

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2651 OF 2020

1. Sheshrao s/o. Janinath Patil,
Age 66 years, Occu. Agri. and pensioner,
2. Maroti s/o. Janinath Patil,
Age 70 years, Occu. Agri.,
3. Ramrao s/o. Janinath Patil,
Age 83 years, Occu. Agri.,

All Residents of village Dhanegaon,
Taluka Deoni, District Latur

.. Petitioners

Versus

1. State of Maharashtra
through Department of Irrigation
Mantralaya Mumbai
2. The Collector,
Latur District, Latur
3. Sub Divisional Officer,
Nilanga Sub Division,
Nilanga, District Latur
4. Tanaji s/o. Pandharinath Patil,
Age 35 years, Occu. Agri.,
R/o. Dhanegaon, Taluka Deoni,
District Latur
5. Shivaji s/o. Pandharinath Patil,
Age 42 years, Occu. Agri.,
R/o. Dhanegaon, Taluka Deoni,
District Latur

.. Respondents

...

Mr. Rajiv B. Deshmukh, Advocate for Petitioners
 Mrs. V. S. Chaudhari, Assistant Government Pleader for
 Respondents no. 1 to 3 - State
 Mr. G. D. Kale, Advocate for Respondents no. 4 and 5

...

**WITH
CIVIL APPLICATION NO. 7262 OF 2021
IN
WRIT PETITION NO. 2651 OF 2020**

Tanaji s/o. Pandharinath Patil and another .. Applicants

Versus

1. State of Maharashtra and others .. Respondents

...

Mr. Gopal D. Kale, Advocate for Applicants

Mrs. V. S. Chaudhari, Assistant Government Pleader for
Respondents no. 1 to 3 – State

Mr. Rajiv B. Deshmukh, Advocate for Respondents no. 4 to 6

...

**WITH
WRIT PETITION NO. 2652 OF 2020**

Jayant s/o. Dhondiram Patil,
Age 30 years, Occu. Agri.,
R/o. Dhanegaon, Taluka Deoni,
District Latur

.. Petitioner

Versus

1. State of Maharashtra
through Department of Irrigation
Mantralaya Mumbai

2. The Collector,
Latur District, Latur

3. Sub Divisional Officer,
Nilanga Sub Division,
Nilanga, District Latur

4. Tanaji s/o. Pandharinath Patil,
Age 35 years, Occu. Agri.,
R/o. Dhanegaon, Taluka Deoni,
District Latur

5. Shivaji s/o. Pandharinath Patil,
Age 42 years, Occu. Agri.,
R/o. Dhanegaon, Taluka Deoni,
District Latur

.. Respondents

...
Mr. Datta A. Madake, Advocate for Petitioner
Mrs. V. S. Chaudhari, Assistant Government Pleader for
Respondents no. 1 to 3 - State
Mr. G. D. Kale, Advocate for Respondents no. 4 and 5

...
WITH
CIVIL APPLICATION NO. 7263 OF 2021
IN
WRIT PETITION NO. 2652 OF 2020

Tanaji s/o. Pandharinath Patil and another .. Applicants

Versus

1. State of Maharashtra and others .. Respondents

...
Mr. Gopal D. Kale, Advocate for Applicants
Mrs. V. S. Chaudhari, Assistant Government Pleader for
Respondents no. 1 to 3 – State
Mr. Datta A. Madake, Advocate for Respondent no. 4

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 04-01-2022

PRONOUNCED ON : 31-01-2022

JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. Since both these petitions raise similar questions of law and facts, they are heard together and are being decided by this common judgment.

3. These petitions are directed against an order dated

31.01.2020, in file no. 2009/LNQ/CR-06, passed by respondent no. 3 Sub Divisional Officer (SDO) and Land Acquisition Officer, Nilanga, District Latur, thereby allowing Review Application filed by respondents no. 4 and 5 and their father Pandhrinath Laxmanrao Patil.

4. Brief facts leading to writ petition no. 2651 of 2020, are as follows -

. Petitioners and respondents no. 4 and 5 are joint Hindu family members. Agricultural land Survey No. 18 admeasuring 21 Acres 31 Gunthas, situated at village Dhanegaon, Taluka Deoni, District Latur, is their ancestral joint family property.

. The petitioners filed Regular Civil Suit No. 106 of 2008 against respondents no. 4 and 5 / original defendants and others, seeking partition and separate possession of the above suit property, thereby claiming 1/3rd share in the lands and houses as described in schedule 'A' of the plaint. The said suit is pending.

