



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

WRIT PETITION NO. 853 OF 2024

Smt. Savita Sunil Biswas & Ors. ... PETITIONERS

Versus

Dilip Bholanath Pal & Ors. ... RESPONDENTS

Mr. V. N. Morande, Advocate for Petitioners.

Mr. K. K. Nalamwar, Advocate for Respondent Nos.1 to 5.

Mr. H. D. Futane, AGP for Respondent No.6.

CORAM : R. M. JOSHI, J.
DATE : JUNE 27, 2025.

ORAL ORDER

. Heard Mr. V. N. Morande, learned Counsel for the Petitioners, Mr. K. K. Nalamwar, learned Counsel for the Respondent Nos.1 to 5 and Mr. H. D. Futane, learned AGP for Respondent No.6.

2. By consent of both sides, heard the Petition finally at the stage of admission.

3. This Petition takes exception to the order dated 10/1/2024 passed below Exhibit-91 by the Executing Court in Regular Darkhast No. 1/2002,

whereby the objection raised by the original Defendants/Judgment Debtors came to be rejected.

4. The facts as they appear from the record indicate that the contesting Respondents filed suit bearing Regular Civil Suit No. 9/1987 for declaration of title, injunction and so also for possession of the suit property. Initially, the Tahsildar, District Relief and Rehabilitation Officer and State of Maharashtra were made party – Defendants. By order dated 18/1/1989 these Defendants were deleted from the array of Defendants. The suit proceeded on merit which came to be ultimately decreed on 17/1/1994. The original Defendant preferred appeal against the said Judgment and Decree being Regular Civil Appeal No. 6/1994. This Appeal came to be dismissed on merit on 11/1/2000. There is no further challenge to the said order passed by the Appellate Court. As such, the decree passed by the trial court has become final.

5. In the year 2002, the execution proceedings came to be initiated for execution of the decree. After its dismissal for want of prosecution, it came to be restored again in the year 2017. The Judgment Debtor filed application (Exhibit-91) raising objection to the decree on the ground that the decree is nullity. The reason for taking such exception is that in the year 1996 the land

has been now vested in Government and without Government being a party no decree could have been passed by the trial court.

6. The learned Counsel for Petitioners apart from drawing attention of this Court to the facts of the case has placed reliance on the Judgment of the Hon'ble Supreme Court in the case of *Sushil Kumar Mehta V/s Gobind Ram Bohra (dead) through L.Rs. (1990) 1 Supreme Court Cases 193*. He drew attention of the Court to the paragraph No.26 of the said Judgment in order to canvass that the objection with regard to the nullity of the decree can be taken at any stage even at the stage of execution or in collateral proceedings.

7. The learned Counsel for contesting Respondent supported the impugned order.

8. No dispute can be made with regard to the proposition laid down by the Hon'ble Supreme Court in the Judgment cited supra. Question arises as to whether the said Judgment would have any application to the facts of the present case.

9. Admittedly, the State as well as other State Authorities were deleted from the array of the Defendants during the pendency of the suit. Thereafter, the suit was contested by the Defendant/Judgment Debtor and the

same came to be decreed on 17/1/1994. It is against the said decree, Regular Civil Appeal came to be filed in the year 1994. This appeal is dismissed by the Appellate Court on 11/1/2000. It is sought to be contended on behalf of the learned Counsel for Judgment Debtor that in the year 1996, the land was vested into the Government, and therefore, the decree is nullity. Pertinently, the issue about the Government being necessary party to the suit was raised in the appeal and has not been accepted by the Appellate Court. Admittedly, the order passed by the Appellate Court, confirming the decree passed by the trial court is not challenged further by the Defendant. Thus, the issue of Government being necessary party or not, having been not accepted by the Appellate Court, the Judgment and decree binds the Execution Court.

10. In view of this, the Judgment cited supra has no application to the present case. The order impugned deserves no interference. Writ Petition is dismissed.

(R. M. JOSHI, J.)