

((1))

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.8733 OF 2018

1. Vijay s/o Nanasaheb Borse
Age 37 years, Occu. Agri.
2. Smt. Mathurabai Nanasaheb Borse
Age 66 years, Occu. Agri.

Both R/o Chikatgaon, Tq. Vaijapur,
District Aurangabad ...

PETITIONERS

VERSUS

1. Chindha s/o Venkat Aagone,
Age major, Occu. Agri.,
R/o Anilnagar, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon
2. The Special Land Acquisition Officer,
Jalgaon, Dsit. Jalgaon
3. The Executive Engineer,
PWD Department, Jalgaon

...**RESPONDENTS**

.....
Shri N.D. Sonavane, Advocate for petitioners
Shri S.K. Shinde, Advocate for respondent No.1
Shri A.B. Chate, A.G.P. for respondent Nos.2 and 3
.....

CORAM: R.G. AVACHAT, J.

Date of reserving judgment : 19th September, 2019
Date of pronouncing judgment : 11th February, 2020

J U D G M E N T :

Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel appearing for the parties.

2. The challenge in this Writ Petition is to the order dated 7.1.2016, passed by the Court of Civil Judge, Senior Division, Jalgaon, below application (Exh.21) in execution proceedings, being Regular Darkhast No.330/2013.

By the impugned order, the application moved by the petitioners for declaration that the respondent No.1 (applicant in the execution proceedings) has obtained the award in Land Acquisition Reference No.1753/1998 by practicing fraud on the Court and the same is not binding on the petitioners. Consequential relief for grant of the amount of the award, passed in Land Acquisition Reference No.1753/1998 was also prayed for. The Executing Court disposed of the application (Exh.21) with the following order :

आदेश

अर्ज व म्हणणे पाहिले. युक्तिवाद ऐकला. मा. उच्च न्यायालयाचा न्यायनिवाडा जयराम तापडिया वि. कमलकिशोर 1995 CJ (Bom.) 200, 2001 (9) Bom.C.R. 129, रघुनाथ वि. पंडित हे अभ्यासले.

भूसंपादन कायदा कलम ५३, दिवाणी प्रक्रिया संहिता कलम १५१ चा अभ्यास केला. दिवाणी प्रक्रिया संहिता क्रम १ नियम १० चा अभ्यास केला.

मा. उच्च न्यायालयाचा न्यायनिवाडा रघुनाथ वि.

पंडित 2001 (9) Bom.C.R. 129, या निवाड्यात तिन्हाईत पक्षकाराला दरखास्त कामात सामील होता येत नाही हि बाब नमूद केलेली आहे. सदर न्यायनिवाड्यात तिन्हाईत पक्षकाराला दिवाणी स्वरूपाचा दावा दाखल करण्याचा पूर्णपणे अधिकार आहे, हि बाब देखील नमूद केली आहे. अशा स्थितीत, नमूद अर्जदारांना, सदर प्रकरणात सामील करून घेता येणार नाही. सद्यस्थितीत आदेश.

आदेश

अर्ज नामंजूर कार्यात येतो."

3. In view of the learned Judge, the petitioners/ applicants, being third parties, cannot be allowed to be impleaded in an execution proceedings. They are at liberty to file an independent suit.

4. With a view to avoid repetition of facts, it is stated that the Writ Petition is allowed for the reasons given hereinbelow :-

Land bearing Survey/ Block No.162/2 i.e. Gat No.291, situated at village Khadki (Bk.), Taluka Chalisgaon, District Jalgaon was originally owned and possessed by one - Shrawan Ukha Borse. Late Shrawan was the grandfather and father-in-law of the petitioners No.1 and 2 respectively. The respondent No.1 had agreed to purchase some portion of the land in Gat No.291 from late Shrawan Borse. An agreement to

sell was executed between Shrawan and respondent No.1 on 31.5.1984. It is stated that the sale deed could not be executed as the respondent No.1 did not pay the entire consideration amount. The possession of the land was agreed to be delivered at the time of execution of the sale deed.

Land admeasuring 46 R in Gat No.291 was acquired by the State Government for ring road. The respondent No.1, by joining hands with Talathi, got his name recorded in the revenue record of the said land and obtained compensation amount of Rs.11,072/-.

5. The aforestated facts are conclusive in view of the fact of the judgment and decree having been passed in a suit, being Regular Civil Suit No.208/1994. The said suit was filed by the father of the petitioner No.1 and husband of petitioner No.2 along with other legal heirs of late Shrawan Borse. It was a suit filed against the respondent No.1 for recovery of compensation amount of Rs.11,072/-. The said suit was decreed on 19.1.1999. The respondent No.1 had been directed to pay the said amount to the plaintiffs along with 6% interest thereon. The respondent No.1 did not prefer appeal against the judgment and decree passed in Regular Civil Suit No.208/1994. As such, the decree in the said suit attained finality. The copy of the judgment and decree in the said suit

is on record. It has been held that the respondent No.1 fraudulently received the sum of Rs.11,072/- towards compensation of the land acquired by the State Government. As such, the facts indicate that the respondent No.1 did not have any right, title and interest in the land that came to be acquired for the purpose of ring road. Necessarily, he was not entitled to any farthing as compensation on account of acquisition of the said land.

