

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.13352 OF 2021

IN

WRIT PETITION NO.5413 OF 2020

**(Kasudabai Sidheshwar Padule through L.Rs. Sakharbai Dadasaheb
Bandgar and others Vs. Mahadeo Krishna Thavare and another)**

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Mr. V.D. Salunke, Advocate holding for Mr. Abhijit S. More,
Advocate for the applicants

Mr. S.Y. Mahajan, Advocate for the respondents (original petitioners)

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CORAM : MANGESH S. PATIL, J.

DATE : 10.12.2021

PER COURT :

By way of this application, the respondents in the writ petition
are making following prayer :

“(B) This Hon’ble High Court may be pleased to modify the judgment and order dated 13.10.2021 passed in Writ Petition No.5413/2020 to the extent of clause (C) of para 17, and present respondent No.1 and 2 may kindly be restrained from withdrawing the amount of compensation lying in the Special Darkhast No.4/2019 pending before the Ld. Civil Judge Senior Division at Paranda Dist. Osmanabad may be quashed and set aside.”

2. Mr. V.D. Salunke, learned Advocate for the applicants/
respondents submits that this court has decided the writ petition by the judgment and order dated 13.10.2021, under a mistaken assumption that the amount of compensation has already been withdrawn by the

petitioners. In the operative part in paragraph No.17 (c), this court had allowed the petitioners to retain the amount of compensation subject to further conditions as incorporated therein. He would submit that in fact, the petitioners have not received any amount of compensation and under the garb of this clause, they are now putting a claim before the executing court to receive the entire amount of compensation. The learned Advocate further submits that if the petitioners were aware that they had not withdrawn any amount of compensation, they ought not to have solicited such a direction permitting them to retain the amount.

3. The learned Advocate would further submit that subsequently, the decree for partition under execution has also been modified and the shares have been reworked. Therefore, even for this reason, the direction in paragraph 17 (c) be modified and the petitioners be restrained from withdrawing any amount of compensation in Special Darkhast No.4/2019.

4. Mr. S.Y. Mahajan, learned Advocate for the respondents (original petitioners) strongly opposes the application. He submits that the petitioners were challenging the order passed by the executing court on the application (Exh-48) in an execution proceeding bearing Regular Darkhast No.8/2011, which was a proceeding for executing a decree for partition. By the order under challenge, the executing court in that execution proceeding had directed the petitioners to deposit in the court the amount received by them in the land acquisition proceeding

wherefrom Special Darkhast No.4/2019 emanates. He would submit that after considering the facts and circumstances, particularly the fact that the reference was made by the petitioners alone, albeit all the sharers will be entitled to lay claim to the extent of their respective share in the amount of compensation that this court had modified the direction under challenge permitting the petitioners to retain the amount subject to furnishing security as directed therein. He would submit that bearing in mind the fact that it was the petitioners alone who had preferred the reference and not the respondents and also the fact that it is the petitioners who would be entitled to recover the amount by putting the award under execution that this court had directed the modification requiring the petitioners to furnish security and bring back the money as and when directed in future. He would further submit that even this court had directed the Collector to see that the partition is effected ignoring the acquisition and to demarcate the shares so that depending upon such demarcation, the amount of compensation could be appropriated by calling upon the petitioners to bring back the money. This court has already recognized, approved and protected the rights of the respondents.

5. Lastly, learned Advocate Mr. Mahajan would point out that by way of an application on which the order under challenge in writ petition was filed, the respondents had prayed for transfer of money that was deposited by the acquiring body in the execution of the land acquisition award to the other execution proceeding bearing Regular Darkhast

No.8/2011, which was for partition. However, the executing court had merely directed the petitioners to bring back the money and there was no direction to transfer the money from one execution proceeding to the other and the order was not challenged by the respondents.

6. So far as modification of the decree for partition by demarcating the shares is concerned, learned Advocate Mr. Mahajan would submit that the executing court is now ceased of the matter and would have to issue appropriate directions to the Collector to whom the decree has been sent under Section 54 of the C.P.C. for effecting partition.

