

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.774 OF 2018

VISHNU DAULAT WANI AND ANOTHER
VERSUS
NIL

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Advocates for Petitioners : Shri Gore R.V. a/w Shri Matkar N.A.
AGP for State : Shri Yadav (Lonikar) S.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 11, 2019

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PER COURT :-

1. While issuing notice on 22.1.2018, I had passed the following order:-

"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."

2. I have heard the learned Advocate for the petitioners and the learned AGP.

3. The petitioner is about 78 years old and has an aged wife to take care of and that he is unable to cultivate the land, since his son and daughter in law, who were parents of the special child /petitioner No.2, have passed away.

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.

(RAVINDRA V. GHUGE, J.)

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