

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

913 WRIT PETITION NO.4410 OF 2014

**BAPURAO MADHAVRAO UGILE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr. V.D. Gunale
AGP for Respondents 1 & 3 : Mr. A.V. Deshmukh
Advocate for Respondent 2 : Mr. A.V. Hon

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**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**
DATED : 8th January, 2019.

ORDER :

1. The petition is filed for direction to respondents to initiate the acquisition proceeding in respect of the land admeasuring 1 H. 79 R. from Survey No. 20 of village Sayyadpur, Tahsil Devni, District Latur and to pay compensation in respect of that land. Both the sides are heard.

2. The submissions made and the record show that in the year 1982 respondent No. 2 had proposed the construction of percolation tank in aforesaid village. Notification under section 4 of the Land Acquisition Act was issued in which some portion of land, Survey No. 20 of this village was shown. Subsequently, two separate awards came to be passed like Award bearing file

No.81/LNQ/CR-10 for Gat No. 20 admeasuring 3 H. belonging to Shrirang Kadaji Biradar and from file No.87/MP/LNQ/CR-58 from Gat No. 20 for 50 R. land belonging to Shrirang Kadaji Biradar. These awards were prepared well back in the year 1982.

3. It is the case of petitioner that the widow of Shrirang Kadaji Biradar had made representation to respondent No. 2 and she had informed that her land was not actually acquired and due to mistake her husband had collected the compensation in respect of the land admeasuring 3 H. from Survey No. 20. Copy of that representation dated 2.7.2013 is produced on the record and she had requested the Acquiring Body to delete the area which was shown to be acquired to the extent of 2 H. and she had expressed that she was ready to deposit the amount which was collected by her husband. According to the petitioner, as the department informed that the lady may deposit the amount, if it was collected by mistake, the lady deposited the amount in treasury on 1.7.2013. Copy of correspondence made by Executive Engineer of Irrigation Department made with the widow of Shrirang dated 18.12.2012 is produced, showing that she was asked to deposit the amount which was purportedly collected by her husband.

4. The petitioner is relying on sale deed shown to be executed on 20.2.2001 by three daughters of Shrirang Biradar of the area of 2 H. from Survey No. 20. In this sale deed, there is no mention of percolation tank. The boundaries of the portion sold are described and they show that on eastern side, there was road, on west there was the land of Dhanaji and Shyam, two sons of Shrirang, on south there was land of Gopabai, widow of Shrirang and on north, there was Government Gairan land and land of one Prakash Chamkore.

5. On one hand, the record shows that two awards were prepared by Special Land Acquisition Officer in respect of 3 H. 50 R. land from Survey No. 20 and on other hand, there is sale deed of aforesaid nature shown to be executed in favour of present petitioner by successors of Shrirang, who had collected the compensation amount. The copy of award statement shows that the compensation amount was collected by Shrirang in respect of 3 H. land in respect of his award and that amount was Rs.10,350/- and in respect of second acquisition of 50 R. land, that was of Rs.9,375/-. Thus, the award had become final and acquisition was completed in respect of 3 H. 50 R. land. The

submissions made and the record show that Acquiring Body is disputing that the land about which claim is raised was not acquired for percolation tank. The contention of the petitioner that due to increase of height of Bandh of percolation tank his land got submerged subsequently is denied by the respondents by contending that at no time there was increase in the height of Bandh of percolation tank.

6. The aforesaid circumstances show that everything is disputed. There is dispute about the title of the petitioner. In view of the these circumstances, this Court holds that no relief which is claimed in the present petition can be given at this stage. In view of the aforesaid circumstances, it was necessary for the petitioner to first get declaration in respect of the title of the land which is shown to be purchased by him as there is clear possibility that the amount was already acquired for percolation tank. Only if the petitioner succeeds in getting declaration about his title on the basis of sale deed and other circumstances, the claim of the petitioner made in the present petition can be considered. It appears that all the confusion was created as the mutation in respect of entire land which was acquired, to the extent of 3 H. 50 R. was not taken in the revenue record and

due to that, the land was shown to be available to the vendors.
With the aforesaid observations, the petition is disposed of as
dismissed.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

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