

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14659 OF 2023

Sitabai Ram Borhade & Ors.

.. Petitioner

Versus

The State of Maharashtra & Ors.

.. Respondents

.....

- Mr. Mahesh Vishwakarma, Advocate for Petitioners.
- Mr. Y.D. Patil, AGP for Respondent Nos.1 & 6.
- Mr. Drupad S. Patil, a/w. Mr. Namitkumar S. Pansare, Amicus Curaie.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 19, 2024.

JUDGMENT:

1. The present Writ petition takes exception to the order dated 02.11.2023 passed by the Civil Judge, Senior Division, Panvel in Application filed by Petitioners i.e. Plaintiffs for deciding the objection raised by the department regarding computation of Court Fee as the Court Fee paid being deficit as per Section 6(iv)(ha) of the Maharashtra Court Fees Act, 1959 (for short "**said Act**"). By virtue of the order dated 02.11.2023, learned Trial Court has directed Writ Petitioners i.e. Plaintiffs before the Trial Court to deposit the deficit Court Fee as per Section 6(iv)(ha) of the said Act.

2. Facts necessary for adjudication of the present *lis* are as under:-

2.1. Petitioners are the successors-in-title of deceased Mr. Narayan Buvaji Durge who expired on 17.08.1981 and was declared as 'protected tenant' in respect of an agricultural land property bearing Survey No.95, Hissa No.1 situated at Village – Shirvali, Taluka – Panvel, District – Raigad (for short “**Suit property**”).

2.2. On 29.08.1977, Certificate under Section 32-M of the Maharashtra Tenancy and Agricultural Lands Act, 1948 was issued in favour of deceased Narayan Buvaji Durge on payment of the necessary purchase price.

2.3. Revenue records of the Suit property record the names of legal heirs of deceased Pandurang Hari Durge who was the nephew of deceased Narayan Buvaji Durge as per the Mutation Entry No.992 dated 22.09.2011. The name of deceased Pandurang Hari Durge was mutated in the revenue records of the Suit property as per Mutation Entry No.573 dated 05.04.1985.

2.4. Somewhere in November 2020, Petitioners learnt about issuance of a Notification by Central Government for acquisition of the Suit property and hence Petitioner No.2, being one of the legal heir of deceased Narayan Buvaji Durge filed objection with the Competent Authority claiming right and title in the suit property and also the compensation receivable owing to the acquisition.

2.5. On 18.07.2022, Petitioners challenged the Mutation Entry No.573 dated 05.04.1985 and also Mutation Entry No.992 dated 22.09.2011 by filing RTS Appeal No.453 of 2022 alongwith an application seeking condonation of delay owing to the gross and inordinate delay in filing of the Appeal. The said Appeal was dismissed on the ground of delay on 08.12.2022. Thereafter, Petitioners challenged the order dated 08.12.2022 before the Revenue Minister by filing RTS Appeal No.228 of 2023 and the Revenue Minister by order dated 23.05.2023 stayed the order dated 08.12.2022.

2.6. In the interregnum on 26.03.2021, acquisition of the suit property by the Central Government through National Highways Authority of India for construction of Vadodara – Mumbai National Highway was recorded to be completed as per the provisions of the National Highways Act, 1956, and compensation amount of Rs.2,43,90,000/- was issued, however the compensation in lieu of the acquisition of the Suit property was not taken by the beneficiaries as recorded in Mutation Entry No.1173 dated 26.03.2021. Furthermore on 28.12.2021, legal heirs of deceased Pandurang Durge executed a registered Sale Deed in favour of Mr. Ananta Baban Bangar in respect of the Suit property.

2.7. In the above backdrop, Petitioners filed a Suit for declaration of their title in the suit property, compensation, injunction and other

ancillary reliefs against the legal heirs of deceased Pandurang Durge before the Civil Judge, Senior Division, Panvel. On filing of the Suit plaint, a preliminary objection was raised by the department that the Court Fee paid was deficit as per Section 6(iv)(ha) of the said Act. Petitioners filed an Application for determination of the issue of computation of Court Fee as per the provisions of the said Act and the learned Trial Court after hearing the Petitioners, passed order dated 02.11.2023 directing the Petitioners to deposit deficit Court Fee as per Section 6(iv)(ha) of the said Act within a period of 7 days.

