



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

928 WRIT PETITION NO. 11679 OF 2024

SUNIL SUDHIR THITE

VERSUS

**NATIONAL HIGHWAY AUTHORITY OF INDIA THROUGH
PROJECT DIRECTOR AND ANOTHER**

...

Mr. G. K. Naik Thigle, Advocate for the Petitioner

Mr. R. K. Ingole, AGP for Respondent/State

...

CORAM : AJIT B. KADETHANKAR, J.

DATED : 8th September 2026

P.C. :-

. Mr. G. K. Thigale, learned Advocate for the petitioner would submit that the petitioner's land admeasuring 4,200 square meters, comprising Gat No.73/2, situated at Mouje Bhandari, Taluka and District Dharashiv was acquired by the National Highways Authority of India for construction of National Highway No.361. In accordance with the provisions of law, the final award came to be declared.

2. Respondent No.2 raised an objection before the competent authority claiming his alleged interest in the subject matter land. Accordingly, invoking the provisions of Section 3H(4) of the National Highways Act, 1956, the

competent authority referred the matter to the Civil Court. Consequently, the proceedings culminated in Land Acquisition Reference No.11 of 2018.

3. The learned Civil Court heard the parties extensively and upon considering the evidence on record, vide judgment and order dated 08.07.2022, declared that the petitioner is the only owner and interested person in respect of the land admeasuring 4,200 square meters bearing Gat No.73/2, situated at Mauje Bhandari, Taluka and District Dharashiv. It was further declared that the petitioner is the only person entitled to receive the compensation. The acquiring body was accordingly directed to deposit the award amount before the Court.

4. It is further submitted that pursuant to the said judgment and award, the amount came to be deposited by the acquiring body before the Reference Court. The petitioner accordingly filed an application before the Reference Court seeking permission to withdraw the said amount.

5. It appears that Respondent No.2 raised an objection on 06.08.2022, intimating the Court about his intention to prefer an appeal before this Court against the judgment and award

passed by the Reference Court, and requested that withdrawal of the amount be stayed till expiry of the period of limitation for filing the appeal.

6. It is pertinent to note that the judgment and award came to be passed on 08.07.2022, whereas the application for withdrawal was filed on 06.08.2022. On 11.08.2022, the Reference Court passed the following order:

*“Perused the application and report of As and writ section. Perused the say filed by Adv B R Mane for Ashok somvanshi. The application has been moved by Sunil thite for claiming the amount of compensation as per award passed in land reference.
As such the 50% amount of compensation be given to Mr. Sunil thite and after obtaining the bank guarantee or solvent surety to the extent of that amount. remaining amount of compensation be paid to Mr. Sunil thite by obtaining surety bond of requisite stamp paper and undertaking stating therein that he and his legal heirs shall be bound by the decision higher court before whom the decision in LAR no 11/2018 is challenged.”*

7. Mr. Thigale, learned Advocate for the petitioner submits that the Reference Court permitted withdrawal of the award amount by the petitioner; however, imposed a condition requiring the petitioner to furnish a bank guarantee in respect of 50% of the amount. The remaining 50% was permitted to

be withdrawn upon furnishing an undertaking. Needless to state, the said 50% amount which was permitted to be withdrawn upon furnishing an undertaking is already withdrawn by the petitioner.

8. Mr. Thigale was at pains to submit that there was no justification for the Reference Court to impose such a stringent condition upon the petitioner particularly when the same Court had already arrived at a determined conclusion that the petitioner was the only person entitled to receive the compensation awarded in respect of the acquired land.

9. He would submit that the condition imposed by the Reference Court is contrary to the settled principles of law and procedure. He would fairly submit that Respondent No.2 has preferred First Appeal No.2916 of 2022 before this Court which is pending. He would candidly submit that in the said First Appeal, this Court has not passed any preventive order.

10. In these circumstances, learned Advocate for the petitioner would submit that the condition imposed by the Reference Court permitting withdrawal of 50% of the compensation upon furnishing a bank guarantee is not only harsh one but cannot be sustained in law.

