

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

WRIT PETITION NO.5974 OF 2012

Shri Bhimashankar Sidramppa
Chippa

... Petitioner

Vs

The State of Maharashtra
& Ors.

... Respondents

...

Mr. P.K.Dhakephalkar, Senior Advocate I/by Mr. Sachin
Dhakephalkar for the Petitioner.

Ms. M.S.Bane, AGP for the State.

None for Respondent-Corporation.

CORAM : SANDEEP K. SHINDE J.

DATE : JUNE 14, 2019

P.C. :

Heard.

2 Petitioner's land bearing City Survey No.10388, final plot no.34A/52 under the Town Planning Scheme No.1, Solapur admeasuring 5587.31 sqr.mtrs. (hereinafter referred to as the 'Suit Land') was acquired by the Government of Maharashtra at the instance of Solapur Municipal Corporation. Prior to year 1979, the suit land was reserved as play-ground under the development plan; however, by minor modification, it came to be reserved for 'market'

since the year 1979. Aggrieved by the award, the Claimant/Petitioner applied for land reference. It was decided by the the Civil Judge, Senior Division, Solapur vide judgment and Award dated 13th February, 1995. Aggrieved by the decision in the Land Reference, the State of Maharashtra and the Solapur Municipal Corporation, preferred the First Appeal Nos.72 of 1998 and 233 of 1999. The Petitioner being claimant and the respondent in the First Appeals also filed cross-objections. Both the First Appeals and and cross-objections were heard by this Court and the same were dismissed by the judgment dated 7th May, 2009, however, cross-objections were partly allowed.

3 It appears that the property bearing final plot no.34 admeasuring about 50,000 sq.mtrs. of which the suit land forms a part was purchased by the Petitioner-claimant prior to the year 1969. He prepared a lay-out, which was sanctioned by the authorities on 10th March, 1969. The land was divided into 51 plots and land of 5587.31 sq.mtrs., was kept as "Open Space". Different plots in the lay-out were sold by the petitioner and the purchasers started using

them by raising constructions. As stated here-in-above, initially, 'open space' in the lay-out plan was reserved for play-ground but later by allowing minor modifications in the development plan, reservation was changed from play-ground to market. Subsequently, this plot was acquired by the Corporation as 'market' as a part of implementation of the development plan.

4 In aforesaid First Appeals, the contention of the Corporation that the Petitioner was not entitled to more than nominal compensation has been turned down and the Court held that an 'open space' under the lay-out does not get vested in the Municipality free of cost merely because of a condition imposed in the order sanctioning the lay-out to transfer the open space in the lay-out to the Municipality.

5 In paragraph 13, this Court in the First Appeals have held thus,

13. Thus though the owner of the land who gets the layout sanctioned continues to be the owner of the land, he would have to hold the land in trust for the plot holders to whom he has sold the plots in the layout. If the land is compulsorily acquired he would be entitled to the market value as compensation but he would hold it in trust for all the plot holders in the 14 layout for whose the benefit the

open space was held. However, that is not the issue in the present case. Any plot holder has not come forward to claim a share in the compensation nor has any plot holder made an application u/s.30 of the Land Acquisition Act for apportionment of the compensation. The plot holders may exercise the right and avail the remedy, if any, available to them against the respondent claimant for a share in the compensation in accordance with law. Subject to decision of such claim, if any, made by plot holders in accordance with law, the claimant would be entitled to receive the compensation equivalent to the market value at the first instance.”

6 Taking recourse to the observations made in paragraph 13 as reproduced here-in-above, the Respondent-Corporation and the State of Maharashtra filed applications below Exhibits 35,36 and 38 in the Regular Darkhast No.284 of 1995 to contend and urge that in view of the said observations, the petitioner/deGREE holder be directed to implead all plot owners [as named in the schedule] be joined as decree-holders, in the execution proceedings.

7 The learned Executing Court heard all the applications together and directed petitioner/deGREE holders to comply with the observations made in paragraph 13 of the judgment dated 7th May, 2009 delivered by the Bombay High Court in First Appeal No.72 of 1998 and First Appeal No.233 of 1999.

8 The Petitioner has assailed this order in this Petition under Article 227 of the Constitution of India.

9 Mr. Dhakephalkar, the learned Senior Counsel, submits that this Court has not issued any directions to the Petitioner to implead plot owners as decree-holders in the execution proceedings. He submits that the Court has observed that '*such plot holders may exercise their rights and avail the remedy, if any, available to them against the petitioners for share in compensation in accordance with law (emphasis supplied)*.' It is submitted that, in paragraph 13 of the judgment, this Court has kept all the remedies open to the plot purchasers may be they are “persons interested” in the land acquired by the State by adopting appropriate remedy.

10 I have gone through the judgment in two First Appeals and in particular paragraph 13. In this paragraph, the learned Judge of this Court has categorically held that issue in the First Appeals was not that of share of “persons interested” in the compensation. However, such plot owners' remedy has been kept for claiming share

in the compensation from the petitioner. Paragraph 13 does not contain the 'findings', but only 'observations' and, therefore, applications filed by the respondents below Exhibit 35, 36 and 38 in Regular Darkhast No.284 of 1995 were mis-placed and not in tune with the observations made in paragraph 13 of the judgment in the two First Appeals.

11 Nothing is brought on record by the State that the plot holders have exercised have exercised their rights to claim share in the compensation by adopting appropriate remedy.

12 Thus, taking into consideration facts of the case that the order impugned dated 4th April, 2012 passed below Exhibits 35,36 and 38 in Regular Darkhast No.284 of 1995 is quashed and set aside.

13 Writ Petition is allowed in the aforesaid terms and disposed of accordingly.

(SANDEEP K. SHINDE, J.)