



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

WRIT PETITION NO.4815 OF 2021

- 1] Sindubai alias Kalabai Rambhau Kapse,
Age-67 years, Occu. Agril.,
R/o. Pimparkhed, Tq.: Ashti, Dist. : Beed.
- 2] Rambhabai Balbhim Gavhane,
Age-64 years, Occu. Agril.,
R/o. Wamanbhau Nagar, near new bus stand,
Pathardi, Tq.: Pathardi, Dist.: Ahmednagar.
- 3] Bhimabai Laxman Gavhane,
Age-60 years, Occu. Agril.,
R/o. Alhatwadi, Tq.: Pathardi,
Dist. : Ahmednagar.
- 4] Meenabai Dilipa Gaikwad,
Age-55 years, Occu. : Agril.
R/o. Akolner Railways,
Tq. & Dist. : Ahmednagar.
- 5] Lahanabai Vishnu Pathak,
Age-48 years, Occu.:Agril.
R/o. Sadhwad, Tq.:Pathardi,
Dist.:Ahmednagar.

.. PETITIONERS
(Orig.Plaintiffs)

VERSUS

- 1] Raosaheb Baburao Dahatonde
Died Through L.Rs.
- 1-A] Shashikala wd/o. Raosaheb Dahatonde,
Age: 56 years, Occu. Household,
R/o. Underkhel, Tq.Ashti,
Dist. Beed.

- 1-B] Sau. Vandana Arjun Parbhane,
Age: 39 years, Occu. Household,
R/o. Darewadi (Gaothan),
Tq.and Dist. Ahmednagar.
- 1-C] Navnath s/o. Raosaheb Dahatonde,
Age: 37 years, Occu. Agril.,
R/o. Underkhel, Tq.Ashti,
Dist. Beed.
- 1-D] Sau. Sunanda w/o. Ramdas Jare,
Age: 35 years, Occu. Household,
R/o. At Sasewadi, Post. Jeur
(Baijabaiche), Tq. & Dist.
Ahmednagar.
- 1-E] Sau. Suvarna Indrajeet Gavhane,
Age: 27 years, Occu. Household,
R/o. Navjeevan Colony, G/9-4,
N-11, HUDCO, Aurangabad.
- 1-F] Amol s/o. Raosaheb Dahatonde,
Age: 24 years, Occu. Agril.,
R/o. Underkhel, Tq. Ashti,
Dist. Beed.
- 2] Eknath Baburao Dahatonde,
Age-47 years, Occu. : Agril.,
R/o. as above.
- 3] Jalindar Baburao Dahatonde,
Age-42 years, Occu. : Agril.,
R/o. as above.
- 4] Kausabai Baburao Dahatonde,
Age-81 years, Occu. : Agril.
R/o. As above.

.. RESPONDENTS
(Orig.Defendants no.1 to 4)

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Mr.C.K.Shinde, Advocate for the petitioners

Adv.V.D.Salunke, Advocate for respondent nos.1A to 1F

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CORAM : ARUN R. PEDNEKER, J.

Reserved on : 28.03.2024.

Pronounced on : 13.06.2024

JUDGMENT :

1] By the present Writ Petition, the petitioners are challenging the impugned order dated 02.02.2021 to the extent of clause (4) of the operative order passed by the Appellate Court, District Judge-1, Beed in Misc. Civil Appeal No.31/2020 thereby rejecting the application for temporary injunction restraining the respondents – defendant nos. 1 to 3 from withdrawing the compensation amount vide award passed in LAR No.335/2012 and thus maintaining the order passed below Exh.5 by the Civil Judge Senior Division, Beed dated 02.07.2020 to the above extent. The effect of order dated 02.02.2021 of the Appellate Court is that the application for the injunction filed by the petitioners – plaintiff is allowed to the extent of granting temporary injunction restraining defendants from alienating the suit

property. However, the Appellate Court has not interfered in the order of the trial Court to the extent of permitting defendant nos. 1 to 3 from withdrawing compensation amount vide award passed in LAR No.335/2012.

