

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO.795 OF 2007 WITH
CIVIL APPLICATION NO.5139 OF 2007**

Kalyan s/o Nilkanthrao Patil,
aged 55 years, Occu. Agri.,
R/o Kini Thot, Tq. Ausa,
District Latur

... APPELLANT

VERSUS

1. The State of Maharashtra
2. Prakash s/o Manikrao patil,
Age 40 years, Occu. Agri.,
R/o Kini Thod, Tq. Ausa,
District Latur

... RESPONDENTS

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Shri V.S. Bedre, Advocate holding for
Shri S.P. Urgunde, Advocate for appellant
Shri S.N. Kendre, A.G.P. for respondent No.1.
Shri S.S. Halkude, Advocate for respondent No.2.
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CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 24th November, 2021

Date of pronouncing order : 2nd March, 2022

J U D G M E N T :

This is an appeal under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act'). The challenge herein is to the judgment and order passed in Land Acquisition Reference No.498/1992, preferred by the

respondent State under Section 30 of the Act for apportionment of amount of compensation.

2. Facts giving rise to the present appeal are as under :

Land admeasuring 18 acres 20 gunthas in Survey No.24/A, situated at village Bhangewadi (Kini Khot), Taluka Ausa, District Latur was acquired for percolation tank. The award under Section 12 of the Act came to be passed in favour of the appellant Kalyanrao on 5/3/1991. The respondent No.2 herein, nephew of Kalyanrao preferred an objection to the award. The Collector, therefore, referred the matter under Section 30 of the Act to the Reference Court, being L.A.R. No.498/1992. The Reference Court passed its judgment and order dated 26/2/2007, holding the respondent No.2 Prakash to be exclusively entitled to the amount under the award.

3. Learned counsel for the appellant would submit that, during the acquisition proceedings, title and factum of possession of the land acquired was examined. The appellant was found to be owner, in possession of the acquired land. The Collector had, therefore, rightly passed the award in the appellant's favour. The learned counsel first referred to the

genealogy of the parties and then took me through the revenue record to ultimately submit that the award impugned herein was inconsistent with the evidence in the case. He, therefore, urged for setting aside the impugned judgment and award.

4. Learned counsel for the respondent Prakash, on the other hand, reiterated the reasons given by the Reference Court in support of the impugned judgment and award.

Only with a view to avoid repetition, the submissions advanced by the learned counsel are not reproduced. The same would, however, be adverted to in appreciation of the evidence in the matter.

5. Considered the submissions advanced. Perused the evidence in the matter. Gone through the impugned judgment and award.

6. The land in Survey No.24/A, admeasuring 18 acres 20 gunthas came to be acquired for percolation tank way back in 1988. An award under Section 12 of the Act was passed on 5/3/1991 in favour of appellant Kalyanrao. Admittedly, land admeasuring 37 acres bearing Survey No.24 originally belonged to Radhabai. Radhabai had two daughters

– Ratnabai and Mainabai. Radhabai allotted eastern portion of the land Survey No.24 to Ratnabai. The remaining half portion of the land was allotted to Mainabai. Ratnabai later on sold her entire share in the land Survey No.24 to Nilkanthrao, husband of Mainabai. As such, the entire land in Survey No.24 (Gut No.167) came to be owned by Mainabai and her husband Nilkanthrao.

7. Nilkanthrao had two wives – Prayagbai and Mainabai. Manikrao was a son of Nilkanth and Prayabgai. While Gunderao and Kalyanrao (appellant) are the sons born to Mainabai by Nilkanthrao. Mainabai died in 1980, leaving behind three sons – Prakash, Balu and Sanjay. These are all undisputed facts. As such, the land in Survey No.24 was equally owned by the family of Manikrao on one hand and Gunderao and Kalyanrao on the other. In this factual backdrop, it was necessary for the appellant to show how did he become owner of the entire land in Survey No.24. In the revenue record, Survey No.24 came to be sub-divided as – 24/A and 24/B. Prayagbai, wife of Nilkanthrao gifted all the properties to her son Kalyanrao (appellant) under a gift deed executed on 26/7/1957 (Exh.39). The description of the land described in the gift deed indicates that the western half portion of the land in Survey Nos.76 to 80 came to be gifted

to Kalyanrao. This reinforces the case that there was oral partition between Nilkanthrao and Manikrao way back in 1956. A mutation entry came to be effected in this regard in the revenue record. On the death of Manikrao, his three sons including Prakash (respondent herein) inherited the land in Survey No.24/A. Mutation entry to that effect was made in December 1980 (Exh.26). The land in Survey No.24/A continued in the name of Prakash until the Government acquired the said land in April 1987. The revenue record from the year 1954 to 1990 indicates that the appellant Kalyanrao was owner of only half portion of the land in Survey No.24, to be specific, the western portion therein, which came to be described in the revenue record as Survey No.24/B.

