

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 534 OF 2023

Kusum Sadashiv Dhone

...Petitioner

Versus

Union of India and Ors.

...Respondents

WITH
INTERIM APPLICATION NO. 13581 OF 2023
IN
WRIT PETITION NO. 534 OF 2023

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Subhash Shivram Pawar & Anr.

...Applicants

In the matter between:

Kusum Sadashiv Dhone

...Petitioner

Versus

Union of India and Ors.

...Respondent

Mr. Bhushan Walimbe i/b Ms. Preeti Walimbe for the Petitioner.

Mr. A.I. Patel, Addl. G.P. a/w Ms. M.S. Bane, AGP for Respondent No.3.

Mr. Laxman Deshmukh for the Respondent No.6 and for Applicant in IA/13581/2023.

Mr. Sagar Joshi for Respondent No.8.

**CORAM : NITIN JAMDAR AND
M.M.SATHAYE, JJ.**

DATE : 2 JANUARY 2024

P.C. :

. Heard learned counsel for the parties. Perused record.

2. The Petitioner/sister is challenging the order passed by the Competent Authority/SDO, Kalyan Sub-Division, District- Thane by which the amount of compensation towards land acquisition is disbursed to Respondent No.6/brother. The Petitioner is also praying for direction to the Competent Authority to decide the claim of the Petitioner under Section 3H of the National Highways Act, 1956 and refer a dispute for apportionment to the competent Civil Court. The Petitioner is further seeking direction to the said Authority to recover amount of Rs.23,50,000/- disbursed to Respondent No.6.

3. The Petitioner and Respondent No.8 are married daughters of one Shivram Dunda Pawar. Respondent Nos. 6 and 7 are sons of said Shivram. Survey No. 112/2 situated at village Rayate, Taluka-Kalyan, District-Thane is the subject matter property, which was acquired amongst other, for the purpose of construction of JNPT Baroda National Highway. It appears that dispute was pending between the Petitioner, Respondent No.8/sister and Respondent Nos. 6 and 7 (brothers) in the Revenue Court. It further appears that despite specific objection raised by the Petitioner with the Competent Authority (Respondent No.4), the said objection was kept pending and the amount of compensation was disbursed to

Respondent No.6.

4. On 17 June 2022, on the admitted premise that Respondent No.6 has received the entire amount of compensation of Rs.2,35,54,945/-, it was informed to the Court that the said amount has already been spent in buying two properties and in business. Two sale deeds were produced in support of this contention, which were taken on record and were directed to be kept in safe custody of the Registrar of this Court. This Court directed Respondent No.6 to deposit a sum of Rs. 58,88,731/- in this Court within a period of 8 weeks and it was further directed that if the amount is deposited, the Registrar would return the original sale deeds. A statement was made on behalf of Respondent No.9 who is son of Respondent No.6 and one of the purchaser, that he will not create third party rights and will not part with possession in respect of the said two properties. Under the said order, the Competent Authority was directed to refer the dispute to the Court under Section 3H(4) of the National Highways Act. It was further directed that upon deposit of the said amount and upon the dispute being referred to the Civil Court, the amount deposited shall be transmitted from this Court to the concerned Civil Court.

5. On 4 July 2022, Respondent No.8 remained present in person as also her lawyer was present. During interaction with Respondent No.8, it was found that she claimed to be entitled to her share in the

compensation. She contended that she had not put any thumb impression on vakalatnama in favour of learned Advocate who appeared for her on earlier occasion, claiming to be appearing for Respondent Nos. 6 to 8. Respondent No.8 was permitted to file vakalatnama of another Advocate. This Court thereafter directed that the original sale deeds deposited with this Court pursuant to the earlier order dated 17 June 2022 shall not be returned till further sum of Rs.58,88,731/- is deposited by Respondent No.6. Respondent No.6 was directed to produce title deeds of other immovable properties in order to secure claims made against him.

6. On 19 August 2022, Respondent Nos. 6 & 7 again prayed for some time to comply with the order of this Court regarding deposit of amount and after considering earlier orders, two weeks time was granted as last chance and it was clarified that in case Respondent No.6 fails to deposit the amount within two weeks, it will be considered as willful breach of this Court and appropriate further orders may be passed on next date.

7. In the aforesaid factual backdrop, the matter appeared before this Court on 27 June 2023, when a categorical statement was made that the amount shall be deposited in this Court on or before 4 July 2023 and indulgence was sought from the Court. The matter was adjourned to 4 July 2023 and it was clarified that if the directions are not complied, the Court will not hesitate to issue suo moto contempt against Respondent No.6 for willfully breaching several orders of this

Court and it was further clarified that it was a last chance.