2.8. Hence, the present Petition.

3. Since the issue of the computation of Court Fee in the facts and circumstances of the present case would affect large number of similarly placed cases also wherein there is a dispute between the legal heirs of the original owner for claiming compensation and subsequent purchasers, this Court appointed Mr. Drupad S. Patil, Advocate practicing in this Court as *Amicus Curiae* to assist the Court in determining the issue involved.

4. Mr. Vishwakarma, learned Advocate for Petitioners at the outset would submit that the Suit filed by the Petitioners is primarily for determination of their rights to claim apportionment compensation owing to acquisition of the suit property of their predecessor Narayan Buvaji Durge and hence as per Section 20(xv) and Article 15 of

Schedule I of the said Act, Petitioners are exempted from payment of Court Fee. He would submit that despite that being the case, Petitioners have deposited an amount of Rs.1,54,816/- as Court fee as per the third proviso to Section 6(iv)(d) of the said Act.

4.1. He would submit that the nature of the principal relief prayed for by Petitioners in the Suit being for grant of compensation is not altered merely because the Court has to decide the issue of title of the suit property for the purpose of apportionment. He would submit that as interested persons under the National Highways Authorities Act, 1959 whose land has been acquired and who has not appeared in the acquisition proceedings before the Competent Authority as also not been served with the notice of filing, can raise a dispute and apply to the Court for reference and determination of his right to compensation which may have existed before the passing of the Award or which may have devolved upon him since the Award.

4.2. He would submit that Reference under the National Highways Authorities Act, 1959 cannot be said to be made by the Collector only and the person aggrieved / interested also have the option to approach the Civil Court to claim his right to compensation awarded under the Award.

4.3. In support of his submissions, he has referred to and relied upon the following decisions of the Supreme Court and the various

High Courts:-

(i) *Smt. Leelawati Vs. State*¹;

(ii) *Mangaldas Girdhardas Parekh Vs. The Assistant Collector of Prantij Prant, Ahmedabad*²;

(iii) *Husaini Begam Vs. Husaini Begam & Ors.*³;

(iv) *Vinod Kumar & Ors Vs. District Magistrate, Mau & Ors.*⁴;

(v) *Ratansingh s/o Kanhaisingh and Ors. Vs. Raghurajsingh s/o Madhosingh & Ors.*⁵;

(vi) *Badrilal Bholaram Vs. State of Madhya Pradesh & Anr.*⁶; and

(vii) *M.A. Jabbar Vs. The State of Andhra Pradesh, Industries, Department, Hyderabad*⁷.

5. *PER CONTRA*, Mr. Y.D. Patil, learned AGP has drawn my attention to the reliefs prayed for in paragraph No.2.4 of the Writ Petition and more specifically prayer clause (iii). He would submit that apart from entitlement, there is another relief prayed for by Petitioners

1 AIR 1983 ALL 423

2 1920 ILR 277

3 1895 (17) ILR ALL 573

4 2023 SCC Online 787

5 AIR 1946 Nagpur 30

6 AIR 1964 MP 485

7 1967 SCC Online AP 1

which is in the nature of declaration of the Agreement dated 28.12.2021 as not being binding on them and hence the Petitioners would be liable to pay Court fee as computed under Section 6(iv)(ha) of the said Act. He would submit that the impugned order dated 02.11.2023 therefore deserves to be upheld.

6. Mr. Drupad Patil, learned Amicus Curiae has made the following submissions:-

6.1. At the outset, Mr. Drupad Patil would submit that the submission of Petitioners that they would be exempted from payment of Court Fee in view of Section 20(xv) of the said Act does not hold water as the said provision is in respect of applications made for compensation and not for Suits filed in Civil Court seeking specific prayers of declaration and moreover, Article 15 of Schedule I of the said Act is in respect of Application made to the Collector for reference as contemplated under Section 18 of the Land Acquisition Act, 1894 and is not applicable to the facts and circumstances of the present case.

6.2. Next, he has drawn my attention to the three principal prayer clauses in the Suit plaint namely prayer clause (i) which seeks a declaration of title in respect of the suit property and hence Section 6(iv)(d) read with Section 6(v) of the said Act would be applicable and hence Petitioners would be liable to pay one half *ad valorem*

Court Fee.