. It appears that by way of mutations, the lands were mutated in the names of members of the joint family.

. Admittedly, during pendency of the suit, the land in question came to be acquired for construction of Dhanegaon barrage on Manjara river at Dhanegaon.

. Lands, Survey No. 18/1 admeasuring 1 Hecter 60 R each standing in the name of respondents no. 4 and 5 and their father, Survey No. 18/2 admeasuring 11 R standing in the name of present petitioners and Survey No. 18/3 admeasuring 27 R. standing in the name of Dhondiram, were acquired.

. An award is passed by respondent no. 3 on 22.09.2016. After passing of the Award, the petitioners filed application with respondents no. 3 – SDO, contending that though land Survey no. 18 stood in the name of different members of the joint family, they have share in the said land and suit for partition is pending in the Civil Court. The petitioners, therefore, requested respondent no. 3 not to disburse the amount of compensation in respect of land Survey No. 18. The petitioners, by application dated 19.07.2019, requested respondent no. 3 to refer the dispute for apportionment to the Tribunal constituted under the Act.

. Respondent no. 4 also filed application dated 25.07.2019 with respondent no. 3 requesting not to disburse the amounts in view of pendency of civil suit. By order dated 13.11.2019, respondent no.3 referred the dispute, under Section 76 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, "said Act"), for apportionment of the amount to the Tribunal.

. Respondent no. 4 filed an Appeal before respondent no. 2 Collector, Latur. Though, it was not maintainable, respondent no. 2 referred the matter to respondent no. 3 with a direction to decide the same in accordance to the law. Respondent no. 3 treated the application of respondent no. 4 as an application for review and allowed the said application and directed that the compensation for the acquired land Gat No. 18 be disbursed as per Award. Before disbursing the compensation, an undertaking be obtained from the parties that if the Civil Court decides against them, they shall deposit the compensation amount with the Government. This order is impugned in the present petition.

5. Writ petition no. 2652 of 2020 filed by the son of the original defendant no. 4 (Dhondiram s/o. Narayanrao Patil) impugns the same order.

6. Heard the learned Advocates for the petitioners, learned Assistant Government Pleader for respondents no. 1 to 3 - State and the learned Advocate for the respondents no. 4 and 5.

7. Learned Advocate for the petitioners submitted that the impugned order is unsustainable as respondent no. 3 has no power of review. Under Section 76 of the said Act, only the Collector has power to refer the dispute to the authority for

apportionment of the compensation amount. He further submitted that the order (Exhibit-G) passed by respondent no. 3 on 13.11.2019, thereby referring the matter to the competent authority in terms of Section 76 of the said Act, is not challenged by the respondents no. 4 and 5. The application submitted by respondents no. 4, 5 and their father to the respondent no.2 Collector dated 16.11.2019 was not tenable. The said application was wrongly referred by respondent no.2 Collector to respondent no. 3 SDO. He, therefore, submitted that the impugned order cannot be sustained and the same is liable to be quashed and set aside and the matter is required to be referred under Section 76 of the said Act to the appropriate authority. In support of the submissions, he relied on the decision of this Court, (Nagpur Bench), in writ petition no. 531 of 2018 (*Kisan Devla Chavan Versus State of Maharashtra and others*), dated 26.04.2019 and order passed by the Division Bench of this Court, in writ petition no. 12987 of 2019 (*Santosh Pandurang Patil and others Versus The State of Maharashtra and others*) dated 17.10.2019.

8. Opposing the petitions, the learned Advocate for respondents no. 4 and 5 submitted that order dated 13.11.2019 under Section 76 of the said Act cannot be passed by respondent no. 3 - SDO and it can only be passed by respondent no.2 -

Collector. He further submitted that in similar matters, respondent no. 3 has passed orders for disbursing compensation amount on furnishing undertaking; however, in the present case only, respondent no. 3 has passed the impugned order, which is without jurisdiction. By pointing out the Award, he submitted that the Award is passed in the name of respondents no. 4 and 5 and their father Pandharinath Laxman Patil, therefore, respondents are entitled to withdraw the amount of compensation.

9. Learned Assistant Government Pleader, on direction of this Court, filed additional affidavit-in-reply on behalf of respondents no. 2 and 3 by Naib Tahsildar, Nilanga, District Latur, wherein it is specifically stated that the Collector has not delegated the powers to the SDO to decide the application under Section 76 of the said Act.

