

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

WRIT PETITION NO. 206 OF 2018

- PETITIONERS:** 1 Dameshwar Tikaram Bisen,
aged about 60 years, Occ. Agri,
2. Indraraj Tikaram Bisen,
aged about 58 years, Occ. Agriculturist
3. Chandrarekha d/o Tikaram w/o Indraraj Turkar,
aged about 62 years, Occ. Household work
4. Hirabai Makhansingh Pawar,
aged about 55 years, Occ. Household Work

Petitioner Nos. 1 to 3, R/o Civil Lines, Ingle Chowk
Gondia, Tah. And Dist. Gondia.

5. Anbandabai Tikarambhau Bisen (Dead)
Petitioner No.4, R/o. Mandla (M.P)
through their power of attorney holder
Zhalaksingh Tikarambhau Bisen,
aged about 68 years, Occ. Agri.
R/o. Civil Lines, Ingle Square, Gondia,
Tah. And Dist. Gondia.

...VERSUS...

- RESPONDENTS:** 1] Union of India, Ministry of Railway,
through Divisional Manager, South-Eastern
Railway Manager, Nagpur.
- 2] The State of Maharashtra, through therefore
Collector, Gondia, Tah. And Dist. Gondia.
- 3] The Special Land Acquisition Officer,
Bagh & Itiyadoh Project No.10, Gondia,
Tah. And Dist. Gonida.

- 4] Shri Ranchandra Devasthan, Ram Mandir
through Mahant Bharatdas Koushaldas
Vaishnau Bairagi, aged about 55 years,
Occ. Nil, R/o. Railtoli, Ram Mandir, Gondia,
Tah. And Dist. Gondia.

Mr. R.K.Borkar, Advocate for petitioners.
Mr. V.M.Gadkari, Advocate for respondent No.1.
Ms. T.Khan, AGP for Respondent Nos. 2 and 3

CORAM : AVINASH G. GHAROTE, J.
DATE : 27/10/2021.

1] Heard Mr. Borkar, learned counsel for petitioners,
Mr. Gadkari, learned counsel for Respondent No.1 and Ms. T. Khan,
learned AGP for respondent Nos. 2 and 3. Mr. Ramteke, learned
counsel for Respondent No.4 is absent.

2] Rule. Rule made returnable forthwith. Heard finally by
consent of the learned counsel appearing for the parties.

3] The present petition challenges the judgment dated
10.12.2012, passed by the learned Civil Judge, Senior Division,
Gondia, in L.A.C. No.1/2003, whereby the application under
Section 18 of the Land Acquisition Act, filed by the present
petitioners came to be dismissed and it was held that Respondent
No.4 was entitled to the amount of compensation.

4] Mr. Borkar, learned counsel for the petitioners submits that Respondent No. 4 has no title to the property, which was acquired by Respondent No.1, inasmuch as Regular Civil Suit No. 207/2012, filed by Respondent No. 4, against the present petitioners, claiming title to the land of Khasra No. 93, admeasuring 300 Sq.mtr., situated at Azad Ward, Gondia, is presently pending, in which Respondent No. 4 has sought declaration of having acquired title, by way of adverse possession. He therefore submits that the averments in Regular Civil Suit No. 207/2012 itself indicate the ownership of the petitioners and not of Respondent No. 4. He further submits that no document of title has been considered by the learned Reference Court for the purpose of holding Respondent No. 4 entitled to receive the compensation, in spite of the fact that it has been observed in para 9 of the impugned judgment that the name of the applicants/ petitioners is recorded in the revenue record as the owners. He further submits that the finding rendered by the Reference Court that Respondent No. 4 is the real owner of the property, is contrary to the revenue record, which have to be taken into consideration, as the Reference Court cannot enter into a controversy to determine the title. Reliance is placed on the

judgment of the Full Bench of Patna High Court in **Amarsingh Yadav and another vrs. Shanti Devi and others, AIR 1987 PATNA 191**. He therefore submits that the judgment as passed by the learned Reference Court cannot be sustained in law. He submits that the judgment in reference was sought to be reviewed, which has been dismissed on 18.7.2017, without considering the fact that the question of title was pending before the Civil Court.

5] Mr. Gadkari, learned counsel for Respondent No. 1 submits that the payment of compensation be made subject to the result of Regular Civil Suit No. 207/2012, in which the entitlement of Respondent No. 4 would be decided.

6] It is a settled position of law that a Reference Court under Section 18 of the Land Acquisition Act cannot entertain a dispute regarding title to the property in question, which has to be decided by the Civil Court. In the instant matter, the suit filed by Respondent No. 4 claiming title by way of adverse possession over the property in question, was filed in the year 2009, bearing Regular Civil Suit No. 86/2009, which has been renumbered as Regular Civil Suit No. 207/2012. Since the question regarding title, was already

subjudice before the court of competent jurisdiction, it was impermissible for the Reference Court to have entered into the controversy and decide that Respondent No. 4 was the owner of the property in question and therefore, entitled to compensation. It clearly appears that this has been done, in spite of the pendency of Regular Civil Suit No. 86/2009, having been brought to his notice, as is reflected from the order dated 18.7.2017, passed in Review Application M.J.C. No.32/2014.

7] Considering the above position, the order in review dated 18.7.2017 as well as the judgment dated 10.12.2012 passed in L.A.C. No. 1/2003 cannot be sustained and both are hereby quashed and set aside. It is however made clear that any entitlement of the petitioners or of Respondent No. 4 to the amount of compensation shall be subject to the result in Regular Civil Suit No. 207/2012. The petition is accordingly allowed in above terms. No order as to costs.

JUDGE

Digitally sign byRAJESH
VASANTRAO JALIT
Location:
Signing Date:28.10.2021 16:51