

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.293 OF 2020
WITH
CIVIL APPLICATION NO.740 OF 2020

Raju Savlaram Bachkar,
Age:43 years, Occ. Agri.,
r/o. Satara Parisar,
Tq. and Dist. Aurangabad

..Appellant

Vs.

1. The State of Maharashtra,
 2. Vishnu Rangnath Kulkarni,
 3. Sarjerao Shripat Kulkarni,
 4. Baburao Kanhuji Kulkarni,
 5. Ankush Kanhuji Kulkarni,
 6. Kashinath Kanhuji Kulkarni,
 7. Eknath Kanhuji Kulkarni,
 8. Laxman Kanhuji Kulkarni,
 9. Draupadabai Pundlik Bankar,
- (First Appeal dismissed against
Resp. Nos.3 to 9 vide court's
order dated 28.01.2021)*

10. Dashrath Gangaram Kulkarni,
11. Gautam Gangaram Kulkarni,
12. Gayabai Kachru Kulkarni,
13. Kalabai Sheshrao Hivrle

..Respondents

Mr.D.P.Palodkar, Advocate for appellant
Mr.S.S.Dande, AGP for respondent no.1
Mr.A.P.Gunge, Advocate for respondent no.2

**WITH
CIVIL APPLICATION NO.6720 OF 2020
IN FIRST APPEAL NO.293 OF 2020**

Vishnu s/o. Rangnath Kulkarni	..Applicant
Vs.	
The State of Maharashtra and ors.	..Respondents

Mr.A.P.Gunge, Advocate for applicant
Mr.S.S.Dande, AGP for respondent no.1
Mr.D.P.Palodkar, Advocate for respondent no.2

**CORAM : R.G. AVACHAT, J.
RESERVED ON : AUGUST 31, 2021
PRONOUNCED ON : OCTOBER 29, 2021**

JUDGMENT :-

The challenge in this appeal is to the judgment and order dated 23.09.2019 passed by 10th Joint Civil Judge, Senior Division, Aurangabad, in Land Acquisition Reference No.259 of 2013. Under the impugned judgment and award, the appellant has been held to be entitled to receive a sum of Rs.30,000/- with interest accrued thereon.

2. The facts, giving rising to the present appeal, are as follows:-

The land admeasuring 46 R in gut no.54, situated at village Karmad, Tq. and Dist. Aurangabad, came to be acquired for

"Additional Shendra Industrial Development Area" (अतिरिक्त शेंद्रा औद्योगिक विकास क्षेत्र). An award was passed in favour of respondent – Vishnu Kulkarni. The appellant made a reference to the Land Acquisition Officer, asking for share in the amount of compensation. His claim was based on Issar Pavati dated 03.12.2010 executed by respondent no.2 - Vishnu in his favour. The S.L.A.O., in turn, submitted reference to the Court for decision thereon. The reference Court, after giving the parties opportunity of hearing, passed the impugned judgment and award. It was the claim of the appellant before the reference Court that he had paid Rs.10,51,000/- to the respondent towards earnest amount. The respondent, in turn, executed Bharna Pavati (Exh.70) on 23.08.2011 acknowledging to have received sum of Rs.10,51,000/-.

3. Heard learned counsel appearing for the parties.

4. The learned counsel for the appellant would submit that the Issar Pavati dated 03.12.2010 executed by respondent-Vishnu in favour of the appellant has been duly proved. The respondent-Vishnu had agreed to sell 66 R land in gut no.54 to the appellant with an understanding between the two, the entire amount of consideration of Rs.15,51,000/- had not been mentioned in the Issar

Pavati (Exh.56). The respondent - Vishnu (land owner), however, executed a separate Bharna Pavati acknowledging to have received a total sum of Rs.10,51,000/-. An attesting witness to Bharna Pavati was examined. Bharna Pavati has, thus, been proved. Except denying receipt of a sum of Rs.10,51,000/-, the respondent-Vishnu did not lead any evidence in disproof of the appellant's claim. According to learned counsel, since the agreement for sale has been frustrated due to acquisition of the land, the entire amount paid to the land owner towards earnest money, needs to be paid back to the appellant with interest otherwise, it would be a case of unjust enrichment. According to learned counsel, the Tribunal erred in observing the appellant to have failed to show that he had sufficient funds to pay the respondent-Vishnu a hefty amount of Rs.10,51,000/-. Learned counsel, therefore, urged for direction to the respondent-Vishnu, land owner, to pay the appellant a sum of Rs.10,51,000/- with interest.

