

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1386 OF 2020

Vishwanath s/o Ganpatrao Varatkar and others

Vs.

Dashrath s/o Keshav Salve and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. H. V. Thakur, Advocate for petitioners.
Ms. Kirti Satpute, Advocate for respondent No.1.
Mr. S. A. Ashirgade, Addl. G. P for respondent No.2.
None appears for respondent No.3 (served).

CORAM : AVINASH G. GHAROTE, J.

DATE : 20/10/2021

1. Heard Mr. Thakur, learned counsel for the petitioners, Ms. Satpute, learned counsel for respondent No.1 and Mr. S. A. Ashirgade, learned Additional Government Pleader for respondent No.2. None appears for respondent No.3 though served.

2. The short question involved in this petition is, whether the petitioners are liable to be impleaded as parties, in Special Dharkhat No.42 of 2013 filed by the respondent No.1, the legal heirs of deceased Keshav Salve, who had filed proceedings under Section 18 of the Land Acquisition Act for enhancement of the compensation awarded in respect of the property jointly owned by Keshav and the petitioners. It is not in dispute that the compensation as originally awarded by the Land Acquisition Officer was paid to Late Keshav as well as the present

petitioners who were joint owners of the property acquired by the respondent No.3. Thereafter, in the year 2008, enhanced compensation was also deposited in the joint account of Late Keshav and the petitioners.

3. In the proceedings under Section 18 of the Land Acquisition Act, which was numbered as LAR No.191 of 2008, a compromise came to be effected between the respondent No.1, who was in the meantime brought on record due to demise of Keshav and the respondent No.3, on 06.02.2011. Since the terms of the compromise were not complied with, the respondent No.1 filed executing proceedings No.42 of 2013. In this execution proceedings the petitioners filed application for impleadment on the ground that the said property was a joint property and the proceedings under Section 18 of the Land Acquisition Act by Late Keshav was for on behalf of the entire family. An application for dismissal of the said application for impleadment, came to be filed by the respondent No.1 at Exh.30. The learned Executing Court, after hearing the learned counsel for the respective parties, allowed the application for dismissal as filed by the respondent No.1 and rejected the application for impleadment as filed by the petitioners, as a result of which, the present petition has been filed.

4. It is not disputed by learned counsel for respondent No.1 that the property which is a subject matter of the Land Acquisition proceedings was a joint family property. It is also not disputed that the proceedings under Section 18 of the Land Acquisition Act, filed by Keshav were for and on behalf of the other co-owners also. This being the position, Late Keshav or for that matter respondent No.1, could always be held to be acting for and on behalf of the entire joint family and not individually, and therefore, the petitioners would be equally entitled to the share in compensation, commensurate to the shares to which they were entitled. This being the position, merely because the execution proceedings were as a result of the compromise between the respondent No.1 and respondent No.3 that would not disentitle the petitioners to claim their shares in the enhanced compensation whatever the quantum may be. In that light of the matter, the learned Executing Court could not have rejected the application of the petitioners for impleadment on the ground that the provisions of Order 1 Rule 10 of the Code of Civil Procedure were not applicable to the proceedings under Land Acquisition Act, as the proceedings under Land Acquisition Act, were no longer pending, but, had come to an end due to the compromise. In that view of the matter, the application filed by the respondent No.1 at Exh.30 for dismissal of the application for impleadment at Exh.24 ought not to have been allowed by the

learned Executing Court. The impugned order therefore, cannot be sustained and the same is thus quashed and set aside. The application Exh.30 is dismissed and the application Exh.24 is partly allowed to the extent that it claims impleadment.

5. Any other relief claimed in the said application at Exh.24 cannot be permitted to be raised in the executing proceedings and to that extent Exh.24 is rejected.

6. Needless to mention that any entitlement, which the petitioners may claim as against the respondent No.1, vis-a-vis prayer Clause 2 made in the application for impleadment at Exh.24, shall be permissible to be raised by them in appropriate proceedings, if so permissible in law.

7. The Writ Petition is allowed to the above extent. In case there are any objections regarding any of the petitioners being the legal heirs of the original land owners, the same shall be decided by the Executing Court as per law.

(AVINASH G. GHAROTE, J)