



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11834 OF 2019

Ujwalabai Vijay Chavan

...Petitioner

Versus

The State of Maharashtra & Ors

...Respondents

...

Mr. V. B. Dhage, Advocate for the Petitioner

Mr. S. K. Tambe, AGP, for the Respondent Nos. 1 and 2

Mr. S. S. Deve, Advocate for Respondent No. 3

Mr. A. B. Kharosekar, Advocate for the Respondent Nos.
4 to 6

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CORAM : RAVINDRA V. GHUGE &
R. M. JOSHI, JJ

RESERVED ON : MARCH 13, 2024

PRONOUNCED ON : APRIL 04, 2024

ORDER (PER R. M. JOSHI, J)

1. Being aggrieved by the highhanded action of Respondent No. 3 in disbursing compensation in respect of acquisition of land in question, in favour of Respondent Nos. 4 to 6 by order dated 25.02.2019, this Petition is filed.

2. Petitioner claims that Respondent Nos. 4 to 6 are her paternal uncles who along with father of Petitioner were holding ancestral properties admeasuring 1H 60R at village Malegaon. Since after

demise of father of Petitioner, these Respondents failed to pay any heed towards her request for partition of the suit properties, RCS No. 94/2013 came to be filed before CJJD, Loha. During the pendency of the said suit, a notification was published on 23.06.2013 under Section 3A of the National Highways Act, about acquisition of said land. Respondent No. 3 passed final award on 02.08.2018 indicating names of Respondent Nos. 4 to 6 to be the persons entitled to receive the said compensation. In view of the Petitioner's objection, the concerned officer/authority had directed the said amount of compensation to be deposited in the Court. However, after the change of officer, Respondent Nos. 4 to 6 filed false affidavit informing the said authority about dismissal of RCS No. 94/2013. On the basis of false affidavit, without verifying the facts and also without issuing any notice to the Petitioner by order dated 25.02.2019, Respondent Nos.4 to 6 were allowed to withdraw the awarded compensation. Hence, this Petition.

3. Respondent Nos. 4 to 6 opposed the Petition by filing affidavit of Mahadev Pawar contending that the

Land Acquisition Officer had called upon these Respondents to file affidavit for withdrawal of amount of the compensation and on the basis of same, withdrawal was allowed. It is stated that the learned CJJD, Loha by passing order dated 11.02.2014 rejected application Exh. 5 and accordingly, same was informed to the concerned authority.

4. Sharad Mandalik, Sub-Divisional Officer, Kandhar and competent Authority Land Acquisition under National Highways Act filed affidavit contending that Respondent Nos. 4 to 6 submitted affidavit before the predecessor of this deponent and it was contended in said affidavit that Civil Suit for partition is dismissed, and therefore, the amount of compensation is released in favour of Respondent Nos. 4 to 6.

5. Learned Counsel for Petitioner apart from oral submissions, filed written notes of arguments. He has placed on record photocopy of judgment dated 26.11.2020 passed in RCS No. 94/2013 indicating that the said suit is now partly decreed and the Petitioner and the Respondents therein are held to be entitled for their

respective shares in the suit properties.

6. From the pleadings it is clear that before issuance of notice of acquisition of the land in question, suit for partition of said land was filed by the Petitioner against Respondent Nos. 4 to 6 being RCS No. 94/2013. Though application Exh. 5 was rejected by the Civil Court, but there is no dispute about the fact that the said suit was pending adjudication at the time of passing of impugned order by Respondent No. 3. Record further indicates that previous order came to be passed by the competent Authority on 22.05.2018 after hearing both sides. It is only after considering the fact about pendency of the suit and even order below Exh. 5 dated 11.02.2014, it was directed that the amount of compensation be deposited with the District Court by observing that the Civil Suit is pending.

7. It would be relevant to refer to Section 3H(4) of the National Highways Act, which reads thus:

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute

to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

This provision clearly indicates that in case there is any dispute with regard to the apportionment of the compensation, reference needs to be made to Civil Court for determination of the same. It is not open for the Authority to adjudicate claim of the parties, in the proceeding which is summary in nature.

8. Having regard to the facts of present case wherein a specific objection was raised by the Petitioner before competent authority objecting to the disbursement of amount of compensation awarded in favour of Respondent Nos. 4 to 6 by citing fact of pendency of the suit for partition between them. Previous officer had rightly taken note of the fact of pendency of suit as well as order passed by Civil Court below Exh. 5, while passing order dated 22.05.2018 and directed authority to deposit the amount of compensation with the District Court.

9. We are shocked to find that without any change

in circumstances, subsequent officer had called upon Respondent Nos. 4 to 6 to file affidavit and on the basis of such affidavit, and without hearing Petitioner, it is observed that there is no need to deposit amount before the Court as suit is already dismissed. Consequently, amount was allowed to be withdrawn by the Respondent Nos. 4 to 6. Even if it is accepted that an affidavit was filed by Respondent Nos. 4 to 6 contending that the RCS No. 94/2013 is dismissed and on the basis of said statement impugned order is passed, it is pertinent to note that in view of specific objection of Petitioner and previous order dated 22.05.2018, it was duty and obligation on the concerned officer to hear Petitioner and also to verify the said fact before passing order of disbursement of amount of compensation. This order smacks mala fides and there is reason to believe that order impugned has been passed for extraneous consideration.

10. In such state of affairs, we won't hesitate to observe that *prima facie* there is collusion between concerned Officer and Respondent Nos. 4 to 6, for the withdrawal of amount of compensation. Moreover,

apparently by filing a false affidavit stating dismissal of suit, Respondent Nos. 4 to 6 have committed perjury.

11. This Writ Petition is, therefore, partly allowed with the following directions :-

- a] The Respondent No. 3 is directed to initiate appropriate criminal proceedings against Respondent Nos. 4 to 6, as well as concerned officer who had passed impugned order dated 25.02.2019, for perjury.
- b] Having regard to the aforestated facts, the order of disbursement of amount of compensation dated 25.02.2019 is set aside.
- c] Respondent Nos. 4 to 6 are hereby directed to deposit amount of compensation received by them, with Respondent No. 3, along with interest @ 6% p.a. within a period of 90 days from today.
- d] The issue of disbursement/apportionment of the said amount of compensation be decided on the basis of finality attained after the judgment and decree

that will be passed in RCS No. 94/2013.

12. Learned Registrar (Judicial) to forward copy of this order to Respondent No.3 for initiating action of perjury against Respondent Nos. 4 to 6 and appropriate action as provided by law against concerned officer, who had passed impugned order. We make it clear that these observations are on *prima facie* consideration of record.

(R. M. JOSHI, J)

(RAVINDRA V. GHUGE, J)

Malani