6. Pending the suit (Regular Civil Suit No.208/1994), the respondent No.1 had preferred Land Acquisition Reference, being L.A.R. No.1753/1998. The same was allowed, directing the respondent/ State to pay the compensation @ Rs.255/- per sq.mtr. The respondent No.1 then initiated execution proceedings for execution of the award passed in L.A.R No.1753/1998 i.e. Regular Darkhast No.330/2013. The petitioners herein filed an application (Exh.21) in the said execution proceedings for the prayers stated hereinabove. The record indicates that, as per the calculations made by the respondent No.1, a sum of Rs.82,36,280/- was due from the respondent/ State under the award. The record further indicates that the respondent No.1 deposited a sum of Rs.74,30,395/- in the Executing Court on 3.3.2014. The respondent No.1 moved an application for withdrawal of the amount. The said application was allowed

on 11.3.2014. The respondent No.1 received the said amount by furnishing an undertaking in the nature of a bond. He undertook to repay the amount in case, if he is directed to repay the same by virtue of an order that may be passed in any appeal or other proceeding filed by the State Government against the award passed in Land Acquisition Reference No.1753/1998. The record further indicates that on 5.9.2015, learned Advocate for the respondent No.1 (applicant in execution proceedings) moved a pursis, stating therein that the amount under the award has been received and the execution proceedings be disposed of as fully satisfied.

It is reiterated that, aforesaid are the facts not in dispute at all.

7. The petitioners cannot again be driven to a remedy of filing a suit against the respondent No.1 for receipt of the amount of compensation paid to the respondent No.1. At the cost of repetition, it is stated that, by virtue of the judgment and decree passed in Regular Civil Suit No.208/1994, the respondent No.1 is held to have not been entitled to receive any amount of compensation in respect of the land that was acquired for ring road. The judgment and decree in the said suit came to be passed after a full-dress trial. The respondent No.1 had contested the suit. In spite of there being a

judgment and decree against him, the respondent No.1 continued with/ prosecuted the proceedings being Land Acquisition Reference No.1753/1998, keeping the Court seized of the matter, in dark, about the judgment and decree in the said suit. The Executing Court was also not informed about the judgment and decree in the said suit. The petitioners herein were not aware of filing of the Land Acquisition Reference No.1753/1998 and decision therein.

8. In the aforesaid factual backdrop, the Executing Court ought to have entertained the application (Exh.21) moved by the petitioners herein, and on hearing the parties, should have passed orders on Exh.21 on merits of the case. It needs no mention that fraud vitiates all proceedings. The order or decree obtained by fraud is a nullity. The defence or case that the award or the order is a nullity on account of having been obtained by fraud can be set up at any time in any proceedings.

9. The respondent No.1, instead of pursuing the execution proceedings further, for recovery of the balance amount, as per his calculations, preferred to file a pursis for disposal of the execution proceedings on account of it being fully satisfied speaks in volumes.

10. Learned Advocate for respondent No.1 placed

reliance on the following two authorities, to submit that the petitioners being not parties to the proceedings of a land reference, have no say or right to appear in execution proceedings. They have any independent remedy of suit.

- (1) Shri Deo Sansthan Chinchwad & ors. Vs. Chintaman Dharnidhar Deo & anr. [AIR 1962 Bombay 2014]
- (2) Govind Narayan Lotlikar Vs. Savitribai Raghuwira Lotlikar & ors. [(1986 Mh.L.J. 844]

11. I have perused both the aforesaid authorities to find that the facts therein were altogether difference.

In the case in hand, the predecessor-in-title of the petitioner had already filed a suit (Regular Civil Suit No.208/1994) against the respondent No.1. The said suit was decreed. The decree passed therein attained finality. The petitioners, therefore, cannot again be asked to file a fresh suit. In the peculiar facts and circumstances of the case, the petitioners were justified in approaching the Executing Court by preferring an application (Exh.21). The Executing Court ought to have decided the application (Exh.21) on its own merits. In exercise of inherent powers, the Executing Court has every right to recall its order by virtue of which the respondent No.1 has received the amount of compensation.

12. Needless to state that the aforesaid observations

are prima facie in nature. The Executing Court is expected not to be influenced thereby. The Court has rejected the application (Exh.21) only on the ground that the petitioners, being not parties to the award, have no locus to appear in an execution proceedings. In the aforesaid factual backdrop, the impugned order needs to be set aside.

13. For the reasons given hereinabove, the Writ Petition is allowed in terms of prayer clause (B). The Executing Court is directed to decide the application (Exh.21) on merits, uninfluenced by observations made hereinabove. Since the execution proceedings have been disposed of, as fully satisfied, the Executing Court is expected to reopen the said proceedings for the purpose of deciding the application (Exh.21).

14. Rule is made absolute in above terms.

(R.G. AVACHAT, J.)

fmp/-