

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13501 OF 2021

Baliram Bala Rathod
Through GPA holder
Santosh Baliram Rathod

.... Petitioner

Versus

Deputy Collector Land Acquisition
Aurangabad and others

.... Respondents

.....

Mr. Mahesh K. Bhosale, Advocate for the Petitioner
Mr. S.R. Yadav Lonikar, AGP for Respondent No.1
Mr. Kiran D. Jadhav, Advocate for Respondent No.2

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 24th JULY, 2023

ORDER :

1. Land of the petitioner is acquired for the purpose of widening of the National Highway and award is passed in favour of the petitioner. Respondent No.2 filed objection claiming that in the area of the petitioner, which is under acquisition, her area is also included. Accordingly, revised joint measurement was carried out, wherein it is found that the 4400 Sq. Mtrs. land of the petitioner, 300 Sq. Mtrs. land of respondent No.2 and 900 Sq. Mtrs. Land of respondent No.3 is acquired. Since revised joint measurement was objected to

and in view of Regular Civil Suit No.738 of 2016, as there was dispute about the ownership of the acquired property, respondent No.1 forwarded the reference to the Civil Court, which is registered as Land Acquisition Reference No.99 of 2017. In the said reference, the petitioner was filed objection and he was added as respondent on 20/04/2019. Since the petitioner was absent, the Reference Court passed 'no say' order against him.

2. By filing application Exhibit-44, the petitioner prayed for setting aside 'no say' order, contending that he was not aware of the pendency of the reference, and he did not receive any notice. Respondent No.2 opposed the application by filing a detail say. The Reference Court has rejected the applications with costs of Rs.2,000/-. Hence, the present petition.

3. Heard the learned advocate for the petitioner, learned advocate for respondent No.2 and the learned Assistant Government Pleader for respondent No.1. Perused the writ petition memo, annexures thereto, impugned order and the citations relied upon by the learned advocate for the petitioner.

4. Perusal of the record indicates that, the petitioner came to be added as defendant in Land Acquisition Reference No.99 of 2017 on 04/10/2018. Regular Civil Suit No.738 of 2016 is filed by respondent No.2/plaintiff Shardabai for injunction against the Land Acquisition Officer in respect of property Land Gut No.10 admeasuring 84 *Gunthas*, seeking injunction against the Land Acquisition Officer from paying compensation to the extent of 12 *Gunthas* of land to defendant No.3 in the suit (respondent No.3 herein). In the said suit, the petitioner filed application under Order X Rule 1 of the Code of Civil Procedure for adding him as defendant contending that, consent deed is executed by defendant No.3/ respondent No.3 herein, and therefore, he may be added as defendant in the suit. Learned 5th Joint Civil Judge, Senior Division, Aurangabad allowed the application and added the petitioner as defendant in the suit.

5. Indisputedly, the petitioner is added as respondent in Reference on 04/10/2018. Regular Civil Suit No.738 of 2016 in which the petitioner was added as defendant has merged in the present reference on 15/03/2019. There was nothing on record to show that summons was served on the petitioner in the reference. In these facts, 'no say' order passed against the

petitioner on 03/04/2019 is unsustainable. The petitioner is entitled to contest the Reference on merits as valuable rights of the petitioner are involved in the Reference. The petitioner will suffer irreparable loss if, 'no say' order is upheld against him, the said would amount to denial of fair opportunity to contest the Reference on merit.

6. In *Zolba Vs. Keshao and others, (2008) 11 Supreme Court Cases, 769*, it is held;

"It cannot be forgotten that in an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation."

This observation supports the case of the petitioner. In the result, the writ petition is allowed.

7. Impugned order dated 17/11/2021 passed by learned 5th Joint Civil Judge, Senior Division, Aurangabd, below Exhibit-44 in Land Acquisition Reference No.99 of 2017 is hereby quashed and set aside.

8. Application Exhibit-44 is allowed subject to the petitioner paying costs of Rs.15,000/- to the claimant Shardabai before the Reference Court.

9. The petitioner shall file his say within two weeks from the date of receipt of writ of this order, and the Reference Court shall decide the Reference within three months, thereafter.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane