



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

35 WRIT PETITION NO. 9247 OF 2023

Dharma Motiram Chavan And Another
VERSUS
The Special Land Acquisition Officer 1 And Others

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Advocate for the Petitioner : Mr. Kale Ajeet B.
AGP for Respondents-State : Mr. B. A. Shinde
Advocate for Respondent Nos.3A to 3D : Mr. Patil (Borse) Paresh B.

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CORAM : R. M. JOSHI, J.

Dated : July 29, 2024

PER COURT :-

1. By consent of both sides, heard finally at the admission stage.
2. This petition takes exception to order passed below Exhibit 84 and Exhibit 160 in Regular Darkhast No.160/2021 on the ground that the petitioners are not given opportunity of hearing nor the reasoned orders are passed by the Execution court.
3. The facts in this case are not in dispute to say that there is a decree passed in LAR No.1576/1998. The Regular Darkhast No.160/2021 is instituted for execution of the said award. In this proceedings an application came to be filed vide Exhibit 84 to bring legal heirs of deceased Adhar Motiram Chavan (Decree Holder) on record. This application was filed on 01/09/2022. The execution Court has called upon other side to file say. Petitioners i.e. respondent Nos.3 and 4 sought time to file say on the ground that copy of the application has not been

received and also the documents concerned. It is thereafter application Exhibit 160 came to be filed by the petitioners for directions for issuance of witness summons as described in paragraph No.4 of the application to Gramsevak / Gramvikas Adhikari and other two persons. This application came to be rejected by passing order dated 21/06/2023. On the same day application Exhibit 84 stood allowed.

4. Learned Counsel for petitioners submits that the petitioners had sought time to file say on the ground that the copy of the application with the relevant documents are not received. It is his submission that before any order could be passed on the said application, applications Exhibit 138 and 160 were filed with specific averment that the death certificate of the deceased issued by two different authorities is doubtful so also identity of father and mother, and therefore, serious doubt is created about the relationship between the parties. Hence, examination of the witness is necessary. On instructions, he made statement that if the petition is allowed, the petitioners would examine Gramsevak/ Gramvikas Adhikari of Khadi to substantiate his contention. He further makes positive statement to the effect that no other including witness from Hyderabad Local Authority would be examined.

5. Learned Counsel for respondent opposed the said contention by drawing attention of the Court to the various proceedings wherein the

petitioners has never disputed the respondents to be legal heirs of deceased Adhar Motiram Chavan. It is his submission that the order of proceeding without say passed on Exhibit 84 has not been challenged and hence it is not open to challenge final order passed therein. He further submits that in spite of granting of sufficient opportunity, no say was filed. Hence, there is no error committed by the Execution Court in rejecting the application Exhibit 84. He has also drawn attention of the Court to the order passed below Exhibit 138 and 160. In order to argue that the facts of the case, the said orders too are justified.

6. There cannot be any dispute about the fact that once a serious objection is raised by any party with regard to legal heirs of deceased person on record and more particularly when other side is called upon to file say, it is duty of the Court to atleast to conduct summary inquiry in to the said objection. Here in this case there are specific allegations made Exhibit 138 and 160 about the place of death, the death certificate of deceased Adhar and names of his parents to be doubtful. In such circumstances, even if for the sake of argument it is accepted that the petitioners have not raised any objection with regard to the legal heirs of deceased Adhar herein before, it was not open for the execution Court to simply ignore the objection so raised.

7. Perusal of order passed below Exhibit 84 indicates that there is no

reason recorded for allowing the said application. So also application Exhibit 160 has been decided with the observations that the execution Court cannot go beyond the decree. Such observations are wholly unjustified in the present case as the inquiry which was sought to be conducted at the instance of the petitioners was never beyond the jurisdiction of the Court and in no case it would amount to going beyond decree. Similarly order passed below Exhibit 138 indicates that there is no reason recorded for not considering the request of the petitioners. It just says that in view of the order passed by the predecessor of the said Court, application was rejected.

8. Having regard to the aforestated facts, it would be in the interest of the justice that the impugned orders are set aside and applications are relegated back to the execution Court for its decision on merit. However, at the same time having regard to the fact that any proceeding are pending for last three years and it involves right of the respondents to receive compensation, the execution Court is directed to decide the said application within period of two months.

9. The petitioners are permitted to examine Gramsevak/ Gramvikas Adhikari in support of his contention and shall not be allowed to lead any other oral evidence.

10. It is clarified that the time granted to the Execution Court to decide this application shall not be extended beyond two months in any circumstances. If it is found by the Execution Court that the petitioners are not co-operating in decision of the application expeditiously, then the right of the petitioner to substantiate his case shall stand forfeited after two months.

11. Petition stands disposed of in above terms.

(R. M. JOSHI, J.)

vj gawade/-.