

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

WRIT PETITION NO. 3106 OF 2022

Lalsingh Hirasingsh Kotithirthawale
and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri Anuj A. Fulfagar, Advocate for the Petitioners.
Shri S. B. Pulkundwar, A.G.P. for the Respondent Nos. 1 and 2.
Shri S. S. Thombre, Advocate for Respondent Nos. 3 to 8.
Shri J. B. Paikrao, Advocate for Respondent Nos. 9 to 16.

**CORAM : NITIN W. SAMBRE AND
S. G. CHAPALGAONKAR, JJ.**

CLOSED FOR ORDER ON : 29.03.2023
ORDER PRONOUNCED ON : 19.04.2023

FINAL ORDER :

. Heard learned counsel for respective parties.

2. The challenge in the petition is to the order dated February 14, 2022 passed by the Respondent No. 2/Collector thereby refusing to exercise powers vested to him under Section 64, 65 and 75 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred as to the “Act of 2013” for the sake of brevity).

3. It is the case of the petitioners that land admeasuring 03H 08R out of gut No. 173 of village Babhulgaon, Tq. and Dist. Nanded was subjected to acquisition under the Act of 2013 and compensation vide award dated 25.01.2021 to the extent of Rs. 1,04,32,887/- was determined pursuant to the provisions of Section 37 of the Act of 2013.

4. According to petitioners, the aforesaid property was mutated in the name of the respondents and accordingly 7/12 extract stand in their names as father of respondents was Karta of the family.

5. According to petitioners, they having share in the above property initiated suit bearing R.C.S. No. 285 of 2020 for partition and separate possession in relation to the aforesaid property. A decree for perpetual injunction is also sought thereby restraining the respondents, their heirs, attorney or any other claiming through them from selling, alienating, transferring or creating any third party interest in the suit property.

6. The aforesaid suit claim is resisted by the respondents by filing written statement thereby denying the claim based on following plea : (a) already existence of partition, (b) entire property is not brought in common hotch-potch, (c) legal heirs of Dhannasingh are not added as parties, (d) the suit claim is barred by limitation, (e) the revenue record speaks of exclusive title and possession of the respondents.

7. In the aforesaid background, the petitioners approached the respondent No. 2 by invoking provisions of Section 64, 65 and 76 of the Act of 2013 seeking reference to be made to the Civil Court for apportionment. Said prayer is rejected vide the impugned order dated 14th February, 2022.

8. Learned counsel for the petitioners would urge that the land in question was belonging to the joint family and the father of the respondents was Karta can be inferred from the pleadings in the plaint R.C.S. No. 285 of 2020, so also written statement of the respondents. He would urge that once relationship between the parties is not disputed or denied, it has to be inferred that the petitioners have every right to claim the share in the amount of compensation and as such apportionment can be decided by the competent Court in view of the provisions of Section 64 of the Act of 2013.

9. While countering aforesaid submissions Mr. Thombre, learned counsel for respondent Nos. 3 to 8 with another counsel for other respondents would support the impugned order. According to him only after the award was passed, the petitioners developed, the theory of they having share in the suit property and initiated false suit claim. According to him the partition was already in existence as can be inferred from the revenue record. As such he has sought dismissal of the petition.

10. We have appreciated rival claims in the background of

Section 64 of the Act of 2013.

11. A person interested who has not accepted the award has every right to apply to the Collector in writing for referring the matter for determination of the issue as to the payment of compensation or apportionment of compensation amongst the persons interested. The Collector in such an eventuality can make reference to the appropriate authority provided the application contains grounds on which such reference is sought.

12. In the case in hand, if we appreciate the pleadings in the plaint in R.C.S. No. 285 of 2020, so also the written statement what can be noticed is respondents have not denied the relationship with the petitioners. Once such relationship is not disputed in the written statement, the fact remains that the claim of the petitioners of having share needs to be appreciated. In such an eventuality, the provisions of Section 64(1) of the Act of 2013 are very much attracted.

13. Having not denied the relationship by the respondents with the petitioners, the burden shifts on the respondents to prove that there already exists a partition and merely because all the properties of the joint family are not brought in common hotch-potch by itself would not deny the claim of the petitioners for referring the matter U/Sec. 64 of the Act of 2013 for demand of the apportionment of the compensation.

14. In the aforesaid backdrop, if we appreciate findings

recorded in the impugned order, what can be noticed is the respondent No. 2 in the impugned order has clearly relied on the revenue entries so as to infer that the petitioners have no concern with the property which was acquired. The said authority has failed to consider the pleadings in the plaint and the written statement thereby not denying the relationship by the respondents with the petitioners. Merely because the State Government or the Collector is not added as party to the suit that by itself will not create a reason or ground for the respondent No. 2 to reject the prayer of the petitioners for making a reference to the competent authority under Section 64 of the Act of 2013 for apportionment of the property.

15. As the relationship between the parties is not denied by the respondents, we deem it appropriate to quash and set aside the impugned order dated February 14, 2022. We hereby allow the application preferred by the petitioners U/Sec. 64 of the Act of 2013 and we direct the Collector Nanded to forthwith refer the claim of the petitioners to the competent authority for determining the apportionment of compensation. The petition as such **stands allowed** in above terms.

[S. G. CHAPALGAONKAR, J.]

[NITIN W. SAMBRE , J.]

bsb/April 23