

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13013 OF 2019

Shahaji Rajaram Shinde

PETITIONER

VERSUS

The State of Maharashtra and Others

RESPONDENTS

Mr. Abhishek Kulkarni and Mr. S. S. Patunkar, Adv. for petitioner

Mr. Y. G. Gujrathi, AGP for respondent - State

Mr. S.V.Kurundkar h/f Mr. A.R.Tapse, Adv. for respondent No. 6

Mrs. S. G. Chincholkar, Advocate for respondent No.3

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 6th JULY, 2022

ORDER :

1. The petitioner is aggrieved by the order passed by the learned District Judge-1, Ambajogai, below Exhibit-1 in LARD No. 58 of 2011, thereby rejecting the prayer of the petitioner to pay him compensation amount of his acquired land.

2. Land, jointly owned by the petitioner and his brothers – Prakash and Subhash, was acquired for construction of minor irrigation project. The petitioner accepted compensation under protest on 4th May, 2001. The petitioner and his brothers filed Land Acquisition Reference No. 144 of 2004 in the District Court, Ambajogai for compensation of 81 Are land, out of survey No. 11/4, 11/5 and 11/6. By Award dated 23rd July, 2010, the District Court allowed the reference and granted compensation @

Rs.2000/- per *Are*. The petitioner and his brothers accordingly filed execution proceedings bearing LARD No. 58 of 2011 for recovery of Rs.29,40,863/-. In the Execution Proceedings, the judgment debtor deposited an amount of Rs.28,22,520/-. Out of this amount, Rs.9,40,840/- comes to the share of the petitioner, which he sought to withdraw. The Executing Court directed the amount of petitioner's share to be transferred to the court of Civil Judge, Junior Division, Kaij in Execution Proceedings No. 3 of 2017. This order is impugned in the present writ petition.

3. Execution Proceedings No.3 of 2017 is filed by respondents No. 4, 7 and 8. Respondent No.4 is the wife and respondents No. 7 and 8 are the sons of the petitioner. They filed Regular Civil Suit No. 221 of 2003 for partition claiming share in the suit property. The said suit was decreed and the respondents No.4, 7 and 8 were held entitled to one fourth share each in the suit property.

4. The petitioner challenged the decree passed in Regular Civil Suit No. 221 of 2003, by filing Regular Civil Appeal No. 3 of 2013. The Appellate Court modified the Trial Court's decree to the effect that the petitioner and respondents No., 4, 7 and 8 are held entitled for one fourth share each in the suit property by further directing that the District Collector or any officer

subordinate to him, to whom the decree would be sent for effecting partition, shall put the portion of the land out of survey Nos. 11 and 12, which has been acquired, to the share of the petitioner. The Appellate Court further clarified that the decree of partition is limited to the properties remaining after the acquisition. This decree is sought to be executed in Regular Darkhast No. 3 of 2017.

5. Heard learned advocate for the petitioner and the learned advocates for the respondents.

6. Admittedly, the Appellate Court has modified the decree directing that while effecting partition, the portion of land out of surveys No. 11 and 12 which has been acquired, be put to the share of the petitioner. The Appellate Court has specifically clarified that the decree of partition is limited to the properties remaining after acquisition. This decree is put for execution by respondents No. 4, 7 and 8 in Execution Petition No. 3 of 2017.

7. The Executing Court appears to have misread and misinterpreted modification of the decree and the specific direction of the Appellate Court. The Executing Court has failed to properly appreciate the purport of the direction given by the Appellate Court that the decree of partition is limited to the

properties remaining after the acquisition.

8. The Executing Court has erred in coming to the conclusion that the aspect of compensation is very much co-relating and part of decree of partition passed by the Civil Court, which is under execution. This observation cannot be sustained in view of the decree passed by the Appellate Court.

9. Since the Appellate Court has clearly held that the decree of partition is limited to the properties remaining after acquisition, there is no basis for the Executing Court to pass the impugned order thereby directing the amount of petitioner's share to be transferred in Execution Petition No. 3 of 2017. Non application of mind on the part of the Executing Court while passing the impugned order is writ large on the fact of record. The impugned order, therefore, cannot be sustained.

10. Mr. Kurundkar, learned advocate for the respondents submits that, if during the course of execution, the acquired lands may be found to be more than one fourth share of the petitioner and, therefore, the respondents may be entitled to the portion, which may be found to be in excess of one fourth share. It is not possible to accept the said argument, in the light of the specific direction given by the Appellate Court that the

decree of partition is limited to the properties remaining after acquisition.

11. Even in the execution petition filed by the respondents, the said direction contained in clause "D" of the judgment of the Appellate Court is reproduced. In that view of the matter it cannot be said that the respondents may be found entitled to the portion of the property, which is found in excess to one fourth share of the petitioner, in view of this specific direction, the decree is directed to be limited to the properties remaining after acquisition. In that view of the matter, the impugned order passed by the Executing Court thereby directing the amount of compensation of the share of the petitioner be transferred in RD No. 3 of 2017 is unwarranted, uncalled for and the same cannot be sustained.

12. In the result, the writ petition is allowed in terms of prayer clause "B". Impugned order dated 15th June, 2019 passed by District Judge-1, Ambajogai below Exhibit-1 in LARD No. 58 of 2011 is hereby quashed and set aside. The amount of Rs.9,40,840/- which has come to the share of the petitioner, be paid to the petitioner along with accrued interest, if any.

13. It is made clear that the observations made in this order

are *prima facie* and limited to the challenge raised in the present writ petition. In case the respondents avail any appropriate remedy, these observation shall not come in the way of the either party.

[NITIN B. SURYAWANSHI]
JUDGE

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