

**Order Below Exh. No. 16 in Special Execution Petition No. 60
of 2019**

Read the application & say of the decree holders vide Exh. 19. Perused the record. Heard Mr. B. N. Jagtap, learned advocate appearing for the third party applicant & Mr. B. T. Nawale, learned advocate appearing for the decree holders.

02. By this application moved under Order 21 Rule 99 of the Code of Civil Procedure, 1908 (hereinafter referred to as C.P.C. in short) third party applicant namely Madhukar Bhikoba Mirgal has raised the objection to the disbursement of the compensation amount to the decree holders on the ground that he has interest in the compensation amount.

03. Learned advocate for the third party applicant has submitted that the property in the present execution petition is joint family property of the decree holders and the third party applicant. However, the name of the third party applicant was not appearing on 7/12 extract of the acquired property therefore, notice of acquisition of said land in block No. 178 A & 178 B of village Karanjadi, Taluka – Mahad, District – Raigad was not issued to him. It is further contended that no compensation amount has been paid to him though he is entitled for the same & the Land Acquisition Officer has passed an award however, as no notice has been served to third party, he could not appeared before the Land Acquisition Officer. So also, it is contended that thereafter decree holders in the present case have raised the reference under section 18 of the Land Acquisition Act for enhancement of compensation amount wherein the third party was not made party & therefore, he

had no knowledge of the proceedings and the award in reference has been passed behind his back. He further submitted that third party applicant is also entitled for the compensation amount. Therefore, though the reference is decided in the absence of third party & amount has been deposited by the Government, it shall not be disbursed to the decree holders unless & until objection of the third party has been removed by them. He submitted that once the award is passed, provisions of Land Acquisition Act are not applicable to the present proceeding. Therefore, in view of provisions of Order 21 Rule 99 of the C.P.C., the applicant is entitled to object the disbursement of amount to the decree holders until his objection as to entitlement of share has been decided. He then submitted that decree holder No. 1 Dagdu Mirgal has died prior to filing of this execution petition i.e. prior to 12/02/2019 & therefore, the execution petition filed on his behalf by making his thumb impression is fraud on the Court. On this ground also, third party applicant is entitled for intervention in the present proceeding. He then submitted that he will going to file separate application under section 340 of the Code of Criminal Procedure for initiation of criminal action against the decree holders.

04. On the other hand, learned advocate for the decree holders has submitted that the Land Acquisition Act is complete code in itself. Third party applicant was not party to the award before the Collector or to the reference bearing L.A.R. No. 01/2006. He submitted that the said reference has been decided by the learned predecessor of this Court on 01/04/2017 & thereafter, the decree holders have filed execution petition for recovery of compensation amount. He submitted that in said execution

petition, the Government has deposited the amount & the Court has directed disbursement of 75% amount to the decree holders on their application below Exh. 10. However, he submitted that as decree holder No. 1 has died, the said amount cannot be disbursed. He submitted that as third party applicant was not party to the award passed by the Collector or to the reference decided by this Court, now, he can not stop the disbursement of payment. He then submitted that unless & until LR's of judgment debtor No. 1 are brought on record compensation amount cannot be disbursed. In support of his submissions, he has relied on the case of **Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. Vs. Allahabad Vikas Pradhikaran 2003 (3) ALL MR 320 (S.C.), Shyamali Das Vs. Illa Chowdhry & Ors. 2007 ALL SCR 46 & the case of Shri. Machindra s/o. Santaram Kutwad Vs. Sharad s/o. Khanderao Survase & Ors. in 2013 (1) ALL MR 584.**

05. This is execution petition filed in pursuance of judgment & award passed by the learned predecessor of this Court in Land Acquisition Reference No. 01/2006. It appears from the copy of judgment & order that the Court had enhanced the compensation amount to the tune of Rs. 750 per square meter. It appears that the decree holders have filed application for execution of award. It then appears that the judgment debtor/Government has deposited the amount of Rs. 1,35,56,029/- (Rs. One Crore Thirty Five Lacs Fifty Six Thousand Twenty Nine only) in the Court. Then the decree holders have moved an application at Exh. 10 for getting 75% compensation amount out of the deposited amount. The Court on 25/06/2019, allowed the said application. However, admittedly, the said amount could not

be disbursed since the decree holder No. 1 Dagdu Pandurang Mirgal is not alive & his LR's are not brought on record.

