing therewith the old Joint Measurement Plan. The Affidavit specifically states that the old joint Measurement Plan annexed to the Affidavit is a copy of Exh.5 annexed to the Award dated 29 March 1962.

8. In our view it is not necessary to issue any direction that the Maintenance Surveyor should specifically state in his Affidavit that he himself has seen the Award, as sought to be suggested by the learned Senior Counsel for the Petitioner. In our view, in view of the various orders passed, the grievance of the Petitioner now stands redressed as now there are two joint Measurement Plans (old and new) on record which sufficiently establish the identity of the acquired land. It is pertinent to note that it is not

contendd before us that there is any variation in the old and new joint Measurement Plan. As a matter of fact, the Award dated 29-03-1962 records that none of the interested persons raised any objection to the joint Measurement Plans. So far as the grievance of the Petitioner that the unacquired portion of the land of the Petitioner is freehold property, it would be open for the Petitioner to file appropriate proceedings.

9. In light of the above, the Petition is disposed of.

10. At this stage, the learned Senior Counsel for the Petitioner seeks continuation of the ad-interim order dated 3 April 2018 for a period of eight weeks. It is noticed that the Award was passed as far back as on 29 March 1962. Two joint Measurement Plans are now on record (old and new), which sufficiently establishes the identify of the acquired land. In these circumstances, we are not inclined to continue the ad-interim relief. The prayer for continuation of the ad-interim relief shall stand rejected.

11. In view of disposal of Writ Petition, Civil Application does not survive and to stand disposed of.

(SANDEEP K. SHINDE,J.)

(A.A.SAYED, J.)