



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

95 WRIT PETITION NO. 3525 OF 2019

Bansilal Shankarlal Modani

VERSUS

Shriniwas Shankarlal Modani Through Lrs Ramprasad Thr Lrs Nirmalabai
Ramprasad Modani And Others

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Advocate for the Petitioner : Mr. Bhamre Manish V

Advocate for Respondents : Mr. Chandak Raviraj R.

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 24.04.2026

PER COURT :

1. Heard learned counsel for the respective parties.
2. The petitioner is aggrieved by the order dated 23.01.2019 passed by the Civil Judge, Senior Division, Omerga below Exhibit 11 in L.A.R. No. 274 of 2015, whereby the application filed by the petitioner for adding him as a party in the reference came to be rejected.
2. Learned counsel for the petitioner submits that the petitioner is a co-sharer in Gat No. 413 situated at village Dhanori, Ta. Lohara Dist. Osmanabad. The said property was ancestral and common property of the petitioner and late Shriniwas Shankarlal Modani. However, only the name of Shriniwas was entered in the revenue record by Mutation Entry No. 659. The said property was acquired by the Government of Maharashtra for Manjara Project and he submits that the Land Acquisition Officer passed an award in the year 2007.

3. Respondent No.1 and the petitioner made a joint application for withdrawal of compensation on 7th May 2013. The petitioner also made a notarized consent letter on 10th June 2013 for withdrawal of the compensation amount of Rs.3,12,116/- in respect of Gat No. 413 respondent No.1. Thereafter, respondent No.1 and the petitioner also filed an application before the Collector, Osmanabad seeking permission for withdrawal of the compensation amount awarded as legal heirs document and respondent No.1, with the consent of the present petitioner, withdrew the compensation of Rs.2,45,893/- amount which was awarded.

4. Learned counsel for the petitioner, Mr. Bhamre, submits that respondent No.1 filed proceedings for enhancement of compensation and in view of that, the petitioner ought to have been made a party respondent. As respondent No.1 filed an application before the Collector and the Collector referred the same. The petitioner filed an application before the Reference Court under Order I Rule 10 of CPC, but the trial Court rejected the same on the ground that the petitioner had not filed an application before the Collector and therefore the application is rejected.

5. He submits that considering that the ancestral property has been acquired & the petitioner has also consented for receiving the amount as per the order passed by the S.L.A.O., and therefore there is no doubt about the fact that the petitioner is having interest in the property, but

the learned Reference Court rejected the same by recording findings which are erroneous, and he prayed to allow the petition.

6. Per contra, learned counsel for respondent No.1 and learned A.G.P supported the order.

7. After going through the order passed and considering the facts involved in the present petition, I find that when the petitioner has come with a case that he is having interest in the property which was acquired and that it is his ancestral property. Once an application was filed by respondent No.1 before the Collector for reference, as far as the Collector's powers regarding reference are concerned, those are very limited and the Collector has to accept the application filed within limitation and send the same to the Civil Court to decide the same under Section 18. Ultimately it is for the Civil Court to decide the matter of apportionment.

8. As the petitioner has come with the case that he is also owner of the property, therefore permitting the petitioner in the reference Court will not cause any prejudice to respondent No.1. However, the learned trial Court rejected the said application by holding that the petitioner had not filed application before SLAO or Collector

9. I find that such order needs to be set aside in view of the fact that the petitioner is having interest and the petitioner can be permitted to be impleaded in the said reference.

10. In view of the above, I am inclined to allow the writ petition by setting aside the order passed by Reference Court.

11. Hence, the petition is allowed. The order dated 23.01.2019 passed by the Civil Judge, Senior Division, Omerga below Exhibit 11 in L.A.R. No. 274 of 2015 is quashed and set aside. Resultantly, application below Exhibit 11 in L.A.R. No.274/2015 is allowed.

[SIDDHESHWAR S. THOMBRE]
JUDGE