06. Order 21 Rule 99 of the C.P.C. reads as under:-

Dispossession by decree holder or purchaser – 1)
Where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

07. Thus, it appears from this rule that the person other than judgment debtor if dispossessed from immovable property by decree holder or where such property has been sold in execution of the decree by the purchaser, the such person can make an application to the Court complaining of such dispossession. Learned advocate for the third party applicant has specifically relied on Sub-rule 2 of Order 21 of Rule 99 which provides that when such application is made, the Court has to adjudicate the same in accordance with the provisions mentioned. The submission of the learned advocate for the third party applicant is that this case is covered by Sub-rule 2. However, said argument cannot be accepted for the reason that Rule 99 referred above is deals with the dispossession & sale of the property in executing of decree & Sub-rule 2 provides that any such application under Sub-

rule 1 if made then the Court has to adjudicate it. Therefore, Order 21 Rule 99 of the C.P.C. is not applicable to the facts of the present case wherein there is no question of dispossession or sale of property in the possession of the third party applicant.

08. Now the question is whether such application can be made by the third party applicant under section 47 of the C.P.C. ? It is not disputed that the name of the third party applicant was not appearing to the 7/12 extract of the property acquired. It is also not disputed that his name is not appearing in the award passed by the Land Acquisition Officer. So also it is not disputed that he was not party to the reference bearing No. L.A.R. No. 01/2006. Now the question is whether the third party applicant is entitled for the reliefs claimed vide section 47 of the C.P.C ?. Section 47 of the C.P.C. provides that all the questions arising between the parties to the suit in which, decree was passed or their representatives & relating to the execution, discharge or satisfaction of the decree shall be determined by the Court executing the decree & not by the separate suit. Thus, this provisions is in respect of questions of discharge, satisfaction of the decree between the parties to the suit or their representatives in the interest. Admittedly, third party was not party to the reference & he is not claiming to be representative of any of the deceased decree holders. It is his case that the acquired property were joint family property & he had share therein. Here it is apposite to refer the judgment of the Hon'ble Bombay High Court in the case of **Raghunath Dhondu Navade Vs. Pandit Ramchandra Navade reported in 2000 (2) Mh. L. J. 1981** In that case, the question before Hon'ble Bombay High Court was whether the person who is not party to the reference

made under section 18 of the Land Acquisition Act can file application for apportionment of the enhanced amount of compensation in execution petition pending before the Court & secondly what should be the proper forum for such person to get adjudicate his claim ?. The Hon'ble Bombay High Court has held that such person who was not party to the land acquisition reference is not entitled to appear before the Civil Court. So also, he is not entitled to appear vide section 47 of the C.P.C. It is held that in fact those persons who are parties to the original proceedings before the Civil Court which passed the decree, their legal representatives & the purchasers of the said property as defined in section 47 are only entitled to appear while the question of discharge satisfaction of the decree is to be considered. The Hon'ble Bombay High Court pleased to held that the petitioner therein is at liberty to file appropriate suit as provided in section 31 (2) of the Land Acquisition Act. In the present case, admittedly the suit bearing Regular Civil Suit No. 98/2019 for partition has been filed before the Court & it is pending. In that suit, partition of compensation amount is also sought. In such circumstances, the present application of the third party applicant is not maintainable.

09. Another contention is that the decree holder No. 1 Dagdu Pandurang Mirgal has died prior to filing of this execution petition. It is submitted that the decree holders have played fraud on the Court in order to get compensation amount. It is submitted that the third party applicant is going to take proper legal action by filing application under section 340 of Cr. P.C. before this Court. However, said aspect needs no comment while deciding this application. If such application is moved, it will be decided on it's

own merit. At any rate, on the basis of this aspect, third party applicant cannot be allowed to intervene in the present proceeding for apportionment of compensation amount.

10. In so far as, the rulings (supra) relied on behalf of the decree holders are concerned, all these rulings of the Hon'ble Supreme Court & Hon'ble Bombay High Court are on the point that the reference Court has jurisdiction to decide the matters which are referred to it & it can not adjudicate matters outside the reference such as addition of parties. It is laid down that the reference Court can not widen the scope of it's jurisdiction or decide matters which are not referred to it. This principle is also applicable to the present case, being execution proceeding in pursuance of original proceedings.

11. Thus, the application moved by the applicant is not maintainable before the executing Court as he was not party to the original proceeding. As stated earlier, if application is moved by third party applicant for initiation of criminal action against the decree holders, it will be decided on it's own merit. With these observations, following order is passed.

ORDER

The application stands rejected.

(dictated & pronounced in open Court)

Mahad.
Date: 30/11/2019

(D.V. Kute)
Judge Labour Court, Mahad,
on deputation Civil Judge, Sr.Dn. Alibag,
Mahad (Camp)