

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5400 OF 2021

Dwarkanath Nago Tarmale & Ors.

.... Petitioners

versus

Sub Divisional Officer,
Kalyan, Dist-Thane & Ors.

.... Respondents

.....

- Mr. Jitendra H. Oak, Advocate for Petitioner.
- Mr. A. I. Patel, Addl. G. P. a/w Mr. R. P. Kadam, AGP for Respondent Nos.1, 2 and 4.
- Mr. Laxman S. Deshmukh, Advocate for Respondent No.3.

**CORAM : R. D. DHANUKA &
M. G. SEWLIKAR, JJ.**

DATE : 18th JULY, 2022.

P.C. :

1. Rule.

2. Mr. A. I. Patel, learned Additional Government Pleader,
waives service for Respondent Nos.1, 2 and 4. Learned counsel
Mr.Laxman Deshmukh, waives service for Respondent No.3.

3. Rule made returnable forthwith.

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4. By this Petition filed under Article 226 of the Constitution of India, the Petitioners are seeking writ, order or directions to call for the records and proceedings of notice dated 03/11/2020 and directions dated 01/12/2020 passed by the Respondent No.1 in Application No.30 of 2020 pending before Respondent No.1.

5. It is the case of Petitioners that they have certain share in the writ property bearing survey No.112/1/A situated at village Rayate, Tal-Kalyan, Dist-Thane. The Sub-Divisional Officer had passed order for payment of compensation for the sum of Rs.82,41,614/- in favour of the Petitioner exclusively on 07/08/2019. The said compensation was made by the Sub-Divisional Officer by cheque. The said amount was deposited in the account of the Petitioner. Respondent No.3 also claimed certain share in the said property. The Sub-Divisional Officer instructed the bank to freeze the said account of the Petitioner. This action on the part of the Sub-Divisional Officer is challenged by the Petitioner in this Writ Petition.

6. The Sub-Divisional Officer has filed affidavit-in-reply pointing out circumstances in which compensation was paid by Sub-Divisional Officer. Some directions were issued by the Sub-Divisional Officer on 11/12/2019 to the Bank of India, to inform as to where the said amount of Rs.82,41,614/- was deposited.
7. Learned counsel for the Petitioner does not dispute that there was a complaint made by the Respondent No.3 in respect of the said order passed by the Sub-Divisional Officer directing payment of compensation exclusively in favour of the Petitioner. Learned counsel for the Respondent No.3 does not dispute that in respect of said plot of land which is the subject matter of this Petition, the Petitioner Kusum Sadashiv Dhone and Bebitai Baliram Kale, Respondent No.8 also claimed certain share in the said property.
8. By a separate order passed by this Court in Writ Petition (St) No.28152 of 2019, this Court has already directed the Respondent No.3 in Writ Petition No.5400 of 2021 (Respondent No.6 in Writ Petition (St) No.28152 of 2019) to

deposit some amount from the compensation exclusively received by the Respondent No.3 in respect of land bearing survey No.112/1 though there was a claim made by the Petitioner and Respondent No.8 in the Writ Petition (St) No.28152 of 2019 and also to secure the said claim.

9. In our view, since there was a complaint made by Respondent No.3 in this Petition, admittedly and there was serious title dispute in respect of said land acquired by the Sub-Divisional Officer acquired by the State Government, the Sub-Divisional Officer could not have passed any order of compensation exclusively in favour of the Petitioner and ought to have referred the dispute to Civil Court.

10. In these circumstances the Sub-Divisional Officer rightly issued a notice dated 03/11/2020 and issued directions on 01/12/2020 directing the bankers of the Petitioner to freeze the account of the Petitioner insofar as the amount of compensation paid to the Petitioner is concerned.

11. In view of the fact that the Petitioner and Respondent No.8 in Writ Petition (St) No.28152 of 2019 are also claiming share in the said property, we direct the Sub-Divisional Officer to refer the dispute between the Petitioner in this Petition and between Kusum Dhone and Bebitai Kale, Petitioner and Respondent No.8 in Writ Petition (St) No.28152 of 2019, to Civil Court. We also direct the Bank of India, 296-A Shankar Shet Mansion, Trade Road, Mumbai – 400 017, Maharashtra, to remit the said amount of Rs.82,41,614/- along with accrued interest from the account of the Petitioner to the Civil Court within one week from the date of communication of this order. The date of transmission of the said amount shall be conveyed to the learned counsel for the Petitioner in this Writ Petition and also to Kusum Dhone and Bebitai Kale within one week from the date of such transmission.

12. If the Petitioner and Bebitai Kale make an application to implead them in the said suit, they would be at liberty to apply for impleadment in the said suit. If such application for

impleadment is made, the trial Court shall consider the application for impleadment and shall implead them as party defendants in the said suit.

13. It is made clear that this Court has not decided the issue of title in this order raised by and between the parties to Writ Petition No.5400/2021 and between the Petitioner Kusum Dhone and Bebitai Kale. All issues relating to title and their alleged entitlement of the properties or to seek compensation is kept open, to be decided by the Civil Court. Writ Petition is disposed off in the aforesaid terms. Rule is made absolute accordingly.

14. Parties to act on the authenticated copy of this order.

(M. G. SEWLIKAR, J.)

(R. D. DHANUKA , J.)