

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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WRIT PETITION No.4013 OF 2021

Sou Vatsala Valaku Yashwantrao & Anr. .. Petitioners
Versus
Moreshwar Janardan Deshmukh & Ors. .. Respondents

**ALONG WITH
INTERIM APPLICATION No.3353 OF 2023
IN
WRIT PETITION No.4013 OF 2021**

Sunil R. Chitre .. Applicant

In the matter between

Sou Vatsala Valaku Yashwantrao & Anr. .. Petitioners
Versus
Moreshwar Janardan Deshmukh & Ors. .. Respondents

Mr.S.M. Sabrad a/w Mr.Amey Sawant and Mr.Suraj Naik i/by Mr.R.D. Suryawanshi for the Petitioners.

Ms.Jahanara Sarkhot i/by Mr.Ganesh Narula and Mr.Mubeen Sirkhot for the Applicant in IA No.3353 of 2021 and for the Respondent No.4 in Writ Petition.

Mr. Girish Godbole, Senior Advocate a/w Mr.Bharatkumar Nukte, Mr.Amey Deshpande, Mr.Harsh Nishar, Mr.Gaurang Jhaveri, Mr.Niyah Sontakke and Ms.Vandana Bait for the Respondent No.1.

Mr.Devidas More for the Respondent No.3.

Mr.P.C. Mohite for the Respondent No.6.

Mr.Rushikesh Kale for the Respondent nos.7(1) and 7(2).

Mrs.Sushma S. Bhende, AGP for the Respondent nos.8 and 9.

**CORAM : R.D. DHANUKA &
GAURI GODSE, JJ.**

DATE : 18th April 2023

P.C.:-

. Learned counsel for the Petitioners seek liberty to delete the name of the Respondent No.5 from the cause title of the petition.

2. We grant leave to the Petitioners to delete the name of the Respondent No.5. Amendment to be carried out forthwith. Re-verification is dispensed with.

3. Rule. Learned counsel for the respective Respondents waives service. Rule is made returnable forthwith. By consent of the parties, petition is taken up for final hearing.

4. This writ petition has been placed on board several times when various ad-interim orders were passed by this Court after hearing learned counsel for both the parties.

5. On 6th March 2023, this Court was of the view that the competent authority could not have disbursed the compensation amount in favour of Respondent Nos.1, 2 and 4. This Court accordingly directed the Respondent Nos.1 to 4 to deposit the 4/7 share of the compensation

received by them from the competent authority in respect of the land in question.

6. On 3rd April 2023, this Court recorded that the Respondent No.4 has filed Interim Application No.3353 of 2023 for modification of order passed by this Court on 6th March 2023. To test the bonafide of the Respondent No.4, he was directed to deposit the original title documents of property bearing Survey No.33/A/7 situated at Mouje Dahivali, Taluka Ambernath, District Thane within one week from the date of the said order with the Registrar (Judicial) of this Court. The said order, however, is not complied with. It is the case of Respondent No.4 that the order passed by this Court was not uploaded immediately and thus the said order could not be complied with.

7. In paragraph 5 of the said order, this Court directed that the Respondents, who have been paid compensation by the competent authority shall file an Affidavit of Disclosure as to how the amount received by them, has been utilised or invested so far and produce the proof of such investments. It was further directed that the affidavits shall indicate if such investments are intact or state the status of such investments as on date.

8. In pursuance of the said order, Respondent No.1 has filed Affidavit of Disclosure notarized on 18th April 2023 which shows that an amount of Rs.6,85,70,000/- has already been spent out of the amount of Rs.7,50,11,785/- received by Respondent Nos.1 and 2. It is disclosed in the said affidavit that most of the amounts alleged to have been spent are without any supporting documents and thus cannot be accepted. Be that as it may, Respondent No.1 has relied upon the Valuation Report of the Agricultural Lands annexed to the said Affidavit of Disclosure at Exhibit '**D Colly**' showing the valuation of the property as Rs.3,87,14,434/- standing in the name of Respondent Nos.1 and 2.

9. Mr.Godbole, learned senior counsel for Respondent No.1, on instructions, state that there are no title deeds of the properties as the same are ancestral properties. Learned senior counsel further states that if there are any title deeds in respect of the said property described in paragraph 9 of the said Affidavit of Disclosure, the same would be deposited with the Registrar (Judicial) of this Court within one week from the date of tracing such title deeds, if traced by Respondent No.1. Statement is accepted. If the title deeds are traceable, the fact of the original title deeds shall be disclosed to the Petitioners' advocate within one week from the date of such deposit.

