



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 2658 of 2017

Ramchandra Gangaram Akotkar

vs.

State of Maharashtra, through its Secretary, Ministry of Revenue & Forests, Mumbai
and others

Mr. R.G.Kavimandan, Advocate for petitioner.

Mr. I.A.Damle, Assistant Government Pleader for respondent nos. 1 to 3.

Mr. A.S.Mehadia, Advocate for respondent no.4.

CORAM :- NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.

DATE :- 8th MAY, 2025

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Heard learned counsel for the parties.

2. The petitioner has questioned the order dated 27.06.2017 passed by the Collector, Akola i.e. respondent no. 2 herein, whereby the objection of the petitioner to the apportionment of the compensation came to be rejected and the amount of compensation is ordered to be disbursed. Similarly the order passed on 24.03.2017 by the Land Acquisition Officer deciding the objection of the petitioner to the apportionment thereby rejecting the same is also under challenge.

3. The counsel for the petitioner has invited our attention to the plaint in the civil suit bearing Regular Civil Suit No. 47 of 2017 initiated on the file of the Civil Judge, Junior Division, Akot, wherein, based on the title, a declaration, so also permanent and mandatory injunction was claimed. In the said suit, the petitioner has claimed for decree of declaration that the sale deed dated 05.06.2009 concerning the suit field executed by the petitioner/plaintiff in favour of the defendant/respondent no.4 herein, is nominal without consideration and therefore *void ab initio*.

4. The basis for objection is similar to the plea that is raised in the aforesaid suit which has been considered by the Land Acquisition Officer, so also by the Collector in the impugned orders.

5. Mr. Mehadia, learned counsel appearing for the respondent no.4-land owner has invited our attention to the fact that the aforesaid suit was dismissed in default under Order IX Rule 3 of the Code of Civil Procedure vide order dated 04.11.2023 of the Joint Civil Judge, Junior Division, and, till this date, no steps are taken for the restoration of the said suit. In such eventuality, the fact that the petitioner has not taken any step to restore the said suit in question, he is not in a position to assert his claim that the sale deed executed in favour of the respondent no.4 in whose favour the award is passed and the apportionment is ordered, is not the owner of the property and his title is based on the nominal sale deed.

6. In view of aforesaid conduct of the petitioner, it is apparent that, based on the sale deed, the name of the respondent no.4 is entered in the revenue record to be the owner of the property and once there exists a sale deed in favour of the respondent no.4 which till this date is not set aside or in absence of there being operation of any injunction or the order restraining the respondent no.4 from claiming the benefit out of the acquired land, it cannot be said that the order of the Land Acquisition Officer or that of the Collector can be said to be suffering from the infirmities. Rather, it has to be inferred that the title being vested with the respondent no.4 which led to carrying out the revenue entry in his favour, the order impugned passed by the Land Acquisition Officer, so also by the Collector is quite justified.

7. Mr. Kavimandan, learned counsel for the petitioner claimed that under Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the Competent Authority is vested with the power to decide all the issues including that of the validity of the sale deed executed in favour of the respondent no.4 and vesting of lawful title.

8. We are of the view that once the petitioner has taken recourse to the filing of the civil suit and he having agitated the said issue before the Civil Court and having suffered dismissal of the suit, it cannot be said that the petitioner has every intention to claim similar relief before the Land Acquisition Officer or that before the Collector.

9. We are equally required to be conscious of the fact that the provisions of Order II Rule 2 of the Code of Civil Procedure contemplate that the petitioner having given up such claim before the Land Acquisition Officer as such claim was agitated before the competent Civil Court, it is not open for him to agitate the very same claim before the Land Acquisition Officer.

10. That being so, there is no substance in the petition. It stands dismissed. No costs.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)

Andurkar.