

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 WRIT PETITION NO. 14240 OF 2017

TULSABAI ASARAM HADE, DECEASED AND OTHERS
VERSUS
SHAHUBAI @ RAMABAI BABURAO PAGARE AND OTHERS

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Advocate for Petitioners : Mr. Shinde Chandrakant K.

Advocate for Respondent No.1 : Mr. A. S. Naik

AGP for State : Mr. S. P. Tiwari

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CORAM : V. K. JADHAV, J.

DATED : 18th APRIL, 2018

PER COURT:-

1. This Writ Petition can be disposed of by directing the trial court to dispose of the suit in a time bound manner.
2. The respondent No.1/original plaintiff, in the pending suit bearing R.C.S. No. 212 of 2009 instituted for a declaration to the effect that the sale deed executed in favour of the petitioner/defendant no.1 is null and void, filed an application exhibit 37 with a prayer to restrain the petitioners/defendants from receiving compensation from the D.M.I.C. authority till the decision of the suit as the suit property came to be acquired by

D.M.I.C. during pendency of the suit. The learned Civil Judge, Junior Division, Paithan, by order dated 29.04.2014, has allowed the said application exhibit 37 with costs and restrained the petitioners/defendants from receiving compensation from the D.M.I.C. authority till disposal of the suit. The learned counsel for the petitioners/original defendants has vehemently submitted that the said order passed below exhibit 37 is an *ex parte* order without giving an opportunity of being heard to the petitioners/defendants. The learned counsel submits that even thereafter, the petitioners have filed an application exhibit 59 for review of the said order. However, the trial court, by order dated 21.07.2016, has also rejected the said application. The learned counsel submits that the petitioners thereafter approached to the District Court by filing Miscellaneous Civil Appeal and the same came to be dismissed as not maintainable. However, the same is not relevant for the present discussion.

3. It appears that though the trial court has passed the order below exhibit 37 on 29.04.2014 and if, according to the petitioner, the said order came to be passed *ex parte* without giving an opportunity of being heard to the petitioners, it was

expected from the petitioners to file an application immediately after passing of the said order by the trial court. However, the petitioners have filed an application exhibit 59 two years after passing of the order by the trial court below exhibit 37. In view of the same, it would not be desirable at this stage to interfere with the order passed by the trial court way back in the year 2014 and the purpose would be served if the trial court is directed to dispose of the suit as expeditiously as possible. Hence the following order:

ORDER

- I. The learned Judge of the trial court is hereby directed to dispose of the suit bearing R.C.S. No.212 of 2009 as expeditiously as possible, preferably within a period of eight months from today.
- II. Parties to co-operate with the trial court in disposing of the suit in a time bound manner as directed by this Court.
- III. The Writ Petition is accordingly disposed of. No costs.

(V. K. JADHAV, J.)