11. It is submitted that Respondent No.2 had merely prayed that disbursement of the amount be stayed till the limitation period of the first appeal. However, the Reference Court applied its mind even beyond the request by Respondent No.2 and levied impugned restrictions upon the petitioner.

12. On query, Mr. Thigale submits that it is true that there was a suit between the petitioner and Respondent No.2. However, under the orders passed by this Court, both matters were directed to be decided together. Subsequently, the said suit came to be disposed of under Order VII Rule 11 of the Code of Civil Procedure, 1908. He would submit that the plaint came to be rejected under the said provision and, to his knowledge, the said order is not challenged by Respondent No.2.

13. May it be, it is his submission at bar that till this date, there is no restrictive order of this Court staying the operation of the judgment and award passed by the Reference Court. In view of the above, learned Advocate for the petitioner prays that the present petition be allowed and the restrictions imposed by the Reference Court vide order dated 11.08.2022

be quashed and set aside.

14. Pursuant to the notice issued by this Court, notice was served on Respondent No.2 as is evident from the record placed before me by the Registry. It appears that Respondent No.2 namely Mahadev was served with the notice along with a copy of the petition on 29.04.2025. However, nobody appeared on behalf of Respondent No.2.

15. I also find an endorsement on the Farad Sheet dated 05.08.2026 indicating that fresh notice was served upon Respondent No.2. This Court recorded the non-appearance of Respondent No.2 on 31.07.2026. The entire position was thereafter recorded by this Court and it was observed that, in the event Respondent No.2 failed to appear on the next date, the petition would be heard finally.

16. Thereafter, the matter was listed on 07.09.2026. Again, nobody appeared on behalf of Respondent No.2. The matter was therefore kept on today.

17. Today, when the matter is called out, nobody appears on behalf of Respondent No.2. In view of the above, I proceed to consider the present petition on its merits.

18. From the record placed before me, I find that the learned Civil Judge, Senior Division, Osmanabad, in Land Acquisition Reference No.11 of 2018, has categorically declared that the petitioner is the only owner of the subject matter property and is the only person entitled to receive the compensation arising out of the acquisition.

19. There is nothing on record before me to indicate that the said judgment and award is stayed by this Court in the first appeal preferred by Respondent No.2.

20. The application filed by Respondent No.2 before the Reference Court seeking stay of disbursement of the deposited amount was also only for the appeal period. The Reference Court however, permitted withdrawal of 50% of the amount upon furnishing a bank guarantee and imposed a condition requiring the petitioner to furnish an undertaking for withdrawal of the remaining 50% of the compensation.

21. The Reference Court has not referred any provision of law to impose such restrictions. Once the Reference Court had arrived at a determined conclusion that the petitioner was the only person entitled to receive the compensation awarded under the judgment and award, the further condition or

restriction imposed upon the petitioner cannot be said to be justified.

22. In the absence of any stay to the judgment and award passed by the Reference Court, and particularly when the petitioner is already declared to be the person entitled to receive the compensation, the condition of furnishing a bank guarantee for withdrawal of 50% of the compensation cannot be sustained.

23. In view of the above discussion, I find that the petitioner has made out a successful case for interference by this Court. Hence, I deem it appropriate to pass the following order :

ORDER

- I. The Writ Petition is allowed.
- II. The order dated 11.08.2022 passed by the learned Reference Court is quashed and set aside to the extent it imposes a condition upon the petitioner to furnish a bank guarantee for withdrawal of 50% of the compensation amount.
- III. The petitioner shall furnish an undertaking to the satisfaction of the learned Registrar of the

Reference Court that, in the event the judgment and award passed by the Reference Court is varied, modified or set aside in the proceedings arising therefrom, the petitioner shall abide by such order and shall redeposit such amount as may become payable pursuant to such order.

IV. The Writ Petition stands disposed of.

(AJIT B. KADETHANKAR, J.)

PRW