

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 788 OF 2017

Kashinath Kacharu Sangale ... Petitioner
Vs.
Dattatraya Kacharu Sangale & Anr. ... Respondents

Mr. Sachin Gite, Advocate for the petitioner.
Mr. Shriram S. Kulkarni, Advocate for respondent No. 1.
Ms. K.R. Kulkarni, AGP for respondent No. 2.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 4th August, 2017.

P.C.:

Rule. Rule made returnable forthwith. By consent, Writ Petition is heard finally and decided at the stage of admission.

2. This Writ Petition is directed against the order dated 18th October, 2016 passed by the Joint Civil Judge Senior Division, Nashik below Exhibit 26 in Special Civil Suit No. 242 of 2014. The respondent no. 1/plaintiff has filed the suit for recovery of the amount of compensation from the petitioner/defendant no. 1, which was deposited by the Government against the land acquisition. The petitioner/defendant no. 1 has moved an application for framing of preliminary issue that the suit is not maintainable for want of notice under section 80 of the Code of Civil Procedure to the State of

Maharashtra, which is also party-defendant. The said Application was opposed by the respondent/plaintiff on the ground that no relief is claimed against the State of Maharashtra and the State of Maharashtra is a formal party.

3. The learned counsel for the petitioner has submitted that in the written statement also, the petitioner/defendant no.1 has contended that the notice under section 80 of the Code of Civil Procedure is not given to the State of Maharashtra and hence the suit is not maintainable. The learned counsel also relied on the petitioner's Application of asking the Court to frame preliminary issue. The learned counsel has further submitted that the learned Judge instead of framing the preliminary issue, has rejected the Application. He submitted that as the notice is not given and that is contended in the written statement, the issue on the point of maintainability is to be framed.

4. Perused the impugned order. The reason given by the learned Judge is correct and hence, no interference is called for. Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)