



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 981 OF 2024

Javed Ahammad Haji Mohammad Shaban

VERSUS

The Union Of India Through Ministry Of Shipping And
Others

- Mr. G. M. Kumar More, Advocate for the Petitioner
- Mr. A. G. Talhar, DSGI for Respondent Nos. 1 & 4
- Ms. A. S. Mantri, AGP for the Respondent No. 2/State
- Ms. D. S. Manorkar, Advocate for the Respondent No. 3

CORAM : R.M. JOSHI, J

DATE : DECEMBER 11, 2024

PER COURT :

1. This Petition takes exception to order dated 20.10.2023 passed by the learned Principal District Judge, Dhule in Civil M.A. No. 422/2022.

2. Petitioner is the land owner whose land was acquired for National Highway. An award was passed. Since he was aggrieved by the quantum of compensation, he initiated arbitration proceeding before the Collector. The Collector passed award dated 17.07.2021. A sum of Rs. 1,35,99,541/- is awarded in favour of the Petitioner/Claimant. This award was put to execution in Civil M.A. No. 422/2022. During the said proceedings,

it was sought to be argued on behalf of Respondents that joint measurement has been conducted before passing of arbitral award and land of 300 sq meters only was acquired and not 3,500 sq meters in respect of which compensation is granted.

3. Learned Counsel for the Petitioner submits that it is not open for the Execution Court to go into the merits of the award/order which is sought to be executed. To support his submissions, he placed reliance on the judgment of the Hon'ble Supreme Court in case of Pradeep Mishra vs. Harijivan J. Jethwa, Civil Appeal No. 6375 of 2023.

4. Learned Counsels for Respondents argued that if it is found that the award has been passed in respect of land admeasuring 3500 sq meters when the land acquired is only 300 sq mtrs, it can be said that it is a fraudulent award. If the award is passed by fraud, the same is *non est* and same can be taken exception to in any proceedings including executing proceedings.

5. There cannot be any dispute with regard to the

position of law that any award/order/decreed obtained by fraud is null and void. Such a decree can be taken exception to even in collateral proceedings. The law on this point is well settled by the Hon'ble Supreme Court to say that a fraudulent decree being *non est* even can be taken exception before the Execution Court. *Prima facie* if it is the contention of the Respondents herein that the acquisition is only of land admeasuring 300 sq meters whereas the Collector has granted compensation in respect of 3500 sq meters, it can be said that the said award is obtained by fraud. In such circumstances, learned PDJ, Dhule has only called upon the Respondents to produce documents of measurement in respect of land in question to ascertain the said facts.

6. It cannot be ignored that this is not a litigation between the private parties. The public exchequer is at stake and no wrongful encroachment can be allowed to any person. If there is *prima facie* substance in the contention of the Respondents that this award is obtained by fraud, it would be open for the Execution Court to look into the said issue and decide the same in accordance with law. This Petition,

therefore, sans merits, hence, dismissed.

7. Learned Counsel for the Petitioner makes grievance that though order impugned is passed in the year 2023, till date Respondents herein i.e., opponents in the execution proceedings have not produced the documents as directed by the Court below.

8. In view of this, Respondents are directed to produce documents, as per the impugned order, within a month. If the documents are not produced, it is open for the Execution Court to proceed further with the execution in accordance with law.

(R.M. JOSHI, J.)