Brief facts leading to filing the present writ petition can be summarized as under :

2] The facts emerging from the pleadings of the parties are that one Mr.Baburao Kanhu Dahatonde was the owner of the following properties :

Sr.No.	Survey No.	Area
1.	5/1	0-59
2.	6/AA/1	0-29
3.	7/A/2	1-01
4.	8/A/3	0-21
5.	17/1	9-29
6.	59/1	11-24
7.	85	11-62
8.	80/AA	2-94
9.	102/A/8	0-45
10.	58/0/14	1-20

All these properties were ancestral properties of Baburao and situated at village Underkhel, Taluka Ashti, District Beed. Baburao had two wives, namely, Kalabai and Kausabai. As there was no male issue to Kalabai, Baburao

married with Kausabai and defendant nos.1 to 6 are born out of the said wedlock. Out of the suit properties, property of survey No.58/0/14, admeasuring 1 Hector 20 R. of village Underkhel, Taluka Ashti, is the exclusive property of the plaintiffs as it is inherited by them through their mother as per compromise decree passed in RCS No.493/1998. On 10.01.1997, following properties of Baburao were acquired by the Government :

Sr.No.	Survey No.	Acquired area H.R.
1.	6/1	0-29
2.	59/1	1-00
3.	5	0-59
4.	102/28	0-17
5.	102/34	0-02
6.	102/53	0-10
7.	8/3	0-21

Baburao expired on 23.03.2006. The award in respect of aforesaid acquired properties came to be passed on 29.09.2004 and the compensation amount of Rs.8,07,514/- was paid on 28.04.2006. Said payment was withdrawn by the defendant nos. 1 to 3 and not a single rupee was paid to the plaintiffs towards their share. On 05.12.2006, the defendant nos. 1 to 3 submitted an

application to take entry of death of Baburao and their names in the record of right. On 10.01.2017, mutation entry no.573 was taken showing that Baburao was survived by 3 sons and 9 daughters and widow Kausabai. However, in the revenue record, only names of the defendant nos. 1 to 3 were entered to the record of the suit property and names of the plaintiffs and defendant nos. 4 to 7 were not entered due to collusion of defendant nos. 1 to 3 with the concerned revenue officer. After demise of Baburao, defendant nos. 1 to 3 stopped giving share of the agricultural produce of the suit land to the plaintiffs. As such, the plaintiffs demanded their share in the compensation amount of Rs.8,07,514/- received by defendant nos. 1 to 3. Similarly, plaintiffs also demanded their share in the produce of agricultural suit land. However, the defendant nos. 1 to 3 claimed to be the only legal heirs of deceased Baburao. As such, the present suit is filed claiming share in the compensation amount of the acquired land and for partition of the suit land. The property of survey No.58/0/14 is devolved upon the

plaintiffs from their mother as per Court decree. The compensation is yet to be paid to the plaintiffs.

3] It is the case of the plaintiffs that the plaintiffs are having 1/13th share each in the suit properties. They have also share in the compensation amount granted in LAR No.335/2012. The compensation amount is not yet deposited in the said award. Hence, the suit for partition and separate possession of their 1/13th share each in the suit properties and in compensation amount of the acquired land. The defendant nos. 1 to 3 contended that their mother, Kausabai was the first wife and Kalabai was the keep of Baburao and that they are only the legitimate children of Baburao. The defendant nos. 1 to 6 are the legitimate children of Baburao. It is further stated that in the year 2003, Baburao had partitioned his property in the presence of village men and in the said partition, defendant nos. 4 to 7 had relinquished their rights of the properties in favour of the defendant nos. 1 to 3. Hence, the property of Baburao was mutated in the names of defendant nos. 1 to 3.

4] During the lifetime of Baburao, defendant no.1 had filed RCS No.432/1997 against defendant nos. 2, 3 and 7 for partition and separate possession of his share in the ancestral properties. The present suit properties and suit properties in RCS No.432/1997 are identical. In that suit, compromise was effected on 30.03.1999 in Lok Adalat and on the basis of award passed in Lok Adalat, defendant nos. 2 to 3 became owner and possessor of the suit properties. As dispute regarding suit property is already decided, this suit is barred by principle of *res-judicata*.

5] It is further case of the defendants that as the plaintiffs are born from the relations of Baburao and Kalabai, Baburao was intending to give something to them for livelihood. Therefore, he decided to give property of survey No.58/0/14 admesuring 60 R. to the plaintiffs and defendant no.10. Accordingly, RCS No.493/1998 was filed at Ashti Court and on 18.08.1998, compromise was effected in that suit and said land was given to the plaintiffs and defendant no.10.

6] In the instant civil suit for partition filed by the petitioners, application for injunction was filed. By the order dated 02.07.2020, the trial Court while considering the interim application formulated the following points :

No.	Points	Findings
1.	Whether the plaintiffs have a <i>prima facie</i> case to grant temporary injunction as prayed?	No.
2.	Whether the balance of convenience lies in favour of the plaintiffs?	No.
3.	Whether the plaintiffs will suffer irreparable loss in the event of not granting temporary injunction?	No.
4.	What order ?	Application is rejected, as per final order.

