

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

WRIT PETITION NO. 13379 OF 2023

Yogesh s/o Vitthal Mahajan
Age : 46 years, Occ.: Agri & Actor,
R/o. Malad, Mumbai.
At present R/o Pimpalbaon Hareshwar,
Tq. Pachora, Dist. Jalgaon.

...Petitioner

Versus

1. The State of Maharashtra,
Through the Collector,
Jalgaon, Dist. Jalgaon.
2. The Special Land Acquisition Officer,
Minor Irrigation Department, Jalgaon.
3. The Executive Engineer,
Minor Irrigation Department, Jalgaon.
4. The Superintendent Engineer,
Tapi Kore Vikas Patbandhare Mahamandal,
Jalgaon Division, Jalgaon.
5. Shri. Laxmikant s/o Vitthal Mahajan,
Age : 52 years, Occ.: Agri,
R/o. Kolhe, Tq. Pachora, Dist. Jalgaon.

...Respondents

AND

WRIT PETITION NO. 13452 OF 2023

Pyarelal s/o Vitthal Mahajan,
Age : 50 years, Occ.: Service & Agri,
R/o. Flat No.208, Navkar Plaza, Waki Road,
Jamner, Tq. Jamner, Dist. Jalgaon.

...Petitioner

Versus

1. The State of Maharashtra,
Through the Collector,
Jalgaon, Dist. Jalgaon.
2. The Special Land Acquisition Officer,
Minor Irrigation Department, Jalgaon.
3. The Executive Engineer,
Minor Irrigation Department, Jalgaon.
4. The Superintendent Engineer,
Tapi Kore Vikas Patbandhare Mahamandal,
Jalgaon Division, Jalgaon.
5. Shri. Laxmikant s/o Vitthal Mahajan,
Age : 52 years, Occ.: Agri,
R/o. Kolhe, Tq. Pachora, Dist. Jalgaon.

...Respondents

Advocate for Petitioners in both petitions : Mr. Bhausaheb S. Deshmukh in
WP-13379/2023 and holding for Mr. A.M. Pawar in WP-13452/2023

AGP for Respondent No.1 and 2/State in both petitions : Mr. Y.G. Gujrathi

Advocate for Respondent No.5 in both petitions : Mr. M.V. Ghatge h/f
Mr. M.S. Taur

CORAM : SHAILESH P. BRAHME, J.

DATE : 3rd NOVEMBER 2023

ORAL JUDGMENT :

. Rule. Rule is made returnable forthwith. Heard learned
counsel for the respective sides finally at the admission stage. The

facts and circumstances of both the petitions are common. The submissions of the learned counsel are also common. Hence, both the petitions are heard together and disposed of by this common order. For the sake of convenience, the papers in Writ Petition No. 13379 of 2023 are referred.

2. The petitioners and the Respondent No.5 are real brothers. The controversy pertains to the entitlement to the compensation payable which is enhanced in Land Acquisition Reference No. 158 of 2019. The petitions are directed against distinct orders passed on 12.10.2023 which are given herein below :

Writ Petition No.13379/2023

Sr. No.	Application for	Exhibit No.	Order
1	Not to disburse amount	17	Rejected
2	Adding party	20	Rejected

Writ Petition No.13452/2023

Sr. No.	Application for	Exhibit No.	Order
1	Stay for disbursing amount	34	Rejected
2	Objection u/s 47 of CPC	72	Rejected

3. Part of the land in Gut No. 87 situated at Kolhe Tq. Pachora Dist. Jalgaon was acquired by the respondent No. 1 to 4. An award was passed. The respondent No. 5 prosecuted land reference No. 158 of 2019 under section 18 of Land Acquisition Act. The reference court enhanced the compensation by judgment and award dated

22.02.2021. The respondent No. 5 filed Regular Darkhast No. 153 of 2021 before civil judge senior division, Jalgaon. An amount of Rs.47,27,200/- was deposited towards part of the awarded compensation. The above applications are filed by the petitioners in the execution.

4. The petitioners contended that they were in Defence Services and retired in 2000. Their brother, respondent No. 5 clandestinely filed reference to usurp the amount of compensation. They were kept in dark. It is their case that they have a share in the amount of compensation because the land is joint family property. The respondent No. 5 is their representative and not exclusively entitled to the enhanced compensation.

5. The petitioner/Yogesh issued a notice to the respondent No. 5 no sooner than he learnt about award of enhanced compensation asserting his share. He has filed Special Civil Suit No. 158 of 2021 for partition, possession and injunction. The said suit is pending. The respondent No. 5 submitted application under Order 7 Rule 11, Exh.-49 which was rejected on 18.11.2022. Being aggrieved, Civil Revision Application No. 26 of 2023 was filed. The same is pending with interim stay to further proceedings of special civil suit No.158 of 2021.

