

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

WRIT PETITION NO.6455 OF 2014

Islampur Municipal Council, Islampur
through Chief Officer

... Petitioner

Vs.

Mahadeo Anna Jadhav and Ors.

... Respondents

.....

Mr. Rupesh K. Bobade for the Petitioner.

Mr. U. R. Mankapure for respondent No.1 and 3.

Ms. Sairuchita Choudhary I/b. J. Shekhar and Co. for respondent No.4.

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CORAM : M. S. KARNIK, J.

DATE : 4th OCTOBER, 2019.

P. C.:

1. Heard learned counsel for the parties.
2. The petitioner-Islampur Municipal Corporation is the judgment debtor in respect of the judgment and decree dated 31.3.2008 passed by the Trial Court. The respondent No.1 is the decree holder. The decree holder had filed a suit for possession of a plot to which he is entitled in view of the illegal acquisition made by the judgment debtor acquiring the portion of the decree holder's property for constructing a road. The Trial Court decreed

the suit and directed that compensation for the acquired area to be given to the plaintiff within three months. In the alternative the Trial Court directed that as per the General Body Resolution No.110 dated 19.12.2002 the alternate land from plot Nos.32 and 33 be given to the decree holder. As the decree was not complied with, Darkhast No.146 of 2008 was filed for execution of the decree. The decree holder requested that he may be given possession of that much area of land acquired by judgment debtor from the decree holder in Revision Survey No.6 (Reserved Nos.32 and 33) as per Resolution No.110. During the course of the Darkhast, the judgment debtor has orally submitted that Nagar Parishad has no objection to give the open space shown in map No.2 and 4. Though the judgment debtor was to be given an area from reserved survey Nos.32 and 33, however the plot which was kept reserved for the decree holder was not of the same dimension as the area of land which was acquired from the decree holder.

3. In this view of the matter, the Executing Court appointed the Court Commissioner requesting him to visit Revision Survey Nos.32 and 33 and to inform the substitute land

available. The report along with map at Exhibit 27 was filed by the Court Commissioner.

4. As the area to which the petitioner is entitled was not available, the decree holder requested that the open space shown in map No.2 and 4 may be given to him. In fact the advocate for the judgment debtor had orally submitted that Nagar Parishad has no objection to give the open space shown in map No.2 and 4 in report of the Court Commissioner.

5. The Trial Court directed the judgment debtor Nos.1 and 2 as well as the decree holder to produce the documents to show as to how much area of decree holder is affected or acquired due to the proposal of the road. The order is passed that the open space which are shown in map Nos.2 and 4 be given in possession of decree holder as substitute land for the land of decree holder acquired by the Nagar Parishad. Further orders are issued for transfer of the ownership of the open space shown in the map Nos.2 and 4 of the Court Commissioner's report at Exhibit 27 in the name of decree holder. Clause 3 of that order directed the

decree holder as well as judgment debtor Nos.1 and 2 to produce documents to show as to how much area of the land of decree holder is affected or acquired for the road.

6. The judgment debtor thereafter filed an application below Exhibit 49 seeking review of the order dated 4.2.2013. It is the stand of the judgment debtor that they are willing to hand over plot No.70 from map No.1 to the decree holder. It is further stated that the decree holder has refused to accept said plot. Further a stand is taken that as per the Court Commissioner's report, it is impermissible to hand over the plot from the open space and therefore the review is sought.

7. The decree holder refused to accept plot No.70 as the area of said plot is 400 square feet whereas his land to the extent of 2 Are i.e. 2000 square feet is acquired. The area affected is not of the same area as the acquired portion of his land.

8. The Executing Court rejected the application for review as it was of the opinion that the Court Commissioner's report at Exhibit 27 would reveal that the person by name Sanjay

Mule was present on behalf of judgment debtor No.2 at the time of execution of said commission.

9. It is also pertinent to note that the advocate for the judgment debtor No.2 had orally submitted and as reflected in the order dated 4.2.2013 that he has no objection to give the open space shown in map Nos.2 and 4 annexed to the report of the Court Commissioner.

10. The decree holder is deprived of the fruits of the decree which is in his favour since 31.3.2008. As per the Resolution No.110 the judgment debtor has failed to give the alternate plot in reserved survey Nos.32 and 33 and on the contrary are offering him plot of much lesser area. The decree holder claims that he is entitled to 2000 square feet of plot area as that was the area which was acquired during the acquisition.

11. It is the submission of learned counsel for the petitioner that it is not permissible for the Corporation to part with the open space as per the existing laws. It is further his case that even in the Resolution No.110 on the basis of which the

decree holder claims, only one plot i.e. plot No.70 was reserved for allotment to the decree holder.

12. In view of the submission made on behalf of the judgment debtor during the course of execution that they are willing to offer the area from the open space, now it is impermissible for the judgment debtor to take a stand that they can not part with the open space thereby completely depriving the decree holder the fruits of the decree. The Executing Court on 4.2.2013 had directed the decree holder as well as judgment debtor to produce documents to show as to how much area of decree holder is affected or acquired due to the proposal of the acquisition for the road. To enable the Executing Court to take clause (3) of the order dated 4.2.2013 to its logical conclusion, the parties to appear before the Executing Court on 16.10.2019 at 11.00 a.m. However, in the peculiar facts of the present case, I am not inclined to interfere with the order passed by the Executing Court.

13. The petition stands rejected with no order as to costs.

(M. S. KARNIK, J.)