Accordingly, by the aforesaid order, the application for interim injunction was rejected and the same was carried in Appeal. By order dated 02.02.2021 in Misc. Civil Appeal No.31/2020, the Appellate Court formulated the following points :

	Points	Findings
1.	Whether plaintiffs made out prima-facie case in his favour?	Yes.
2.	Whether plaintiffs proved that balance of convenience lies in their favour?	Yes
3.	To whom irreparable loss would be	Irreparable loss would

caused if injunction is allowed or cause to plaintiffs if refused ?
 injunction to alienate the suit property is refused. However, no irreparable loss would cause to plaintiffs if injunction to withdraw compensation amount of land acquired is refused.

4. Whether the impugned order passed by learned Civil Judge (S.D.) Beed below Exh.5 in Reg. Civil Suit No.94/2014, dated 02-07-2020 calls for any interference in the present appeal ? Yes. Partly.
5. What order ? Appeal is partly allowed as per order passed below.

7] The Appellate Court has held that nothing is produced on record to show that, the plaintiffs have relinquished their share in favour of the defendants and in view of Hindu Succession [Amendment] Act, 2005, *prima facie* it shows that, the plaintiffs have share in the suit property as well as in the compensation amount of land acquired by the State.

8] The learned counsel for the petitioners contends that the Appellate Court although held that *prima facie* the petitioners are entitled to get share in the suit property and in the compensation amount and hence the appellate

court ought to have restrained the defendants from withdrawing the compensation of the acquired suit lands and protect the right of the petitioners qua compensation determined in LAR No.335/2012.

9] *Per contra*, the learned counsel for the respondents submit that the Land Acquisition Act is complete code in itself and no independent suit is maintainable for claiming compensation determined under the Land Acquisition Act and only remedy to the petitioners was under Section 18 or 30 of the Land Acquisition Act. The learned counsel further submits that there can be no interim direction issued for securing the compensation in an independent suit.

10] Thus, the question that arises for consideration before this Court is that whether an independent civil suit for share of compensation of the acquired land is maintainable when the plaintiffs were not before the Land Acquisition Authority or had not filed proceedings under Section 18 and 30 of the Land Acquisition Act, 1894.

11] As regards maintainability of independent civil suit for claim of share in the compensation of the acquired land is concerned, the Hon'ble Supreme Court in the case of **G.H.Grant Vs. State of Bihar** reported in 1965 DGLS [SC] 99 [1966 AIR (SC) 237 = 1965 (2) MLJ 29 has held at para no.19 as under :

(19) The Collector has no power to finally adjudicate upon the title to compensation, that dispute has to be decided either in a reference under S. 18 or under s. 30 or in a separate suit. Payment of compensation therefore under s. 31 to the person declared by the award to be entitled thereto discharges the State of its liability to pay compensation (subject to any modification by the court), leaving it open to the claimant to compensation to agitate his right in a reference under s. 30 or by a separate suit.

12] In the case of **Comunidade of Bambolim Vs. Manguesh Betu Kankonkar** reported in 2001 (Supp.) Bom.C.R. 99 = 2001 (2) Mh.L.J. 160, the Bombay High Court relying upon the judgment in the case of **G.H.Grant Vs. State of Bihar** [supra] has held that a separate suit is maintainable by a party for determining the right of a party / qua acquired property, although the party was not before the Land Acquisition Authority and had not filed

proceedings under Section 18 or 30 of the Land Acquisition Act.

13] In the case of **Devalibai Nandalya Gavit Vs. Honji Rama Vasawe & Ors.** reported in **2011 (6) Bom.C.R. 45**, the Bombay High Court has also held that the Collector has no power to adjudicate finally upon the title of the acquired land and that the dispute has to be decided either under section 30 or in a separate suit.

14] In this regard reference can be made to the judgment of the Hon'ble Supreme Court in the case of **Rajasthan Housing Board and Anr. Vs. Chandi Bai & Ors.** in Civil Appeal No.11912 of 2018, decided on 07.12.2018 wherein it has held at para no.2, 3, 4 and 21 as under :

21. The remedy of the respondents, if any, was to claim a compensation from Doongra by seeking reference under Section 18 or Section 30 of the Land Acquisition Act or to file a civil suit against him to recover compensation on the basis of title. A civil suit to invalidate the land acquisition is not maintainable.

15] The Supreme Court in the case of *Rajasthan Housing Board [supra]* has held that the Civil Court had no jurisdiction to decide the validity of the proceedings under the Land Acquisition Act. However, in the fact situation, held that the person would have right to recover the compensation on the basis of title by filing separate suit or reference under Section 18 and 30 of the Land Acquisition Act. The person who was not party to the land acquisition proceedings and has any right in the acquired lands is entitled to recover compensation from the person who has received it, by filing independent suit.