7. I have carefully considered the rival submissions and perused the papers. As has been observed in the order dated 13.10.2021, though the parties are related inter se and were involved in a suit for general partition, in which their shares have been worked out and execution proceeding i.e. Regular Darkhast No.8/2011 has been filed, going by such allotment of shares, the petitioners' share clearly worked out to be $4/5^{\text{th}}$. It was specifically noted that for whatever reason, the petitioners alone had preferred the land acquisition reference only to the extent of their $4/5^{\text{th}}$ share in the entire suit property. They had specifically omitted to claim any enhancement in respect of the remainder $1/5^{\text{th}}$ share belonging to the respondents.

8. It is also admitted fact that the petitioners being the lone decree holders in the award in the land acquisition reference they have put

that award to execution in the form of Special Darkhast No.4/2019. The amount of compensation receivable under that reference obviously will have to be paid to them irrespective of the shares of the other sharers i.e. the respondents herein. In order to protect their such right, the following observation in paragraph No.14 of the judgment and order whereby the writ petition was disposed of are eloquent:

“Though the learned Judge of the Executing Court has not stated so in so many words, he has clearly borne in mind the crux of the controversy. It cannot be said that by directing the petitioners to bring money back he has exceeded the jurisdiction. His endeavour is clearly to set at naught injustice that is likely to be caused to the respondents and to restrain unjust enrichment by the petitioners. There is no dispute that the compensation which they have received or are to receive is in respect of portions of the suit properties which are still under execution and though the status of the properties in view of such acquisition has changed to the extent of the lands acquired, it has only changed the form. Therefore, I find no perversity, arbitrariness or illegality in the impugned order albeit, in stead of directing the petitioners to return the money, the learned Judge of the Executing Court could have directed them to furnish some security to its satisfaction and could have issued a direction to the Collector to take into account such amount of compensation received or to be received by the petitioners while adjusting the equities while effecting the partition by metes and bounds.”

9. It is in view of such state-of-affairs that the writ petition was disposed of by issuing various directions commensurate with the peculiar facts and circumstances of the case in paragraph No.17, which reads thus:

“The Writ Petition is partly allowed. The impugned order stands modified to the following effect :

(a) The Collector shall effect the partition by metes and bounds assuming as if the suit properties have not been acquired at all.

(b) He shall then take into account the shares of each of the sharers in the suit properties under acquisition and indicate it precisely and clearly which submitting the report regarding completion of execution.

(c) The petitioners would retain the amount of compensation subject to their furnishing a security before the Executing Court to its satisfaction and furnishing an undertaking that they would, in case, it is so directed in future bring back the money in terms of the report of the Collector.”

10. If such is the state-of-affair, it is quite apparent that though the petitioners may not have withdrawn the amount of compensation, it is them who would be entitled to receive it subject to the conditions superimposed as mentioned in paragraph 17 (c). That would certainly protect the interest of the respondents.

11. Pertinently, the respondents themselves had not challenged the order passed by the executing court which was a subject matter of challenge by the petitioners. In fact, their prayer for transmitting the money from one executing proceeding to the other was not considered and merely the petitioners were asked to bring back the money. It is in the backdrop of such state-of-affair that the observations were made by this court in paragraph No.14 and directions were given in paragraph No.17 of the judgment.

12. Though it is now being pointed out that in fact, the order passed by the executing court, which was challenged in the writ petition, was erroneous to the extent of directing the petitioners to bring back the money, when, in fact, nothing was paid to them and though in view of such a direction even this court under the assumption that the amount was already paid to the petitioners, had given directions in paragraph No.17(c), in my view, that would not change the scenario. There is nothing to be modified and the order is clear.

13. So far as the reworking of the share of the sharers by the executing court is concerned, needless to state that it is for the Collector to look into the matter and effect the partition in accordance with the directions.

14. The Civil Application is rejected.

[MANGESH S. PATIL]
JUDGE