



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10805 OF 2022

Shahaji Rajaram Shinde

VERSUS

The State Of Maharashtra Through Its Collector And Others

Mr. S. S. Patunkar, Advocate for Petitioner

Mr. B. A. Shinde, AGP for Respondent Nos. 1 to 3/State

Mr. S. T. Jadhav, Advocate for Respondent Nos. 4 and 5

Mr. Tapse, Advocate for Respondent Nos. 4A to 4C

CORAM : R. M. JOSHI, J.

DATE : 03rd March, 2025

PER COURT :-

1. This petition takes exception to the order passed below Exhibit 1 dated 15.06.2019 in L. A. R. D No. 57/2011 by which amount deposited of share of Shahaji Rajaram Shinde i.e., decree holder is transferred to the Court of C.J.J.D., Kaij in Execution Proceeding No. 03/2017 arising out of Regular Civil Suit No. 221/2003.

2. The execution proceeding is pending before the District Judge – I, Ambajogai for the recovery of compensation for the land acquired. Shahaji Shinde is one of the decree holder. The amount of compensation came to be deposited therein. Respondent Chandrakant, Shrikant, Sharda challenged the right of recovery of the amount of compensation. Objection was raised in view of the fact that they were not joined/added as a party to the proceedings. It is however matter of record that an

application was filed by respondents for joining themselves as a party to the execution proceedings and the same is allowed by the Execution Court. As far as impugned order is concerned, the Execution Court has referred to the judgment and decree passed in Regular Civil Suit No. 221/2003 and execution proceedings arising out of the same. According to the Execution Court, the issue of entitlement of the petitioner or respondents for the amount of compensation will be considered by the said Execution Court and, therefore, parties are directed to the said Court.

3. Learned counsel for the Petitioner submits that the subject property in Land Acquisition Reference No. 154/2004 is survey No. 33/3/1 whereas the suit properties in Regular Civil Suit No. 221/2003 are survey No. 11, 12, 14/A/2. It is his contention that irrespective of judgment with decree passed in Regular Civil Suit No. 221/2003, proceedings are required to be considered independently. It is his submission that the application filed by the petitioner ought to have been allowed for withdrawal of the amount deposited by way of compensation towards acquisition of land bearing Survey No. 33/3/1.

4. Learned counsel for Respondents sought to support the impugned order by contending that subsequent to the judgment and decree passed in Regular Civil Suit No. 221/2003, Survey No. 33/3/1 is

available for the partition on the death of the ancestors of petitioner and respondents. Thus, it is his contention that owing to the order passed by the Appellate Court in Regular Civil Appeal No. 3/2013, no fault can be found with the order impugned.

5. There is no dispute about the fact that in Regular Civil Suit No. 221/2003, Survey No. 11, 12, 14/A/2 were only suit properties. Survey No. 33/3/1 was never a suit property therein. In such circumstances, in the proceedings for execution of decree passed in the said suit, it would be beyond the jurisdiction of the execution proceedings to determine/decide any issue connected with Survey No. 33/3/1 which is not the subject matter of the said suit. Though, it is sought to be contended that spaces are being taken for including Survey No. 33/3/1 in the decree passed in Regular Civil Suit No. 221/2003 admittedly, no such order has been passed by the Competent Court till date.

6. In so far as impugned order is concerned, learned District Judge – I, Ambejogai has committed error in ignoring the fact that in Regular Civil Suit No. 221/2023, Survey No. 33/3/1 was never a suit property. Thus, question of considering the rights of the parties even for the purpose of receipt of compensation thereof could not have been determined in the said execution proceedings. It was obligatory on the

part of the said Court to decide the application filed by the petitioner herein on merit. Since, there are no observations on merit with regard to the entitlement of the applicant or otherwise of the amount of compensation, this Court, does not wish to elaborate on it. Suffice it to say that order cannot sustain in view of the above discussion.

7. As a result of which impugned order is set aside. The Execution Court in L. A. R. D No. 57/2011 has directed to decide the application of the petitioner of his claim to receive/withdrawal of the compensation in accordance with law but within a period of a month. Parties to appear before the Court on 15.03.2025. No separate notice shall be issued to them.

8. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

bsj