

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12164 OF 2019

Meenakshi Yashwant Sonawane
Age – 67 years, Occ – Pensioner,
R/o Datta Chowk, Jail Road,
Nashik, Taluka and District - Nashik

PETITIONER

VERSUS

1. Anant Hari Jagtap
Age – 77 years, Occ – Pensioner
R/o Municipal Complex No.3
Near Subhash Lodge, Station Road,
Chalisgaon, Taluka – Chalisgaon
District – Jalgaon
2. Arvind Hari Jagtap
Age – 75 years, Occ – Pensioner
R/o Municipal Complex No.3
Near Subhash Lodge, Station Road,
Chalisgaon, Taluka – Chalisgaon
District – Jalgaon
3. The District Collector,
Jalgaon, District – Jalgaon
4. The Special Land Acquisition Officer,
State Highway No.211, Jalgaon
Taluka and District – Jalgaon
5. The Executive Engineer,
Maharashtra State Road Development
Authority, Jalgaon
Taluka and District – Jalgaon

RESPONDENTS

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Mr. Vijay B. Patil, Advocate for the petitioner
Mr. Ajeet B. Kale, Advocate for respondents No.1 and 2
Mr. S. W. Munde, AGP for respondents - State

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 13th JULY, 2022

PRONOUNCED ON : 14th SEPTEMBER, 2022

JUDGMENT :

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

2. This petition, filed under Article 226 and 227 of the Constitution of India, is directed against the order dated 7th June, 2019 passed by the learned 4th Joint Civil Judge, Senior Division, Jalgaon, below Exhibit-25 in Regular Darkhast No. 125 of 2016.

3. Land belonging to the father of the petitioner and respondents No.1 and 2 admeasuring 84 Are from Gut No. 164/5, situated at Chalisgaon was acquired for "Ring Road (Highway) Chalisgaon". The Award was passed by Special Land Acquisition Officer in the year 1992 and the father / original owner of the land expired in the year 1993. The petitioner is the sister and respondents No.1 and 2 are her real brothers. They are legal heirs of original owner – Hari Jagtap.

4. The petitioner and respondents No.1 and 2 filed Land Acquisition Reference No.1444 of 1998 for enhancement of

compensation. The Reference Court directed to pay enhanced compensation @ Rs.255/- per square meter to the claimants.

5. Since the respondents did not pay the enhanced compensation, the original claimants, i.e. the petitioner and respondents No.1 and 2 filed Regular Darkhast No. 125 of 2016 for execution of the award passed by the Reference Court. Since the entire amount, with interest, was deposited by the acquiring body, Executing Court, by order dated 2nd January, 2019, directed the amount to be paid to the decree holders.

6. At the time of disbursement of the amount, respondents No.1 and 2 filed application Exhibit-25 under Order XXI, Rule 101 of the Civil Procedure Code, contending that the petitioner has relinquished her right by executing relinquishment deed on 13th May, 2005 and, therefore, she has no right to claim the amount of compensation. It is further claimed that though the relinquishment deed was filed in Reference No. 1444 of 1998, the concerned earlier advocate did not get the same exhibited.

7. This application was strongly opposed by the petitioner, by filing a detail say, contending that the application filed by respondents No.1 and 2 is not maintainable. The Executing Court, by the impugned order, framed an issue under section 47

of the Civil Procedure Code to the effect that -

“Do the decree holder nos.1 and 2 proved that decree holder no.3 executed deed relinquishing her right in amount of compensation granted in L.A.R. No. 1444/1998?”

8. The Executing Court further directed the decree holders No.1 to 3 to lead their respective evidence on the said issue. This order is impugned in the present writ petition.

9. Heard learned advocate for the petitioner, learned advocate for the respondents No.1 and 2 and the learned Assistant Government Pleader for the State.

10. Learned advocate for the petitioner assailed the impugned order, contending that the application filed by respondents No.1 and 2 before the Executing Court, was itself not maintainable and the said position is also accepted by the Executing Court in the impugned order, however, the Executing Court has committed an error in framing the issue under section 47 of the Civil Procedure Code. He submits that the impugned order is unsustainable in the facts of the present case. He further submits that when the reference as well as execution petition was jointly filed by the petitioner and respondents No.1 and 2, there was no question of framing the said issue. According to

him, the Executing Court cannot go beyond the decree and the Executing Court has exceeded jurisdiction, while passing the impugned order.

11. Learned advocate for respondents No.1 and 2, on the other hand, supported the impugned order, contending that the Executing Court was justified in framing the said issue. He submits that after filing of the reference, out of love and affection, the petitioner, in the year 2005, relinquished her share in favour of respondents No.1 and 2 and though this document was given to the learned advocate to file, the learned advocate failed to get the same exhibited in the reference. He submits that in fact the application filed by respondents No.1 and 2 under Order XXI, Rule 101 of the Civil Procedure Code was maintainable. According to him, the dispute is not about apportionment, but it is about entitlement of the petitioner to the compensation amount. He submits that the Executing Court has rightly framed the issue, by relying on section 47 of the Civil Procedure Code. In the facts of the present case, according to him, the Executing Court is justified in framing the issue of entitlement. He, therefore, supports the impugned order.

12. It is not possible to accept the argument of respondents No.1 and 2 that at the time of filing of reference they had given

copy of the relinquishment deed to their advocate, however, he failed to get the same exhibited, particularly in view of the fact that the execution petition is jointly filed by the petitioner and respondents No.1 and 2. Therefore, this stand of the respondents No.1 and 2 appears to be afterthought and cannot be accepted.

13. Since reference of the alleged relinquishment deed is not there in the Land Acquisition Reference as well as at the time of filing the Execution Petition, the challenge to the entitlement of the petitioner now raised by respondents No.1 and 2 in application Exhibit-25, is liable to be repelled at the thresh hold.

14. The Executing Court though has rightly held that since the Execution Petition is filed for recovery of compensation amount, Rule 101 of Order XXI of the CPC has no relevance in the Execution Petition, however, erroneously proceeded to observe as follows :

“3. However, the decree holder nos. 1 and 2 claimed the execution of said relinquishment-deed by decree holder no.3 whereas decree holder no.3 refused it's execution. Therefore, the execution of award will be dependent on the question whether said deed is executed by decree holder no.3 or not. For deciding this question, the parties should lead the evidence. Therefore, an issue in that respect shall be framed under section 47 of Civil Procedure Code.”

15. Reliance of the Executing Court on section 47 of the CPC is misplaced and misconceived in the facts of the present case. Section 47 of the CPC cannot be made applicable to the facts of the present case as the Execution Petition is jointly filed by the petitioner and respondents No.1 and 2 so also the Land Acquisition Reference proceeding. The objection, therefore, raised by respondents No.1 and 2 about entitlement of the petitioner to the compensation amount cannot be said to be maintainable in the execution proceeding, since it is filed jointly by the petitioner and respondents No.1 and 2.

16. The Executing Court, therefore, while passing the impugned order, has exceeded its jurisdiction, ignoring the settled legal position that the Executing Court cannot go beyond the decree. The Executing Court ought to have rejected the application Exhibit-25 being not maintainable. The exercise of power under section 47 of the Civil Procedure Code, by the Executing Court and framing of issue, is erroneous and unsustainable. The impugned order is, therefore, liable to be quashed and set aside.

17. In the result, the writ petition is allowed in terms of prayer clause "B". The impugned order dated 7th June, 2019 passed by

the learned 4th Joint Civil Judge, Senior Division, Jalgaon, below Exhibit-25 in Regular Darkhast No. 125 of 2016 is quashed and set aside. Rule is made absolute accordingly. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

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