

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5038 OF 2021

Shri. Piraji Rakhmaji Dhobale and Anr. ..Petitioners

V/s.

Shri. Baban Dadabhau Dhobale and Ors. ..Respondents

Mr. Sanjiv Sawant a/w Abhishek Matkar, Malhar Bageshwar i/b
S.M. Suryawanshi for the Petitioners.

Mr. Sachin Kadam for Respondent nos. 6 to 8 and 10.

Mr. A.B. Avhad with Mahesh Rawool for Respondent Nos. 1 to
5, 11 to 13.

Mr. P.P. Pujari, AGP for the Respondent No.19/State.

CORAM : C.V. BHADANG, J.

DATE : 11 OCTOBER 2022

:JUDGMENT:

. Rule made returnable forthwith. The learned counsel for the Respondents waive service. By consent of parties, petition is heard finally.

2. The challenge in this petition, is to the order dated 19.07.2017 passed by the learned Additional Commissioner, Pune Division, Pune in RTS (Revision) No. 249 of 2016. By the impugned order, the learned Additional Commissioner has confirmed the order dated 30.05.2016 passed by the Additional Collector, Pune in RTS Appeal No. 101 of 2013 and the order

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dated 28.01.2013 passed by the learned Sub-Divisional Officer (SDO) in RTS Appeal No. 25 of 2013.

3. The brief facts are that the Petitioners (Plaintiffs) had filed a suit being RCS No. 145 of 1989 against the Respondents for partition/separate possession and injunction etc. before the learned Civil Judge, Junior Division at Ghodegaon, District Pune. The Trial Court decreed the suit by a Judgment and Decree dated 30.12.1996 declaring that the Petitioners were having $\frac{1}{2}$ share in the suit property and directing the partition of the share by metes and bounds. Certain other reliefs of injunction etc. were also granted. The Respondents (original defendants) feeling aggrieved, challenged the said decree in Civil Appeal No. 463 of 1997. The learned District judge at Pune dismissed the Appeal on 2.5.2001 which was carried by the Respondents (original defendants) before this Court in Second Appeal No. 442 of 2005. This Court by an order dated 19.12.2007 has dismissed the Second Appeal, which has not been carried any further. Thus, the decree for partition has attained finality.

4. The Petitioners/decreed holders filed Execution proceedings bearing SR No. 3 of 2005 before the learned Civil Judge Junior Division at Ghodegaon. It appears that the suit property being a revenue paying property, a precept was sent to the Tahasildar,

who by an order dated 18.05.2005 passed an order for possession and the possession has been delivered as per the said decree of partition. Pursuant to the said order, a Mutation Entry (ME) No. 1719 was sanctioned in respect of the partition of the suit land in respect of Gat No. 441 (part) situated at Jarkarwadi, Taluka Ambegaon, District Pune.

5. The first Respondent filed RTS Appeal No. 25 of 2013 challenging ME No. 1719 entry which was infact based on the order dated 16.05.2008 passed by the Tahsildar in pursuance of the execution of the partition decree.

6. The Sub-Divisional Officer by order dated 28.01.2013 has set aside the order passed by the Circle Officer by which ME No. 1719 was confirmed and directed deletion of the part reserved for resettlement of the project affected persons. The Additional Collector by a Judgment and Order dated 30.05.2016 has dismissed the Appeal confirming the order passed by the learned SDO. The learned Additional Collector also directed that necessary action be taken subject to any order passed by the Competent Civil Court below Exh. 64 in Civil Suit No. 368 of 2009. In short, ME No. 1719 was required to be corrected after deleting the area reserved for acquisition for the resettlement of the project affected persons.

7. The Petitioner feeling aggrieved challenged the same before the Additional Commissioner in Revision Application No. 249 of 2016 which has been dismissed on 19.07.2017. Hence, this petition.

8. I have heard learned counsel for the parties. Perused record.

9. The learned counsel for the Petitioners has submitted that the decree had attained finality till this Court when the second appeal was dismissed and the ME No. 1719 was recorded as per order passed in the execution Proceedings for Execution of the partition decree. It is submitted that the Respondents (defendants) had raised a contention in the second appeal that the suit property cannot be partitioned as the same has been included in a beneficial zone. It is submitted that this Court had refused to accept said contention in paragraph 3 of the order as the said contention was not raised before the courts below. It is submitted that the revenue authorities therefore, could not have directed modification of the mutation entry no. 1719 which is contrary to the decree passed in the civil suit as confirmed by this Court.

10. It is submitted that even otherwise the inclusion of a part of the land in a beneficial zone for resettlement of the project

affected persons cannot have any bearing on the partition of the property as Government would be required to pay the compensation to the party on whose share the said portion/part would fall.

11. The learned counsel for the private Respondents has submitted that the contention based on the suit property being included in a beneficial zone was not accepted by this Court only on the ground that the said contention was not raised before the courts below. It is submitted that there is an order passed by the Divisional Commissioner on 05.02.2005 in an application filed by Sakharam Dhobale, Dadabhau Dhobale, Maruti Dhobale and others under Section 48(1) of the Land Acquisition Act, 1894 and Section 22 of the Maharashtra Project Affected Persons Rehabilitation Act, 1986. He has therefore, supported the impugned order.

12. The learned AGP was asked to take specific instructions whether the acquisition for the project affected persons has been proceeded with or completed. The learned AGP today has submitted that the acquisition has not been completed and no award has been passed.

13. I have considered the submissions made. The modification of ME No. 1719 is ordered only on the ground that a part of the

land has been included in the beneficial zone/reservation for acquisition for resettlement of the project affected persons. It can be seen that such a ground was raised in the second appeal, which has been negated. The reason for not accepting the said contention will not be decisive, once it is found that this Court had refused to accept the said contention.

14. Thus in my considered view, the learned counsel for the Petitioners is right that it was not open for the revenue authorities to direct the modification of ME No. 1719 (which entry was taken in the execution proceeding of a partition decree as confirmed by this court).

15. That apart there is also no material to show that the land has actually been acquired. The reservation for acquisition appears to be prior to 1998 and as per the statement made on behalf of the State, there is no award passed as such till today. Even assuming that the land is reserved for such acquisition, is not sufficient to direct such modification as ultimately whichever party is allotted the said part of the land(as the land is partitioned by metes and bounds) would be entitled for compensation.

16. Looked from any angle, the impugned order cannot be sustained. The petition, therefore, succeeds. The petition is accordingly allowed. The impugned orders passed by the Sub-

Divisional Officer, the Additional collector and the Additional Commissioner, Pune Division, Pune are hereby set aside. The Mutation Entry No. 1719 is hereby restored.

Rule is made absolute in the aforesaid terms with no order as to costs.

C.V. BHADANG, J.