

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2147 OF 2015

Shri. Vishnupant Narhar Git (Kulkarni)
(since Decd) Through LRs. ...Petitioners

Versus

The Sub-divisional Officer, Niphad Sub-Division,
Niphad And Ors. ...Respondents

Mr.Nikhil Pujari i/b. Mr.PN.Joshi, for the Petitioners.

Mr.P.G.Sawant, AGP for Respondent Nos.1 and 2.

**CORAM : DR. MANJULA CHELLUR, C. J., &
G.S.KULKARNI, J.**

DATE : MARCH 1, 2017

P. C.

1. The petitioner is before this Court seeking following reliefs:-

“(a) Issue an appropriate Writ/Order for quashing and setting aside the order dated 01.10.2014 passed by the Sub-Divisional officer, Niphad Division, Niphad, District Nashik, by which amount of compensation is directed to be paid to Respondent Nos.3 to 9.

(b) Issue an appropriate writ/order, directing the Respondents to take steps for recovery of the said amount from the Respondent No.3 to 9 and re-deposit the same, in accordance with the Provisions of Section 20 and 30 of the said Act, 1894 in the

civil court and make a reference under the Provisions of Section 30 of the said Act, for deciding the apportionment and entitlement of the amount of compensation.

(c) Issue an appropriate Writ/ Order directing the Respondent No.1 to withdraw the amount which has been already paid to Respondent Nos.3 to 9 and deposit the same in the Civil Court as per the Provisions of Section 30 of the Land Acquisition Act, 1894.

(d) Pending the hearing and final disposal of the present Writ Petition, the amounts so deposited/ paid to the Respondent Nos.3 to 9 may not be permitted to be utilised and / or withdrawn and/or spent till decision of this Writ Petition and/or decision of the Civil proceedings namely Regular Civil Suit No.74/2004 and Regular Civil Suit No.125/2007.

(e) In the alternative, pending the hearing and final disposal of the present Writ Petition, the amount which the Respondent Nos.3 to 9 have received by way of compensation, should be directed to be invested in Nationalized Bank on such terms and conditions as this Hon'ble Court deem fit and proper and will be subject to further orders of this Hon'ble High Court in this Writ Petition.

(f) Ad-interim relief in terms of prayer clause (d) and/or (e) above may kindly be granted.

(g) Any other further prayer that may be deemed fit and proper be granted."

2. According to the petitioners, they are absolute owners of the property at Gat No.1182 admeasuring 0.67 R situated in

the District of Nashik. According to them, their father purchased the property under sale deed way back in the year 1963, therefore, the property is self acquired property of the petitioners and does not belong to joint family. Apparently, a civil suit is pending being Regular Civil Suit No.125 of 2007. This is also subject of Regular Civil Suit No.74 of 2004. Apparently, the award pertaining to this land came to be made in the year 2011. Much prior to the date of the Award, partition suit and other suit were filed in the year 2004 and 2007. It is also not in dispute that under Section 30 of the Land Acquisition Act, 1894 there was resistance with regard to apportionment of compensation amount and the authority concerned passed the impugned order on 9 October 2014. By virtue of this order dated 9 October 2014 under Section 30 of the 1894 Act, the money was to be paid to the family members and the petitioners are aggrieved by the same. Apparently, the parties who received the money were the defendants in the suit. There was ample opportunity for the petitioners to seek proper directions in the civil suit against the defendants in so far as this money is concerned, which has to be paid by the State towards compensation. Even otherwise, after

disposal of the matter under Section 30 of the Land Acquisition Act, 1894 by an order dated 9 October 2014, the petitioners approached this Court in February, 2015. By that time the entire money was deposited and paid to the opponents of the petitioners. Even now it is not too late in the day for the petitioners to get their rights established in the partition suit.

3. On perusal of the impugned order which is in Marathi, what we notice is that in none of the 7/12 extracts, names of the petitioners are indicated. That apart the possession was not found to be with the petitioners and further the persons to whom the amounts are paid have given an undertaking that in case of civil suit ending in favour of the petitioners, they would abide by the decision which means they have to part with the money which they have received already. Even otherwise, if the petitioners were to be declared as absolute owners of the property in question in the partition suit depending upon the value of the other properties, the Court always makes adjustment demarcating other properties which come to the share of the petitioners. When the above remedies are available, we are of the opinion that there

is no purpose in keeping this matter pending. We keep all the contentions of the parties open.

4. Accordingly, the Writ Petition is disposed of.

(G.S.KULKARNI, J.)

(CHIEF JUSTICE)