6. The amount deposited in Regular Darkhast No. 153 of 2021 was

likely to be withdrawn by the respondent No. 5. Therefore, application at Exh-17,20,34 and 72 are filed by the petitioners. Those are contested. Those are rejected by distinct orders mainly on the ground that petitioners were not the party to the reference proceedings under section 18 of the Land Acquisition Act. The respondent No.5 alone had filed reference and thereafter execution. Relying upon the judgment rendered in the matter of **Raghunath Dhondur Navde v/s. Pandit Ramchandra Navde & Others** reported in 2000 (2) Mh.L.J.81. The petitioners are held to be not entitled to stake their claim to the amount deposited in the reference court. All applications are rejected on 12.10.2023.

7. Learned counsel for the petitioners makes following submissions :

- i) The land which is acquired, is joint family property and petitioners are entitled to have share in the enhanced compensation.
- ii) The respondent No. 5 deceived the petitioners when the understanding amongst them was to share the compensation.
- iii) When special civil suit No. 158/2021 is pending before competent court for partition and the amount of compensation is subject matter, the amount deposited in the executing court needs to be preserved till final decision of the suit. They being the family members and co-sharers are necessary parties in the execution.

- iv) The petitioner Pyarelal filed application Exhibit-72 under section 47 of CPC for extending opportunity of hearing and allotting share.
- v) The respondent No. 5 has made false submissions on affidavit which is at Exh-F for securing the payment.
- vi) The impugned orders are cryptic and perverse. The rightful claims of the petitioners have been dislodged.

8. Mr. Mahesh Ghatge, learned counsel for the respondent No. 5 makes following submissions :

- i) The contentions of the petitioners that after retiring from services, they learnt for the first time about proceedings under land acquisition act and respondent No. 5 deceived them are false.
- ii) The petitioners and respondent No. 5 were separated and the separated lands were acquired and compensation was paid. The suit land is exclusive property allotted to him. Hence, reference was also prosecuted by him exclusively.
- iii) Application Exhibit-17 under Order 21 Rule 26 of CPC, Exhibit-20 under Order 1 Rule 10, application at Exhibit-34 under Order 21 Rule 26 read with section 151 and application Exhibit-72 under section 47 of CPC are not maintainable because the petitioners were neither party to the reference nor to its execution.

9. The petitioners have suppressed that application Exh.39 filed by the petitioner/Yogesh in the suit for stalling the disbursement

was rejected by the trial judge on 06.05.2022. It was challenged in Writ Petition No. 10614 of 2022. It was dismissed as withdrawn. Two further writ petitions filed by Yogesh in High Court for the same reliefs were withdrawn.

10. The applications are filed with oblique motive and rightly rejected by executing court. The conduct of the petitioner is objectionable. He is claiming share in the compensation without having any right and filing various proceedings. Reliance is placed on judgments rendered in the matter of :

- i. Raghunath Dhondu Navde (supra).
- ii. Vitthal N. Shinde v/s. Shantaram M.Shinde in WP-3879/2018.
- iii. Ram Avtar Shukla v/s. Arvind Shukla, Commissioner Kanpur Division reported in 1995 (Supp.2) SCC 130.

11. I have considered rival submissions of the parties canvassed across the Bar. The disputes amongst the brothers and their allegations inter se need not be embarked upon. The maintainability of the applications submitted by the petitioners is crucial.

12. It is undisputed that petitioners were not the party to the reference proceedings bearing LAR No. 158 of 2019. It was exclusively prosecuted by the respondent No.5. The compensation was enhanced by the reference court. In pursuant to the award by

the reference court, the Regular Darkhast No. 153 of 2021 is filed by the respondent No.5 exclusively. An amount of Rs. 47,21,200/- is deposited therein.

13. The petitioners are third parties for the execution of award passed by the court. Petitioner/Yogesh has filed Special Civil Suit No. 158 of 2021 for partition, but his application at Exhibit-39 stood rejected by speaking order on 06.05.2022 by the trial judge. The petitions challenging the said order filed in the High Court have been withdrawn from time to time. The petitioners failed to secure any orders to safeguard their so called interests from the Civil Court and the High Court.

14. The application at Exhibit-17 & 34 filed by the petitioners are under Order 21 Rule 26. Only judgment debtors are entitled to invoke the said provisions. The petitioners are not the judgment debtors. Both the applications are not tenable. The stranger to the decree has no right to invoke the provisions. The petitioners are not judgment debtors.