8. These facts get reinforced by the proceedings that took place under the Maharashtra Agricultural Lands (Ceiling and Holdings) Act, 1961. Way back in December 1975, both Kalyanrao – appellant and respondent Prakash, in their returns, submitted to the Ceiling authorities, claimed to be owners of 18 acres 20 gunthas of land each in Survey No.24. The declaration made by the appellant in that regard is at Exh.23. The scheme of consolidation of holdings of the lands in the village took place in the year 1988/ 1990 i.e. 2 / 4 years after the lands came to be acquired for percolation

tank. It appears that, even the construction of the dam was complete before the proceedings of the consolidation of holdings took place. On behalf of the respondent Prakash, two material witnesses came to be examined. R.W.1 Raghunath was an Engineer on Bhangewadi Percolation Tank. He had served on the said post from 1987 to 1990. It is in his evidence that the land in Survey No.24 was in fact acquired and not the land in Survey No.46/B. It was a mistake on his part to show that the land in Survey No.46/B was acquired. This witness gave very vital admissions in his cross-examination. It was he who submitted the proposal for acquisition of the land. It is in his evidence that, northern side of the land in Survey No.24 was acquired. According to him, Survey No.24 was sub-divided as Survey Nos.24/A and 24/B in revenue record. Survey No.24/A stood in the name of Manikrao, Nilkanthrao and Prakash.

9. Witness No.2 examined on behalf of the respondent is Kerba Dudhmande. He was serving as Taluka Inspector of Land Record at the relevant time. He was involved in the work of implementation of the scheme of consolidation of holdings. It is in his evidence that he did not serve the respondent Prakash with notice of the consolidation proceedings. It was obligatory on his part to see previous

record of rights maintained by Revenue Department. As per the revenue record, land Survey No.24/A stood first in the name of Nilkanth, thereafter in the name of Manikrao and then in the name of Prakash until 1990-1991. The land in the name of Prakash was eastern portion of Survey No.24. This witness gave a vital admission to the effect that he had prepared the draft scheme of the consolidation of holdings without looking into the revenue record of 1988-89 and preceding thereto. He did not measure any sub-division/ Pot Hissa of Survey No.24. According to him, such was not the position of the land in Survey No.24 at the site. He endorsed the fact that name of Prakash (respondent) was scored out from entry in Column No.7 of Form 1. The scoring out had not been initialed by any official. In the original mutation register, at relevant entry of Survey No.24, in Column No.7, above the name of appellant Kalyanrao, name of someone else appeared. The same has, however, been erased without any justification. The work of acquisition of land was already over before implementation of the scheme of consolidation.

10. In short, it was originally land Survey No.24, owned by Radhabai. Her two daughters Ratnabai and Mainabai inherited the same. Ratnabai sold her share to the husband of Mainabai. As such, the entire land in Survey

No.24 (Gut No.167) came to be owned by Mainabai and her husband Nilkanthrao. Nilkanthrao had two wives – Prayagbai and Mainabai. Manikrao was the son of Prayagbai. While appellant Kalyanrao and Gunderao are from the branch of Mainabail. Manikrao died in 1980. He was survived by his three sons – Prakash Balu and Sanjay. Prakash is respondent herein. There was partition between Manikrao and Nilkanthrao. Mutation entry to that effect was made. Survey No.24 was divisioned as 24/A and 24/B. The land in Survey No.24/B i.e. western portion of Survey No.24 was gifted by Mainabai to Kalyanrao. Both Kalyanrao and Prakash filed returns and made declaration before the authorities under the Ceiling Act. Both of them claimed equal share in the land i.e. 18 acres 20 gunthas each. The revenue record continued as such for long. In the proceedings for consolidation of holdings of land, the name of Prakash came to be deleted. Prakash did not have any notice thereof nor any land was allotted to Prakash in lieu of his land Survey No.24/A. The Reference Court has rightly observed that the revenue record that came into being as a result of implementation of scheme of consolidation of holdings, has no legitimate foundation. Admittedly, the land came to be acquired (possession taken over) before implementation of the scheme of consolidation.

Admittedly, there is nothing to suggest that the right, title and interest of respondent Prakash in land Survey No.24/A (acquired land) was either transferred or extinguished by any legitimate mode. As such, the land which was acquired under the award belonged to respondent Prakash alone. The appellant Kalyanrao did not have right, title and interest therein. The Reference Court has rightly held Prakash to be entitled to entire amount of compensation. No interference is, therefore, warranted with the impugned judgment and award.

11. The appeal, therefore, fails. It is dismissed.

In view of dismissal of the First Appeal, Civil Application No.5139/2007 stands disposed of.

(R. G. AVACHAT)
JUDGE

fmp/-