10. Mr. Godbole, learned senior counsel for Respondent No.1, on instructions, states that his client has no objection to file an affidavit to state that his client has no objection if the endorsement is made in the said 7/12 extract by the authority to the effect that the said property is given as security to secure the claim made by the Petitioners and other two sisters, who have not received the amount of compensation in respect of the writ property. Statement is accepted. Such affidavit shall be filed within one week from today with a copy to be served upon the Petitioners' advocate.

11. The Revenue Authority to make an endorsement in the 7/12 extract of the said property described in paragraph 9 of the Affidavit of Disclosure stating that the said property is given as security and no third party rights shall be created in respect of the said property till further orders. The Revenue Authority shall make this endorsement within one week from the date of receipt of such affidavit from the Respondent No.1. Copy of such revised revenue entry shall be filed by the Respondent No.1 in this Court within one week from the date of receipt of such revised revenue entry with a copy to be served upon the Petitioners' advocate simultaneously.

12. Since we are of the view that the explanation given by Respondent No.1 in the Affidavit of Disclosure is not proper and is not in compliance with the orders passed by this Court, at this stage, we direct Respondent No.1 to deposit a sum of Rs.2,20,00,000/- in this Court on or before 27th April 2023 with intimation of such deposit to the Petitioners' advocate.

13. Mr.Godbole, learned senior counsel for Respondent No.1, on instructions, states that his client is ready and willing to deposit a sum of Rs.60,00,000/- within one week from today. In view of the fact that the Affidavit of Disclosure does not give true and correct disclosure, we direct Respondent No.1 to deposit a sum of Rs.2,20,00,000/- in this Court and not a sum of Rs.60,00,000/-.

14. The Respondent Nos.7(1) and 7(2), who are the legal heirs of Tarabai Deshmukh, Original Plaintiff No.2 in Special Civil Suit No.195 of 2014, have filed an affidavit on 17th April 2023 stating that the Respondent No.1 did not inform the deponents about the impugned order dated 28th February 2021 while filing the said pursis in the pending suit. Since the deponents did not receive the compensation amount of their mother's share in the writ property, they have filed an application

for withdrawal of the said pursis before the learned Judge at Kalyan on 17th April 2023. It is further stated in the said affidavit that Respondent Nos.7(1) and 7(2) are willing to return the amount of Rs.26,00,000/- received by them from Respondent No.1 as against the said pursis. Statement made in paragraph 4 of the said affidavit is accepted.

15. Learned counsel for Respondent Nos.7(1) and 7(2) states that the said amount of Rs.26,00,000/- will be deposited within one week from today in this Court. Statement made by the learned counsel is accepted as and by way of undertaking to this Court.

16. Respondent No.4 has filed an Affidavit of Disclosure dated 18th April 2023. We have perused paragraph 3 of the said affidavit which indicates that Respondent No.4 had already spent a sum of Rs.11,69,24,960/- out of the amount of Rs.11,78,66,051/-. A bare perusal of the said statement shows that the same is without any supporting documents and is ex facie exaggerated. The amount disclosed in the said affidavit cannot be accepted as true and correct amount. Be that as it may, since Respondent No.4 has already received the amount much more than the entitlement of the compensation. In order to secure the claim of the Petitioners and two others, we direct Respondent No.4 to deposit original

copies of the investments disclosed in paragraphs 3(a) to 3(g) with the office of the Registrar (Judicial) of this Court, within two weeks from today.

17. In so far as the investment of Rs.50,00,000/- alleged to have been made in the HDFC disclosed in paragraph 3(h) is concerned, Respondent No.4 shall obtain certificate from HDFC showing that Policy No.24461898 in the sum of Rs.50,00,000/- was obtained by Respondent No.4 and the same is subsisting. If any certificate or duplicate policy is issued by the HDFC, the same shall be filed with the office of the Registrar (Judicial) of this Court within two weeks from today.

18. Learned counsel for Respondent No.4 agrees and undertakes to file title deeds in respect of the Agricultural Lands disclosed in paragraph 3(s) and 3(w) of the said affidavit, with the office of the Registrar (Judicial) of this Court within one week from today.

