

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1038 OF 2021

**ASHOK YEDUBA KADAM
VERSUS
PRALHAD PANDURANG BHANDARE AND OTHERS**

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Advocate for Petitioner : Mr. N.R. Thorat
AGP for Respondent – State : Mr. R.B. Bagul
Advocate for Respondent No.1 : Mr. S.R. Shirsath

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 15th MARCH, 2023

PER COURT :

1. By this petition filed under Articles 226 and 227 of the Constitution of India, petitioner challenges the order dated 13/06/2019, passed by learned District Judge-8, Beed, below Exhibit-18 in LARD No.129/2012.

2. Decree holder Pralhad Pandurang Bhandare/respondent No.1 filed execution proceeding bearing LARD No.129/2012 for recovery of compensation amount awarded in LAR No.318/2005, to the extent of Rs.5,73,422/-. Petitioner in the said execution proceeding filed objection at Exhibit-18 claiming that he is having ownership of 4 Anna in Gut Nos. 402/A and 402/AA. The said land was acquired for percolation tank No.6. At the time of acquisition, petitioner/objector was minor and taking disadvantage of his minority the decree holder and his advocate cheated the parents of objector and his cousin and obtained General Power of Attorney

bearing No.161/2004 on 13/01/2004. On the basis of this power of attorney, decree holder accepted the compensation amount but did not pay the same to the objector or his parents. Decree holder also got executed relinquishment deed dated 12/02/2004 in his favour from the objector and his parents. The objection petitioner's birth date is 10/12/1995. He was minor at the relevant time. LAR No.318/2005 was filed in the District Court. Court awarded enhanced compensation and at the time of distribution of enhanced compensation general power of attorney and relinquishment deed came to be cancelled.

3. Decree holder was annoyed by this and he filed R.C.S. No.188/2009 before learned Civil Judge Junior Division, Beed, for declaration of ownership against objector, his parents and other relatives. In the said suit, decree holder has shown the objector as major. The decree holder has fraudulently entered into compromise by assuring objector and his parents to pay the money. However, he has cheated them by not paying the same. At the time of passing of compromise decree also the objector/petitioner was minor and he was not present in the Court. On the basis of compromise decree in R.C.S. No.188/2009, decree holder filed LARD No.465/2006 and obtained enhancement of compensation but he did not pay anything to the parents and cousin brother of the objector.

Therefore, the petitioner/objector has filed Misc. Civil

Application No.592/2014 in the Court of Civil Judge Junior Division, Beed, for cancellation of compromise decree. The objector/petitioner, therefore, prayed that till Misc. Application No.592/2014 is decided, the decretal amount should not be released in favour of decree holder.

4. Decree holder opposed the said application. He denied the averments made by the objector. He contended that in view of compromise in R.C.S. No.188/2009, the objector and others have relinquished their rights in favour of the decree holder and compromise decree in R.C.S. No.188/2009 is binding upon them. The decree holder was not aware that the objector was minor at that time. It is further contended that compromise decree passed is yet not set aside and on the basis of said decree LARD No.465/2006 was filed, which was also compromised. It is further stated that Writ Petition No.492/2012 was filed before this Court and names of objector and others were deleted in view of order passed in Writ Petition No.492/2012. Therefore, objector and others have no right to ask for execution of decree passed in LAR No.318/2005. The objector and others have fraudulently filed LARD No.47/2015. He, therefore, claims that LARD No.47/2015 may be stayed and LARD No.129/2012 be proceeded further.

5. The executing Court after hearing the parties and perusing the record, rejected the application of objector/petitioner

observing that, out of decretal amount Rs.30,84,881/- awarded in LAR No.318/2005, decree holder has received the major amount in LARD No.465/2006 and LARD No.129/2012 is filed for recovery of minor amount of Rs.5,73,422/-. The objector though claims to be minor at the relevant time, he has not adduced any evidence in that regard. He has only filed registration form of his Zilla Parishad School Chakarwadi (Exhibit-17/2), which shows his birth date as 10/12/1995. He has not substantiated as to how this birth date came to be recorded in the school record. In spite of giving opportunity, objector failed to adduce evidence in support of his objection. He has failed to bring to the notice of executing Court as to what is the stage of his Misc. Civil Application No.592/2014. It is further held that, admittedly, R.C.S No.188/2009 was compromised and the said compromise decree is yet not set aside. The executing Court was, therefore, of the view that there is no substance in the objection filed by the petitioner/objector and hence, rejected his objection and directed the matter to proceed further. It is further held that so far as LARD No.47/2015 is concerned, it is in respect of decretal amount awarded in LARD No.465/2006. The same is filed after filing of LARD No.129/2012. Objection raised by the decree holder in LARD No.129/2012 is turned down observing that under the circumstances, there is no propriety to continue with the said darkhast and the same stands stayed.

6. Having heard learned advocate for petitioner, learned Additional Government Pleader for State and learned advocate for respondent No.1/decreed holder and after perusal of the impugned order, this Court is of the view that the executing Court is justified in passing the impugned order.

7. Though the petitioner has filed Misc. Civil Application No.592/2014, till date the same is not decided. It appears from the certified copy of *Roznama* presented by learned advocate for respondent that after filing of said application, on many dates, the petitioner has remained absent. The status displayed on the website of the Court shows that the said application is pending for recording of evidence and the matter is kept on 01/04/2023 for orders, also, on the last four dates petitioner as well as his advocate were absent. In that view of the matter and taking into consideration the fact that major amount of compensation awarded is already withdrawn by the decree holder, this Court is of the view that there is no substance in the application filed by the petitioner and executing Court has passed well reasoned order.

8. There is no illegality or perversity in the order impugned in present petition. Writ petition being devoid of merits is dismissed.

(NITIN B. SURYAWANSHI, J.)