16] Next question that arises for consideration is whether in an independent suit for partition and compensation of acquired land an interim order of injunction can be passed against the land acquisition Authorities not to disburse the compensation amount to the claimants. It is by now well settled that the Land Acquisition Act is a complete Code as regards determination of the compensation and disbursal of the same.

17] In the instant case, the partition suit is filed prior to the acquisition of the joint family property. The Appellate court has held that the plaintiffs have right in the suit property and thus it has granted injunction qua suit properties against the defendants from creating third party interest. As regards acquired joint family property, the Appellate Court, in view of the proviso to Section 31 (2) of the Land Acquisition Act, has held that in the event the suit succeeds, the plaintiffs would be entitled to recover the part of compensation which is withdrawn by the defendants. Proviso to Section 31 (2) reads as under :

31. Payment of compensation or deposit of same in Court.

(2) ...

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

18] In the case of **Babusso Godu Gaunso Vs. Suryakant Moga Gaunso & others** in First Appeal No.49 of 1990, decided on 9th October, 1992, the Bombay High Court Bench at Panaji (Goa) at para no.10 has observed as under :

10. Therefore, the right which is already in existence, is recognized by this proviso to Sub-section (2) of Section 31. If a person claims his share from another person who has received the compensation, he is not claiming any special right created by the Land Acquisition Act, 1894 and is claiming his right which he can establish in the Civil Court. This proposition is no more res integra. In the case of Shri Deo Sansthan Chinchwad and others, Appellants v. Chintaman Dharnidhar Deo and another, Respondents (AIR 1962 Bom. 214) a Division Bench of this Court was pleased to hold as follows :-

“ Unless the claim of a person, who is lawfully entitled to a share in the compensation money, is already adjudicated upon under the provision of the Land Acquisition Act or such person having had notice of such proceedings, appears therein and fails to assert and prosecute his claim to a share in accordance with the provisions of that Act, he would be entitled under Section 31 (2) Proviso 3, to file a suit to recover his share from the person who may have received the whole or any part of the compensation amount awarded under the Act.”

19] The Land Acquisition Act is complete Code in itself and that there can be no injunction against the authority not to disburse the amount of compensation to the claimant in an independent suit. However, in a independent suit, if the Court is of the opinion that the plaintiffs therein are prima facie entitled to part of the compensation as

claimed and it is necessary to secure the amount the Civil Court at an interim stage may pass appropriate orders directing the recipient of the compensation to secure the amount. Interim order is passed in aid of the final order that can be passed in suit. The Hon'ble Supreme court in the case of **the State of Orissa Vs. Madan Gopal Rungta** decided on 25.10.1951 held that an interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding.

20] The Supreme Court in the case of **Sardar Amarjit Singh Kalra (Dead) by L.Rs. & others Vs. Pramod Gupta (Smt) (Dead) by Lrs. And others** reported in [2003] 3 SCC 272 has held at para no.33 as under :

33. ... As far as possible, courts must always aim to preserve and protect the rights of parties and extend help to enforce them rather than deny relief and thereby render the rights themselves otiose, "ubi jus ibi remedium" (where there is a right, there is a remedy) being a basic principle of jurisprudence. Such a course would be more conducive and better conform to a fair, reasonable and proper administration of justice.

21] In the instant case, the Appellate Court has observed that there is no partition between the family members and that the plaintiffs have not surrendered their share in the suit property as such it has protected the plaintiffs qua remaining suit property. The Appellate Court has rendered findings that in the compromise decree, Baburao was given 1/4th share in Survey Nos. 5, 6, 7, 59-A and 102/0 in which the plaintiffs also have share. The share of the plaintiffs will have to be protected in the instant case.

22] Thus, although there can be no injunction against the authority / reference Court from disbursing the compensation amount as determined under the Land Acquisition Act, the Court can issue directions to the claimant / defendants before it to preserve the share of the compensation as the plaintiffs may be entitled.

23] Thus, the directions can be issued to the defendants to deposit the share of the plaintiffs, on receipt of the compensation amount from the Reference Court. In the instant case, the defendants are directed to deposit half

of the amount of compensation along with accrued interest thereon they would receive from the Reference Court in LAR No.335/2012 within a period of four weeks of withdrawing the compensation.

24] With the above directions, the present writ petition is disposed of.

[ARUN R. PEDNEKER]
JUDGE

DDC