5. Learned counsel for the respondent-land owner reiterated the reasons given by the reference Court in support of the award.

6. The land admeasuring 66 R in gut no.54 stood in the name of respondent-Vishnu. The land admeasuring 46 R thereof came to be acquired for "Additional Shendra Industrial Development Area". The land acquisition award has been passed in favour of respondent-Vishnu. The appellant submitted an application dated 11.07.2012 to the Land Acquisition Officer, asking for payment of amount of compensation to him instead of the land owner-Vishnu. The appellant has specifically averred in the said application that the agreement for sale was executed between him and Vishnu. He paid Vishnu a sum of Rs.30,000/- by cheque as Issar (earnest money). The appellant could have disclosed in the application dated 11.07.2012 to have had paid Rs.10,51,000/- to Vishnu.

7. True, pursuant to the execution of Issar Pavati, Vishnu had applied to the Collector for permission to sale the land since it was Inam land. The Collector's permission for sale thereof was a condition precedent. The appellant herein had submitted his affidavit along with an application preferred by Vishnu seeking permission for sale of the land. It was an affidavit executed on 03.12.2010. It was averred therein that the land owner - Vishnu has entered into agreement for sale on 03.12.2010. The appellant in his affidavit

has, thus, referred to the Issar Pavati, whereunder he paid the land owner Vishnu a sum of Rs.30,000/- by cheque. Vishnu has acknowledged receipt of said amount. It is only after the reference Court took up the reference for hearing, the appellant came with a case to have had paid Vishnu a sum of Rs.10,51,000/-. Vishnu, allegedly, executed Bharna Pavati on 23.08.2011. An attesting witness to Bharna Pavati was examined in proof thereof. Bharna Pavati was referred to handwriting expert to solicit his opinion, as to whether it bears signature of the land owner-Vishnu. The handwriting expert's report is inconclusive. It has been averred in Bharna Pavati that the appellant paid Vishnu a sum of Rs.2,21,000/- in cash on the day i.e. 03.12.2010, on which Issar Pavati was executed. Bharna Pavati further recites the appellant to have paid the land owner Rs.2,00,000/- each on 28th February, 10th April and 22nd June, besides a sum of Rs.2,00,000/- on the day when Issar Pavati was executed. Admittedly, the appellant is not income tax assessee. Except Bharna Pavati, there is no evidence to indicate that he had sufficient funds to pay the land owner the sum of Rs.10,51,000/- in cash. It has been recited in the Issar Pavati that the land has been agreed to be sold for Rs.99,000/- and the appellant paid Vishnu a sum of Rs.30,000/- towards earnest money.

The reason for not accounting payment in the Issar Pavati, is said to overcome the provisions of the Income Tax Act and save huge stamp duty.

8. It is just illogical to imagine that the appellant paid about 80% of the amount of consideration without obtaining possession of the land to be purchased. Admittedly, the Collector's permission for sale of such land was a condition precedent. If really a hefty amount is paid towards earnest money, it is always an attempt on the part of the purchaser to ensure repayment thereof, in case the bargain fails. The Issar Pavati does not disclose the true bargain. The appellant's claim before the Land Acquisition Officer was based on Issar Pavati only, whereunder he paid Rs.30,000/- to the land owner Vishnu. Bharna Pavati has not been duly proved. Even if it is assumed that the document has been proved, the contents thereof have not been proved.

9. The appellant failed to show that he had sufficient funds with him to pay the land owner the sum of Rs.10,51,000/-. It is reiterated that a person would not part with more than 80% of the amount of consideration without obtaining possession of the land under agreement for sale. More so, when the permission of the

Collector for transfer of the land was a condition precedent. The reference Court has duly negatived the claim of the appellant herein. This Court has no reason to take a different view.

10. In the result, the appeal fails. The same is dismissed. The Civil Application stands disposed of.

[R.G. AVACHAT, J.]

KBP