10. Before considering rival submissions, it is necessary to first consider relevant provisions of the said Act -

“64. Reference to Authority. – (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested:

Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority:

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 21, or within six months from the date of the Collector's award, whichever period shall first expire:

Provided further that the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso."

76. Dispute as to apportionment. – When the amount of compensation has been settled, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such disputes to the Authority."

11. From the above provisions, it is clear that under Section 64 of the said Act, on written application of person interested, the Collector has to make a reference to the appropriate Authority.

Under Section 76 of the said Act, when a dispute arises as to the apportionment of the amount of compensation, the Collector may refer such disputes to the Authority for settlement.

12. In the present case, it appears from the record that in terms of family arrangement made prior to 70 years the lands in questions were partitioned and mutated in the name of respective members of the joint family. Further, it is also a matter of record that lands Survey No. 18/1, 18/2, 18/3 are acquired and the Award was passed in the name of respondents no. 4, 5 and their father. Though, a civil suit is filed by the petitioners in the year 2008, till date, neither there is an interim order passed in civil suit in favour of petitioners nor there is any progress in the civil suit.

13. In the affidavit in reply filed on behalf of respondent no. 4, it is averred that, there was partition between three brothers namely Laxman, Janinath and Narayan prior to 70 years. Thereafter, the three brothers were residing separately in their respective houses. On the basis of said partition, Mutation Entries were recorded and all were enjoying their respective shares of the joint family property. In the acquisition, out of total land admeasuring 5 Hectar 85 R from survey No. 18/1, land admeasuring 1 Hectar 16 R each standing in the name of respondents no. 4 and 5 and their father Pandharinath was acquired and respondents no. 4, 5

and their father are the owners and possessors of the said land. The petitioners have no concern with the said land. It is further averred that the petitioners have failed to raise objection within 60 days as per Section 15 of the said Act, therefore, objection of the petitioners is beyond the limitation.

14. Respondent no. 3 initially passed order dated 13.11.2019, thereby making reference to the competent authority under Section 76 of the said Act. However, in the same order, the compensation in respect of Survey / Gat Nos. 10 and 19 was directed to be paid to the concerned. It is necessary to note here that Survey / Gat Nos. 10 and 19 were also joint Hindu family properties of the petitioners and respondents no. 4 and 5.

15. Respondents no. 4 and 5 in their Appeal-cum-Application dated 16.11.2019 contended that Survey no. 10 and 19 were purchased by their ancestor - Ramrao Janninath Patil, Shesharao Janinathrao Patil and Maroti Janinath Patil. Therefore, those properties also shown to be termed as 'Joint Family Property'. The said objection / representation of respondents no. 4 and 5 titled as 'Appeal' was forwarded by respondent no. 2 to respondent no. 3 for necessary action.

16. Respondent no. 3, by treating said representation as review

application, passed the impugned order dated 31-01-2020 (Exhibit-'I'), thereby directing to distribute the compensation amount as per Award to the respondents. This order is impugned by petitioners, alongwith earlier order dated 13.11.2019 (Exhibit-'G') passed by respondent no. 3.

17. Since it is admitted by respondent no. 3 that the powers of Collector are not delegated to him, the impugned order dated 13.11.2019 (Exhibit- 'G', Page-65) is without jurisdiction. As under Section 64 of the said Act, only the Collector has an authority to make a reference to the appropriate Authority. In that view of the matter, the impugned order (Exhibit-'G') dated 13.11.2019, is liable to be quashed and set aside.

18. The impugned order dated 31.01.2020 (Exhibit-'I') is also without jurisdiction. Since respondent no. 3 has no power to make a reference to the appropriate Authority and the said order dated 13.11.2019 (Exhibit- 'G') is also held to be without jurisdiction. The impugned order dated 31.01.2020 (Exhibit-'I') since is passed by reviewing the order (Exhibit-'G') in absence of power of review, this order is also without jurisdiction and cannot be sustained.

19. For the aforesaid reasons, both the impugned orders are

unsustainable in the law and facts of the case and the same are liable to be quashed and set aside. In the result, following order -

ORDER

- I) Writ petitions are allowed.
- II) The impugned orders passed by respondent no. 3 (at Exhibit - 'G', dated 13.11.2019 and Exhibit - 'I', dated 31.01.2020) are hereby quashed and set aside.
- III) The matters are relegated back to respondent no. 2 to take action in accordance with law.
- IV) Rule is made absolute in above terms with no order as to costs.
- V) In view of disposal of petitions, pending civil applications stand disposed of.

(NITIN B. SURYAWANSHI)
JUDGE