

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 WRIT PETITION NO.11237 OF 2022

ATUL VIJAY MALI
VERSUS
THE LOKMANGAL MULTI STATE CO OPERATIVE SOCIETY LTD.
THROUGH ITS MANAGER AND ANOTHER

...
Advocate for Petitioner : Mr. Sanjaykumar B. Bhosale

....

CORAM : SANDEEP V. MARNE, J.

DATE : 18-11-2022

PER COURT :

. The petitioner has challenged the order dated 13.07.2021 passed by the Additional District Judge-3, Osmanabad by which his application at Exh.36 for deletion of his land from the award of the arbitrator has been rejected.

2. The petitioner was arrayed as respondent no.4 to Arbitration Application No.1 of 2013. The award was passed on 01.06.2013 *inter alia* directing that in the event of the failure of the respondents therein to pay the claim, the property at Gat No.106 area 1-H 21-R be attached, taken possession and sold by auction.

3. In execution proceedings filed by the decree holder, the

petitioner moved application at Exh.36 for deletion of land bearing Gat No.106 admeasuring 1-H 21-R area on the ground that the award was made behind his back. The application has been rejected recording a finding that the executing court cannot go beyond the decree.

4. The learned counsel for the petitioner submits that the petitioner is an auction purchaser does not have any relation with regard to the dispute between the claimant and the borrowers before the arbitrator. He submits that the petitioner was never issued with any notice of arbitration proceedings. He submits that the Sale Certificate in the name of the petitioner was effected on 21.05.2013 and that the award of the arbitrator has been made later on 01.06.2013. He therefore submits that the executing court cannot attach or sell the land of the petitioner.

5. In my view, if the petitioner is aggrieved by the award of the arbitrator, he ought to have adopted proceedings challenging the said award before the appropriate court. He cannot seek prayer of deletion of his properties from the award before the Executing Court. The Executing Court does not have jurisdiction alter the award which is sought to be executed before it. The application filed by the

petitioner was not maintainable and has been rightly rejected.

6. The petition is devoid of merits and the same is dismissed without any orders as to costs.

7. It is however, clarified that the petitioner shall have the liberty of challenging the award of the arbitrator before appropriate forum.

(SANDEEP V. MARNE, J.)