15. The application at Exhibit-20 is filed under Order 1 Rule 10. The petitioners are not the necessary parties for determination of the real matter in dispute. Their attempts failed before civil court in special civil suit No. 158 of 2021 and subsequently in the High Court

on the successive occasions. Hence, no case is made out to exercise power under Order 1 Rule 10. In this regard, reference needs to be made to Paragraph No. 6 of the judgment in the matter of Raghunath Dhondur (supra) which is as follows :

“6. No doubt the Civil Court gets the jurisdiction as a result of the reference being made by the Collector and/or the Acquisition Officer either as provided under section 18 or under section 30 of the Land Acquisition Act and even though to the proceeding which are referred to the Civil Court, the procedure applicable is that of Code of Civil Procedure, still the same will not be applicable when we are considering the issue of addition of parties either Under Order 1, Rule 10 of the Code of Civil Procedure or for any other purpose, because any other procedure other than the procedure which has been provided under the Land Acquisition Act if followed will be inconsistent with the provisions of the Land Acquisition Act as has been held by the Apex Court in the case reported in A.I.R.1996 S.C. 1513 in the case of (Ambey Devi v. State of Bihar)¹, and in 1986 M.L.J. 844 in the case of Govind v. Savitribai.”

16. For the reasons stated above, application at Exhibit-20 is liable to be rejected. Lastly, application at Exhibit-72 is filed under section 47 of CPC. Both the petitioners are not the judgment debtors and therefore they are not entitled to maintain application under section 47. In this regard, it is useful to refer paragraph No.7 of above referred judgment in the matter of Raghunath Dhondur (supra).

“7. In view of the aforesaid decision, as the petitioner was not a party to the Land Acquisition Reference, he was not entitled to appear before the Civil Court. In the present matter, the petitioner appeared in the proceeding after the reference under section 18 has been adjudicated and when the execution petition was pending. In the said execution petition also he was not a party and therefore he is not entitled to appear because section 47 of the Code of Civil Procedure, after amendment, does not permit such parties to appear in the

proceedings. In fact those persons who are parties to the original proceedings before the Civil Court which passed the decree, their legal representatives and the purchasers of the said property as defined in section 47 are only entitled to appear while the question of discharge, satisfaction etc. of the decree is to be considered under section 26(2) the award passed by the Civil Court: in a reference under section 18 is a decree and therefore, the provisions of section 47 of the C.P. Code will cover up the said decree. In the result the present petitioner is not entitled to appear before the Executing Court for the purposes of apportionment of the enhanced compensation. The ultimate analysis shows that the application which was filed by the present petitioner before the Executing Court by Exhibit 20 was without jurisdiction and the Executing Court should not have entertained such an application. Therefore appropriate remedy which was available to the present petitioner was to file a suit in view of the provisions of section 51 second proviso and to seek stay orders in that proceedings. However, admittedly such a separate suit was not filed. Mr. Dixit, learned Counsel concedes to the position that the petitioner should have filed the suit for adjudication of his right for the apportionment of the amount, and therefore, submits that he is advising his client petitioner to file the suit before the Civil Court of competent jurisdiction to decide the claim of the present petitioner in respect of the amount of Rs. 4,60,040/- which is the subject matter of the present Civil Revision Application. He only expressed that the time has been consumed in prosecuting this remedy namely the application Exhibit 20 and thereafter the present Civil Revision Application. However, in view of the provisions of section 14 of the Indian Limitation Act, if the party has prosecuted with due diligence another civil proceedings in good faith, in that eventuality he is entitled to exclude such time while calculating the period of limitation. Whether the present petitioner has bonafide and in good faith prosecuted the application Exhibit 20 and this Civil Revision Application will be a question to be considered by the Civil Court while excluding the period of limitation to entertain the suit. No doubt, here is a petitioner who had no notice of the proceedings under section 18 of the Land Acquisition Act for enhancement of the compensation, however, the moment the petitioner got the information he has approached the Civil Court but the fact of bonafides or good faith are matters to be adjudicated by the Civil Court while excluding the said period consumed in prosecuting another remedy namely the present Civil Revision Application and thereafter to exclude the said period while calculating the period of limitation for the suit. As the statement has been made by the learned Counsel for the petitioner, I find it appropriate that the petitioner may allowed to file such a suit if he desires, within a reasonable time."

17. I am of the considered view that all four applications are rightly rejected by the executing Court. No case is made out by the petitioners to exercise writ jurisdiction.

18. The petitioners are under obligation to disclose material facts. They have suppressed that application at Exh-39 filed in special civil suit No. 158 of 2021 was rejected. Writ Petition No. 10614 of 2022 was dismissed as withdrawn. Thereafter, on successive occasions, the petitions were filed for identical reliefs which were also dismissed as withdrawn. The Respondent No. 5 has rightly pointed out by filing affidavit-in-reply that there is suppression of material facts. This Court is always reluctant to exercise the jurisdiction in favour of a party who is guilty of suppression of material facts. For that purpose, the judgment of the Supreme Court rendered in the matter of Ram Avtar Shukla (Supra), especially paragraph No. 4 is aptly applicable.

19. For the reasons stated above, the challenge of the petitioners fails. Both the petitions are dismissed. Rule is discharged.

[SHAILESH P. BRAHME, J.]