

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

921 WRIT PETITION NO.9193 OF 2018

1. Najera Begum w/o Zahed Miyan @
Javed Deshmukh
Age: 75 years, Occu: Household.
2. Mahemooda Begum @ Fatema Begum
w/o Sala Abdullah
Age: 48 years, Occu: Household
R/o Hasan Nagar, Hyderabad (T.S.)
at present R/o Dubai.
3. Khalida Begum w/o Sayyad Isuf
Age: 38 years, Occu.: Household.
4. Sau.Sarvari Begum @ Sajida Begum
W/o. Yaqoob Abdullah,
Age: 38 years, Occu.: Household,
R/o. Hasan Nagar, Hyderabad (T.S.).
5. Shaheda Begum w/o. Samioddin Shaikh
Age: 34 years, Occu.: Household.
6. Sau. Tahera Begum w/o. Altaf Husain,
Age: 32 years, Occu.: Household.
7. Jahangir s/o. Zahid Miyan @ Javed Deshmukh
Age: 30 years, Occu.: Business.
8. Gous Miyan s/o Zahid Miyan @ Javed Deshmukh
Age: 28 years, Occu.: Business
(Power of Attorney holder for applicant
No.1 to 7 and 9)
(Applicant No.1, 3, 5 to 8)
R/o.Hasan Nagar, Hyderabad (T.S.)
9. Kum.Wahida Begum @ Sabera Begum
d/o Zahid Miyan Deshmukh,
Age: 25 years, Occu.: Household,
R/o. Hasan Nagar, Hyderabad (T.S.) ..Petitioners

VERSUS

1. Yakub Miyan @ Nijam Miyan
s/o Zahid Miyan @ Javed Deshmukh
Age: 60 years, Occu.: Agri.,
R/o.Kingaon, Tq.Ahmedpur, Dist.Latur.

2. The State of Maharashtra,
Through Collector, Latur.
3. The Executive Engineer,
Kopra-Kingaon Storage Tank,
Minor Irrigation, Latur Division, Latur.
4. The Acquisition Officer &
Sub Divisional Officer,
Ahmedpur.

..Respondents

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Mr. H.I. Pathan, Advocate for Petitioners
 Mr. N.T. Bhagat, AGP for respondents No.2 & 3
 Smt. P.G. Sontakke, Advocate for Respondent No.1
 Mr. S.G. Sangle, Advocate for Respondent No.3

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CORAM: ROHIT BABAN DEO, J.Date: JANUARY 10th, 2020

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ORAL JUDGMENT

1 Rule. Rule is made returnable forthwith.

2 Heard finally with consent.

3 The petitioners are assailing the order dated 21.8.2017 rendered by the Land Acquisition Officer and the Sub Divisional Officer, Ahmedpur, whereby and where-under the application preferred by the petitioners under section 30 of the Land Acquisition Act, 1894 (the Act) is rejected.

4 It would suffice, if bare essential facts are noted briefly.

It is not in dispute that the land bearing survey No.206 administering 7.8 Hectare was acquired under the provisions of the Act. The award under section 11 was declared on 20.2.1999.

By and under the award, respondent No.1 Shri Yakub Miya is awarded the compensation. It is further not in dispute that respondent No.1 approached the Reference Court under section 18 of the Act and by the Judgment dated 8.2.2008 compensation was enhanced. It is stated at the bar that the appeal under section 54 of the Act which is preferred by the acquiring body is pending in this Court.

5 Petitioner No.1 is the mother of respondent No.1 Yakub Miya and other petitioners are sisters and brothers of respondent No.1. The petitioners contend that the property which was acquired was jointly owned by petitioners and respondent No.1. The further contention is that although the revenue record testifies joint ownership, keeping the petitioners in dark, respondent No.1 secured the award and enhancement of the compensation under section 18. The petitioners contend that initially a Civil suit was instituted, seeking to restrain respondent No.1 from withdrawing the compensation amount which is deposited by the acquiring body before the executing Court which suit came to be dismissed and the first appeal is pending.

6 It would be apt to notice the reasons recorded by the Land Acquisition Officer and the Sub Divisional Officer for rejecting the application under section 30 of the Act. The first reason is that the petitioners did not produce proof of title. The second reason is that the petitioners did not raise any objection under the

proceedings under sections 4, 6, 9 and 12 of the Act and that in the passing the land acquisition officer notes, the statement of respondent No.1 that the Civil Suit seeking injunction is dismissed.

7 Considering that a substantive suit for partition which is instituted by the petitioner which is Special Civil Suit No.13/2019 is pending before the Civil Judge, Senior Division, Ahemadpur, district : Latur, the scope and ambit of section 30 of the Act is too well settled for this Court to make a reference to the plethora of decisions holding the field. The dispute between the parties i.e. the title of the property acquired considering the nature of the dispute, the authority, in a proceeding under section 30 of the Act could not have in any event finally determined the rights of the parties. Such determination could have been done only by the Civil Court and any finding recorded in section 30 proceedings, would be subservient to the Judgment of the Civil Court.

8 The learned counsel for respondent No.1 would submit that the application under section 30 was not maintainable, in view of the law laid down by the Honourable Apex Court in case of ***Meher Rusi Dalal versus Union of India*** (2004 DGLS (SC) 525). This submission is premised on the issue of limitation. However, perusal of the order impugned would reveal that such

a submission was neither raised nor considered by the authority. Be that as it may, even if it is assumed that section 30 application was delayed, the fact of the matter is that the comprehensive suit for partition is pending and it would be the Civil Court and Civil Court alone, which would be entitled to adjudicate upon the rival claims to the title. In the factual matrix, the following order shall sub-serve the ends of justice and shall protect the interest of the petitioners and respondent No.1.

- a) The petitioners are permitted to approach the Civil Court in the pending suit for partition and seek appropriate interim orders governing the distribution or withdrawal of the compensation amount.
- b) In order to enable the petitioners to approach the Civil Court, it is directed that the compensation amount shall not be withdrawn by respondent No.1 for three weeks.
- c) If the petitioners move an appropriate application, seeking interim order within two weeks on merits, the same shall be considered and decided within next seven days.
- d) If the petitioners do not file an appropriate application within two weeks, the respondent No.1 shall be at liberty to withdraw the compensation amount subject to the orders which may be passed in the first appeal.

- 9 Rule is made absolute in the afore-stated terms.
- 10 Petition stands disposed of.

(ROHIT BABAN DEO, J)

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