

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6336 OF 2023

WITH

WRIT PETITION NO. 6337 OF 2023

Neelakshi Subhash Patil

.. Petitioner

Versus

The Sub-Divisional Officer,
Pandharpur Division,
Pandharpur & Ors.

.. Respondents

.....

- Mr. R.B. Huded & M.V. Chavan for Petitioner
- Mr. Manoj Badgujar for Respondent No. 2

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 13, 2024

P. C.:

1. Heard Mr. Huded, learned Advocate for Petitioner and Mr. Badgujar, learned Advocate for Respondent No. 2.

2. Issue arising in both the Writ Petitions being the same. Hence both Petitions are heard together and being disposed of by this common order. However, for the sake of convenience, relevant facts are noted from Writ Petition No. 6336 of 2023. Facts are also identical.

3. Order impugned in Writ Petition No. 6336 of 2023 is dated 29.11.2022 passed by the learned Reference Court in an Application filed below Exh. 36 in L.A.R. No. 13 of 2020 which is an apportionment reference heard by the Court. Award in the L.A.R. was

declared in 2019. Learned S.D.O. filed apportionment reference for effecting disbursal of the compensation declared under the award to the claimants mentioned in the award. During pendency of that Reference, Petitioner filed impleadment Application below Exh. 36 contending that L.A.R. was filed in respect of an area ad-measuring 17.800 sq. mtrs. out of Gat No. 44 of Village Kamati (Budruk). Petitioner contended that the land originally belonged to her grandfather Manajirao Deshmukh and that she had filed R.C.S. No. 1222/2012 for effecting partition of the properties belonging to her grandfather so also to include all properties which were owned by Balwantrao Deshmukh and Manajirao Deshmukh. Thus it is seen that the Suit is filed in the year 2012. It is seen that no orders are procured by Petitioner in that suit in so far as the subject property which is acquired is concerned.

4. Mr. Huded has drawn my attention to the Suit plaint which is at Exh. A, page Nos. 21-38 of the Petition. It is seen that this Suit was filed initially in the year 2009 and numbered as Special Suit No. 94/2009 which subsequently was renumbered as R.C.S. No. 1222 of 2012. Perusal of Suit plaint reveals that the subject acquired property i.e. Gat No. 44 is not the subject matter of the said Suit at all. Petitioner therefore filed an amendment application in that Suit on 17.09.2022 which is allowed. Mr. Huded would contend that by virtue

of allowing the amendment application in the Suit filed by Petitioner, subject property which is acquired is now part of the suit proceedings and therefore it is now required to be held as property of either Balwantrao or Manajirao to be the subject matter of the partition. He has drawn my attention to the impugned order and would submit that the only reason for rejection of impleadment application in the L.A.R. proceedings was because the subject property which stood acquired in the award was not included in the list of the suit properties which were the subject matter of partition in the suit filed by the Petitioner i.e. Suit No. 94 of 2009. He would submit that since the learned Trial Court in that suit proceedings have now allowed the amendment application so as to include Gat No. 44 as one of the suit properties for partition, Petitioner has become a proper and necessary party for impleading in the reference proceedings.

5. I have perused the impugned order and the pleadings in the present case. Admittedly Petitioner is not a claimant in the Land Acquisition proceedings as also in the award declared by the Land Acquisition Officer. It is clarified that this land acquisition is under Section 3H of the National Highways Act, 1956. At the first available opportunity, it was incumbent upon the Petitioner to raise objection when the subject land out of Gat No. 44 was proposed for acquisition. Petitioner has filed amendment application in September 2022 in her

pending Suit which is a clear afterthought though substantial compensation under Section 3H of the National Highways Act stands deposited pursuant to acquisition of the subject land bearing Gat No. 44. It is an admitted position that the subject land acquired was not part of Petitioner's own suit filed in the year 2009 for partition and as such it revolts against the case of the Petitioner. Amendment sought after almost 13 years is nothing but a clear afterthought in view of claim to the enormous compensation. In any event conduct of the Petitioner in respect of the aforementioned timeline cannot be appreciated and accepted by the Court more so because the pleadings are replete with several suit proceedings between the parties as also compromise decrees which have been passed during the interregnum. Substantial rights if so available to the Petitioner in Gat No. 44 ought to have not only been pleaded but contended with documentary evidence in the first instance itself. It is seen that the same has not been done. In any event, assuming for the sake of argument that Petitioner is the granddaughter of Manajirao Deshmukh and she is deprived of any share in the ancestral property belonging to the said Manajirao, the remedy of the Petitioner cannot lie by filing an impleadment application in Reference proceedings which is sought to be done. Remedy lies elsewhere. I find no reason to interfere with the impugned order dated 29.11.2022. The same is upheld expressly

leaving the right of Petitioner in respect of any alleged properties belonging to her grandfather being ancestral properties to be agitated in appropriate proceedings as may be available to the Petitioner in law. Resultantly Writ Petition No. 6336 of 2023 is dismissed.

6. In view of the above order, Writ Petition No. 6337 of 2023 is also dismissed as the same is identical and in respect of the same parties reserving the right of the Petitioner to file appropriate proceedings as may be available to the Petitioner strictly in accordance with law.

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[MILIND N. JADHAV, J.]

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