

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

WRIT PETITION NO.9333 OF 2018

**APPARAO BABURAO POLE
VERSUS
SHIVAJI GYANOBA SHINDE**

...

Advocate for Petitioner : Mr. Pathan Hamzakhan I. & Mr. Kurundkar Sunil V.
Advocate for Respondent: Mr. P. D. Bachate

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 17th January, 2022

PER COURT :

. By this petition, the petitioner challenges compromise decree passed by the learned Civil Judge, Junior Division, Taluka Loha, District Nanded in Regular Civil Suit No.274/2017.

2. The petitioner/plaintiff filed Regular Civil Suit No.274/2017 against the respondent/defendant claiming ownership and possession of land gut No.82 area 0.73 R. situated at Mangloor, Taluka Loha, District Nanded against the respondent/defendant – Shivaji.

The plaintiff and defendant arrived at a compromise and filed compromise deed in the trial court. As per the said compromise, the petitioner/plaintiff gave 0.73 R. land from gut No.82 to defendant – Shivaji and in exchange, the defendant – Shivaji gave 73 R. portion out of gut No.83 admeasuring 1 Hectare 60 R. to the petitioner/plaintiff. The trial court, therefore, decreed the suit in terms of compromise.

3. A notification for acquisition of land was issued on 17/03/2017, pursuant to which, portion of lands belonging to the petitioner and the respondent are acquired.

4. The petitioner, thereafter, filed Regular Civil Suit No.335/2017 on 23/11/2017, claiming that the decree in Regular Civil Suit No.274/2017 is obtained by fraud and therefore, the same may be set aside.

5. In the meanwhile, the competent authority/Sub-Divisional Officer, Kandhar by passing an order on 17/04/2010, directed to deposit an amount of compensation of Rs.73,79,690/-, for the land 0.34 R. acquired out of gut No.82 in the Court of Civil Judge, Senior Division, Kandhar. Since there was a dispute between the petitioner and the respondent about the entitlement of the compensation amount, the dispute was referred to the Civil Court by order dated 26/03/2018.

6. The petitioner withdrew the civil suit on 03/10/2018 on the ground that the present petition is filed challenging the compromise decree. The suit, therefore, came to be disposed off withdrawn.

7. I have heard the rival submissions of the learned advocate for the petitioner and learned advocate for the respondent.

8. The learned advocate for the petitioner strenuously submitted that, the compromise decree was obtained by fraud and therefore, the same is liable to be quashed and set aside. In support of his submissions, he relied on **A. V. Papayya Sastry & Ors. Vs. Government of A. P. & Ors.** reported in **2007 ALL SCR 1363**.

9. On the other hand, the learned advocate for the respondent submits that, the petitioner has already withdrawn an amount of Rs.50,51,339/- on 18/04/2010 for acquisition of land gut No.83, which was given in exchange to him and now the petitioner is trying to raise dispute when the amount of compensation is deposited for land gut No.82, which is received in exchange by the respondent.

The learned advocate for the petitioner disputes this position.

10. Admittedly, due to dispute between the petitioner and respondent, the compensation amount is deposited by the Sub-Divisional Officer, Kandhar in the Court of Civil Judge, Senior Division, Kandhar, who will decide the dispute between the petitioner and the respondent as to who is entitled to get the amount of compensation.

11. In A. V. Papayya Sastry & Ors. Vs. Government of A. P. & Ors. (Supra), the Hon'ble Supreme Court has held that;

21. Now, it is well settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed.

“Fraud avoids all judicial acts, ecclesiastical or temporal”

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order – by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

12. The above ratio makes a clear that, if the decree or order is obtained by playing fraud on the Court, the same is a nullity and non est and it can be challenged in any Court, at any time, even in collateral proceedings.

13. In the light of above ratio and considering the fact that the dispute between the petitioner and respondent about entitlement of compensation amount is pending in the Court of Civil Judge, Senior Division, Kandhar, the interest of justice would be subserved by granting liberty to the petitioner to file a civil suit challenging the compromise decree on the ground of fraud before the same Court. In the result, writ petition is disposed of in following terms:

(I) Liberty is granted to the petitioner to file a civil suit challenging the compromise decree on the ground of fraud. The same shall be decided on its own merits along with the issue of entitlement of the petitioner and the respondent to the compensation amount of Rs.73,79,690/-

(II) The civil suit and the entitlement of the petitioner and respondent about the compensation shall be decided within a period of six months from the date of filing of the suit.

(III) The parties shall co-operate in expeditious disposal of both the proceedings.

(IV) All the contentions of the respective parties are kept open.

(V) It is made clear that the observations in this judgment are prima facie and shall not influence the learned Civil Judge, Senior Division, Kandhar while deciding the dispute between the petitioner and respondent.

(NITIN B. SURYAWANSHI, J.)