

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.9672 OF 2019
IN
WRIT PETITION NO. 774 OF 2018

VISHNU DAULAT WANI AND ANOTHER
VERSUS
COLLECTOR, JALGAON

...
Advocate for Applicants : Shri Gore R.V.
AGP for Respondent : Shri Tiwari S.P.

...
CORAM : RAVINDRA V. GHUGE, J.
Dated: August 09, 2019

...

PER COURT :-

1. By this civil application, the applicant is seeking an extension of time for selling of the property as per the market price.
2. I have heard the learned Advocates for the applicants.
3. The applicant had first sought a leave to sell the property under the supervision of the District Court, on 22.1.2018. The following order was passed on 22.1.2018 in the writ petition.

"1. The petitioners are aggrieved by the order dated 02/05/2017 by which application No.33/2016 has been rejected and petitioner No.1 is not permitted to sell the land at issue.

2. *It is stated that petitioner No.2 is a special child born on 25/09/1997. His father passed away on 02/01/2009. His mother passed away on 22/02/2011. Petitioner No.1 is the paternal grand father of the child, who purchased land in 2010 in the name of petitioner No.2. Considering his advanced age of about 71 years, he is not able to cultivate the said land, has no male son surviving. He is unable to support himself and petitioner No.2. Reliance is placed on Section 52 of the Mental Health Act, 1987 and it is prayed that the District Court may impose conditions while permitting the sale of the land.*

3. *Leave to add the District Collector, Jalgaon as respondent. Issue notice to the respondent, returnable on 16/02/2018. Learned AGP waives service for the respondent."*

4. *Despite the above and though this Court passed an order on 11.2.2019, yet the applicant has not complied with the directions of this Court set out in paragraph Nos.4 to 7, which read as under:-*

"4. I have gone through Sections 52 to 60 of the Mental Health Act, 1987. Learned Advocate for the first petitioner, who is the grand father of the special child, submits that if permission to sell the land is granted, the land would be sold at the market price which is more than the ready reckoner rates of the Government and the registry would also be as per the market price. It is further stated that the grand-father and the grand-mother would require some amounts for taking care of their health and to look after petitioner No.2 / special child. They have to spend on their medication. The expenditure with regard

to the needs of the special child would be made from the monthly interest amount, if the share of the special child is invested in FDR in any Nationalized Bank.

5. *The learned AGP submits that this matter needs to be looked at from a humane angle. If the grand-father is unable to cultivate the land at the age of 78 years today, it would be appropriate to permit the selling of the land by imposing certain conditions upon the first petitioner, so as to ensure that the special child is not neglected.*

6. *Considering the above, this petition is allowed with the following directions:-*

(A) *Clause 4 of the impugned order, dated 2.5.2017, is modified.*

(B) *Petitioner No.1 is permitted to sell the land Gut No.290/1 as per the market rate as on the date of sale.*

(C) *The registry of the same shall also be as per the same rate.*

(D) *2/3rd of the sale proceeds would be invested in an FDR with a Nationalized Bank at Jalgaon for an initial period of five years. The arrangement with the Bank would be in the nature of permitting the grand-father to withdraw monthly interest amount on the said 2/3rd portion, so as to be utilized for the well being of the special child / petitioner No.2.*

(E) 1/3rd of the sale proceeds would be retained by the petitioner No.1 / grand-father to be utilized for himself and his wife, as per their requirements.

7. Petitioner No.1 is granted a period of three months to comply with the above stated order and report compliance to this Court. If the sale does not occur within three months, petitioner No.1 would once again approach this Court for further directions. For these purposes, petitioner No.1 or his wife, as the case may be, would approach this Court by filing a Civil Application, either for reporting compliance or for further orders, notwithstanding that this petition is being disposed off today."

5. The learned Advocate has drawn my attention to paragraph No.5 of the Civil Application to narrate the efforts taken for selling the property. I find that there is hardly a single reason mentioned in paragraph No.5 or in the entire civil application, which would indicate that the applicant has taken any steps for the disposal of the said property.

6. The learned Advocate submits that the applicant is growing old and his health is also becoming an impediment. The special child has now reached the age of 19 years. He is strenuously taking his care. If an opportunity is granted, he would resort to publishing an advertisement in the news paper with a large circulation, so as to

attract buyers. If some time is granted, he would place on record the efforts taken by him and would endeavour to sell the property.

7. The learned Advocate further submits that under the old Mental Health Act, 1987, Section 55 would enable the District Collector to appoint a suitable person to look after the said property, special child and sell the property if required. A sale was possible with the permission of the District Court. Under the new Mental Health Care Act, 2017, there is no provision for monitoring the sale of a property.

8. The learned AGP submits that in these peculiar circumstances, one more opportunity may be granted to the applicant to take steps for the disposal of the property within three months. The learned Advocate for the applicant submits that he would take steps, even by publication through news paper advertisement.

9. It is in the peculiar circumstances as above and keeping in view the welfare of special child, this application is allowed under the following conditions:-

(A) The time is extended till 15.11.2019.

(B) The applicant No.1 shall take recourse to publishing

advertisement in the largely circulated news paper, so as to attract buyers.

(C) The earlier conditions set out in paragraph No.6 under Order dated 11.2.2019, passed in Writ Petition No.774 of 2018, shall continue to apply to the applicants.

(RAVINDRA V. GHUGE, J.)

...

akl/d