19. Learned counsel for Respondent No.4, on instructions, states that her client will deposit a sum of Rs.1,28,50,000/- in this Court within ten days from today. Statement made by the learned counsel is accepted as and by way of undertaking to this Court.

20. Learned counsel for Respondent No.4 also tendered original title deed in respect of the Agricultural land at Survey No.33A/7, Village Dahivali, Taluka Ambernath, District Thane, Maharashtra. She submitted that as per Valuation Report in respect of the said property belonging to Respondent No.4 is in the sum of Rs.8,83,20,000/-. She submitted that the said property is free from all encumbrances. Her client will not create any encumbrances on the said property till further orders. Statement is accepted as and by way of undertaking to this Court. Original title deed of the said property shall be retained by the learned Registrar (Judicial) of this Court in his safe custody.

21. It is made clear that if the amounts agreed to be deposited or directed to be deposited by this Court in earlier paragraphs of this order, are not deposited within the time prescribed, office to issue a show cause notice under the provisions of Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India as to why an action against Respondent Nos.1, 2, 4 and 7(1) & 7(2) should not be initiated for wilful disobedience of the orders passed by this Court on 6th April 2023 and 3rd April 2023, returnable on 19th June 2023. If the directions issued by this order are complied with by Respondent Nos.1, 2, 4 and 7(1) & 7(2), these Respondents to inform the Registrar (Judicial) about compliance

of the orders within one week from the date of complying the said orders.

22. In so far as the impugned order dated 28th February 2021 is concerned, a perusal of the said order clearly indicates that the said order was passed on Sunday. Though there were serious disputes raised by the objectors before the competent authority in respect of the title of the writ property and though the competent authority was of the opinion that there are disputes between the parties, the competent authority directed to disburse the compensation amount in favour of the selected persons.

23. Learned AGP for the Respondent Nos.8 and 9 could not defend the said perverse and illegal order passed by the competent authority on 28th February 2021. In our view, the said order passed by the competent authority is contrary to Section 3-H(4) of the National Highways Act, 1956 and thus deserves to be quashed and set aside. It is, however, made clear that the contents of the affidavit filed by the Respondent Nos.7(1) and 7(2) are not accepted by the Respondent No.1. We have not gone into the allegations made in the said affidavit nor gone into the correctness and validity of Release Deed relied upon by the

Respondent Nos.1 and 2. All contentions of all the parties on the issue of correctness of allegations made against Respondent Nos.7(1) and 7(2) and the Release Deed are kept open.

24. Learned Registrar (Judicial) of this Court shall transmit the amount that will be deposited in this Court to the reference Court within four weeks from the date of the amount that would be deposited by the parties as set out in the earlier paragraphs of this order along with the title deeds which are deposited and would be deposited by some of the Respondents. The competent reference Court shall keep those documents in safe custody till disposal of the reference. In so far as the amount that would be transmitted by the Registrar (Judicial) to the competent reference Court is concerned, such amount shall be invested in a fixed deposit in any nationalized bank initially for a period of two years and for a like period till such reference is disposed off.

25. In so far as Regular Civil Suit No.126 of 2014 and Special Civil Suit Nos.195 of 2014 & 47 of 2021 which are already filed by the Petitioners in the Court of Civil Judge, Senior Division, Kalyan are concerned, parties are at liberty to apply for expeditious hearing of the said suits. If any application is made by any of the parties for expeditious

hearing of the said suits, same shall be considered by the Civil Judge, Senior Division, Kalyan on its own merit.

26. Writ petition is made absolute in terms of prayer clause (a). Reference shall be made by the competent authority within two weeks from today. In view of disposal of the writ petition, Interim Application does not survive and is accordingly disposed off. Parties as well as the Registrar (Judicial) to act on the authenticated copy of this order.

27. It is made clear that though the petition is disposed off and since we have directed the office to issue a show cause notice for wilful disobedience of the orders passed by this Court, show cause notice would be heard independently. Liberty to apply in case of difficulty.

28. It is made clear that, at this stage, we have not expressed any views on entitlement of each party to receive any particular amount of compensation in respect of the writ property. All contentions will be decided by the competent reference Court.

GAURI GODSE, J.

R.D. DHANUKA, J.