8. It now transpires that in the interregnum, Respondent No.6 had carried the aforesaid orders dated 17 June 2022 and 4 July 2022 to the Hon'ble Supreme Court by filing a SLP bearing (C) No. 13577 - 13578 of 2022 but, ultimately withdrew the same by Order dated 8 August 2022. Obviously therefore, the orders by which Respondent No.6 was directed to deposit the amount in this Court have attained finality.

9. In such circumstances, now Respondent Nos. 6 and 9 have filed the above interim application seeking modification of the order dated 17 June 2022 and 4 July 2022 and allow them to furnish surety instead of deposit of amount of Rs.1,17,77,462/-

10. Learned counsel Mr. Walimbe for the Petitioner and learned counsel Mr. Joshi for Respondent No.8 submitted that Respondent No.6 has shown utter disregard to the orders passed by this court and still has audacity to file above application. They pointed out that 2 sale deeds are annexed to the application, under which 2 flats bearing Nos. 1807 and 1808 in building No.1 known as Balaji Krishna within Kalyan-Dombivali Municipal limits have been purchased in the name of Respondent No. 9 using the compensation amount. They pointed out that the date of the registered sale deeds show that the transactions are entered on 3 July 2023 which is one day prior to the matter being kept before this Court under order dated 27 June

2023. They submitted that on one hand Respondent Nos. 6, 7 and 9 sought indulgence from the Court and stated that the necessary amount will be deposited in this Court on or before 4 July 2023 and on the other hand the amounts of compensation are utilised for purchase of said two flats on 3 July 2023. Stressing these facts, learned counsel for the Petitioner and Respondent No.8 urged that Respondent Nos. 6, 7 and 9 have clearly committed contempt of this Court and the above application may be dismissed and appropriate contempt proceedings may be initiated against them.

11. Learned Counsel for the Respondent No. 6 submitted that since this is a dispute between brothers and sisters, lenient view may be taken and he is ready to offer the above two flats as security instead of deposit of money.

12. From the aforesaid facts and circumstances, it is clear that the conduct of the Respondent No.6 and 9 are closely bordering on contempt. Simple orders of injunction will not protect the said flats sufficiently, considering the aforesaid conduct. We are informed that the dispute between the Petitioner and private Respondents including Respondent No.8 are already referred to 1st Civil Judge, Senior Division, Kalyan and has been numbered as LAR No. 3 of 2022. Considering the fact that this is the dispute between the brother and sisters and further considering the fact that the amounts which were directed to be deposited in this Court, have been

consumed by the brother for purchasing above flats in defiance to the order of this Court, we think it appropriate that the said flats are put *custodia legis* with the Petitioner as well as Respondent No.8 in possession thereof and as agents of the Court Receiver. Learned counsel for Respondent No. 6, on instructions, has submitted to the orders of the Court and therefore, we deem it appropriate not to initiate any contempt action against any Respondent.

13. In these circumstances, nothing survives in the petition itself and as such the above petition as well as interim application are disposed of by passing following order :

i) The Petitioner and Respondent No. 8 are at liberty to apply to 1st Civil Judge Senior Division, Kalyan for appointment of an appropriate person as the Court Receiver in respect of Flat Nos. 1807 and 1808 on 18th floor of building No.1 known as Balaji Krishna situated on old Survey No. 101 part new Survey No. 29 H. No.5 situated at Revenue village Kanchangaon Taluka-Kalyan, District-Thane, which is lying within the territorial limits of Kalyan-Dombilvali Municipal Corporation

ii) The Petitioner and Respondent No. 8 are also at liberty to file appropriate pleadings or amend existing pleadings, as the case may be, to include the said flats as subject matter

properties of LAR No. 3 of 2022.

iii) The 1st Civil Judge Senior Division, Kalyan will take note of the observation made in this order and proceed to pass order on the above application for Court Receiver, placing the Petitioner and Respondent No.8 in possession of the said two flats as agents of the Court Receiver without payment of any royalty and shall also grant necessary amendment for including the said flats as subject matter properties of LAR No. 3 of 2022.

iv) The Petitioner and the private Respondents shall be bound by the final orders that will be passed in the said proceedings.

14. The writ petition as well as interim application is disposed of in the above terms. No order as to costs.

(M.M.SATHAYE, J.)

(NITIN JAMDAR, J.)