6.3. Next, he would draw my attention to the prayer clause (ii) in the Suit plaint which seeks a negative declaration of transfer by partition by deceased Narayan Durge in favour of Pandurang Durge and would submit that as the Petitioners are seeking a declaration relief by the said prayer, Court fee as per Section 6(iv)(j) would be payable by Plaintiffs i.e. Petitioners.

6.4. Next, he has drawn my attention to prayer clause (iii) in the Suit plaint and would submit that the relief sought by Petitioners is in the nature of seeking a declaration that the Sale Agreement dated 28.12.2021 in respect of the Suit property is not binding on the Petitioners. He would submit that the Petitioners are not a party to the said Agreement and have consciously omitted to seek declaration that the said Agreement is null and void and thereby Petitioners are seeking a declaration in *personam* and not declaration in *rem*. On this aspect, he has placed reliance on a decision of the Division Bench of this Court passed in the case of *Dilip Khushalchand (Srisrimal) Jain Vs. Hardik Deepakbhai Raman⁸* and would submit that in the said decision, the Division Bench of this Court has held that where a relief is sought that the instrument / deed is not binding on the Plaintiffs and the Plaintiff is not a party to such instrument / deed, such prayer is not susceptible to monetary evaluation and therefore Section 6(iv)

8 WP No.8968 of 2018 decided on 05.05.2022

(j) of the said Act would apply while computing Court fee due and payable.

7. I have heard Mr. Vishwakarma learned Advocate for Petitioners, Mr. Y.D. Patil, learned AGP and Mr. Drupad Patil, learned *Amicus Curiae* and with their able assistance perused the record and pleadings of the case. Submissions made by the learned Advocates have received due consideration of this Court.

8. In the present case a Suit for declaration, compensation and injunction is filed. The Petitioners are successors of Narayan Buvaji Durge claiming to be owners of the Suit property. The said Narayan Durge expired on 17.08.1981. By Mutation Entry No.573 dated 05.04.1985 the Suit property has been mutated in the name of deceased Pandurang Hari Durge who is the nephew of deceased Narayan Buvaji Durge. It is seen that the Suit property is acquired on 26.03.2021 and compensation of Rs. 2,43,90,000 /- is declared.

9. By virtue of the impugned order dated 02.11.2023, direction is given to the Plaintiffs to pay Court Fee as per Section 6(vi)(ha) of the said Act. Plaintiffs have already paid Court Fee which is in excess of 50% of the *ad valorem* Court Fee. It is contended by Plaintiffs – Petitioners that a declaratory relief is sought for without seeking possession of the Suit property. According to Plaintiffs, since they are seeking declaration without possession, their case falls under Section

6(vi)(d) of the said Act.

10. It is seen that there are four prayer clauses in the Suit Plaint. The principal prayer clause (i) seeks declaration of title and in that view of the matter as rightly opined by the learned Amicus Curiae the Plaintiffs would be liable to pay the Court Fee as per Section 6(vi)(d) of the said Act which would be half of the *ad valorem* Court Fee. In so far as prayer clause (ii) is concerned once again since a negative declaration is sought for, Petitioner is liable to pay Court Fee as per 6(vi)(j) of the said Act and in so far as prayer clause (iii) is concerned, since Plaintiffs have prayed for declaration that the Sale Agreement dated 28.12.2022 is not binding upon them, since no declaration is sought for declaring the agreement as null and void and they not being a party thereto, they are liable to pay Court Fee under Section 6(vi)(d) of the said Act.

11. In view of the above observations and findings, the impugned order dated 02.11.2023 is not sustainable and is quashed and set aside. Since Plaintiffs have paid more than 50% of the *ad valorem* Court Fee, after computing the same as directed above, the excess amount shall be refunded to Plaintiffs by the Trial Court and the Suit shall be numbered and proceeded strictly in accordance with law.

12. This Court expresses its appreciation to Mr. Drupad Patil,

Advocate and learned *Amicus Curiae* alongwith his junior Advocate Mr. Namitkumar Pansare for their valuable 3assistance rendered to the Court at short notice in this matter.

13. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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