

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

920 WRIT PETITION NO.5027 OF 2019

VITTHAL CHANDRABHAN UKHARANDE THROUGH
GPA SHRIRAM VITTHAL UKARANDE
VERSUS
THE UNION OF INDIA AND ORS.

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Mr.S.S.Randive, Advocate for Petitioner.

Mr. Anilkumar B. Dhongade, Advocate for R – 1 & 3.

Mr. K.B.Jadhavar, A.G.P. for R – 2.

Mr. S.K.Chavan, Advocate for R – 4.

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CORAM : V.L.ACHLIYA, J.

DATE : 26/04/2019

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ORAL ORDER :

1. By the present petition under Articles 226 and 227 of the Constitution of India the petitioner challenges the order dated 06/03/2019 passed by the Civil Judge [S.D.], Bhoom. By the impugned order, learned Civil Judge [S.D.], Bhoom before whom the Reference has been made u/s 3 (h) of the National High-way Act, 1956 [for short, 'said Act'] has allowed the application of respondent No. 4 seeking withdrawal of amount to the extent of 3500 Sq.Mtrs. of land acquired.

2. In brief, it is the grievance of the petitioner that though he has raised objector and same has been referred u/s 3 (h) of said Act and also requested the

reference Court to release compensation to the extent of 2955 Sq.Mtrs. of land in his favour, the reference Court has allowed the application moved by respondent No. 4. However, no order was passed in respect of request made by the petitioner to release compensation to the extent of 2955 Sq.Mtrs.

3. On the other hand, learned counsel for respondent No. 4 submits that the petitioner has not filed any application seeking withdrawal of compensation. He has simply raised an objection to the application moved by the petitioner. He further submits that there is a dispute about the entitlement of petitioner to claim the compensation to the extent of 2955 Sq.Mtrs. of land as in the award passed the petitioner is shown to be entitled to receive the compensation to the extent of 900 Sq.Mtrs. of land. Learned counsel further submits that the dispute needs to be adjudicated by the Reference Court.

4. On due consideration of the submissions advanced, I am of the view that the order passed by the learned Civil Judge [Sr.Division], Bhoom which is impugned, is quite reasoned and calls for no interference in exercise of powers under Articles 226 and 227 of Constitution of India. The observations noted in the order reads as under.

" 3. The objector by filing say at Exh. 19 and 22 opposed the application. As per him, his 2955 Sq. Mtr. land has been acquired and is entitled to receive compensation for that land. The compensation amount should be paid after determining rights of parties. If the respondent is permitted to withdraw amount, he will prolong the matter and the objector will suffer huge loss. On this ground he prayed for rejection of application.

4. This is reference under section 3(h) of National Highways Act, 1956. On perusal of record, it appears that 7100 Sq.Mtr. of land from block No. 1174 situated at Terkheda, Taluka Washi was acquired for National Highway 211 and compensation of Rs. 1,20,44,141/- is deposited by acquiring authority. Objector raised dispute before said authority as to apportionment of said amount, hence this reference. Initially, it was shown by Highway Authority that out of above 7100 Sq. Mtr., 6200 Sq.Mtr. belong to respondent and 900 Sq.Mtr. belong to objector. Subsequently, acquired land was re-measured and it

was communicated by referral authority vide letter dated 05/12/2017 that in re-measurement, 4200 Sq.Mtr. of respondent and 2955 Sq.Mtr. of objector are shown to have been acquired. Accordingly, the objector is claiming compensation of 2955 Sq.Mtr. That means there is dispute only regarding 2955 Sq.Mtr. out of 7100 Sq.Mtr. and objector in a way admitting that respondent is entitled to compensation of remaining almost 4200 Sq.Mtr. In such circumstances, I do not find any reason to withheld the undisputed compensation amount. Therefore, I hold that respondent is very well entitled to withdraw the compensation amount to the extent of 35 R. as prayed. Hence, the application deserves to be allowed. In the result, following order.

ORDER

- 1. Application is allowed.*
- 2. Compensation amount of 3500 Sq.Mtr. be paid to the respondent Narayan Ukrande as prayed after necessary verification.*
- 3. Remaining amount be kept with Court as per rules. "*

5. The petitioner has not disputed the entitlement of respondent No. 4 to receive the compensation to the extent of 4200 Sq.Mtrs. of land out of 7100 Sq.Mtrs. of land acquired for the construction of road under the provisions of the National Highways Act. The dispute appears to be in respect of remaining land. Respondent No. 4 has not disputed that the petitioner is entitled to receive the compensation to the extent of 900 Sq.Mtrs. of land. It appears that the land has been re-measured by the Highway authority and communicated vide letter dated 05/12/2017 that as per the re-measurement of land measured the , respondent No. 4 is entitled to receive compensation in respect of 4200 Sq.Mtrs. of land and the petitioner is entitled to receive compensation of 2955 Sq.Mtrs. of land out of 7100 Sq.Mtrs. of land acquired for the said project. In the light of report from the National Highway authority the objections raised, the referral authority needs to decide the dispute. Since there is no dispute the applicant is entitled to receive compensation in respect of 3500 Sq.Mtrs. of land, the application moved by the petitioner has been allowed by the referral authority. In that view, the order suffers from no illegality or perversity so as to call for interference in exercise of writ jurisdiction.

6. So far as the grievance of the applicant that while deciding the application, the referral authority

has not passed the order in respect of the petitioner, I am of the view the petitioner can make an application seeking withdrawal of amount. Since there is no dispute about the area admeasuring 900 Sq.Mtrs., the same can be considered by the referral authority and permission can be granted to withdraw that amount. So far as the disputed area is concerned, the matter can be decided expeditiously by the referral authority in light of the report submitted by the National Highway authority.

7. Accordingly, the petition is disposed of as dismissed. The petitioner is granted liberty to make appropriate application before the reference Court for withdrawal of amount. In case such application is made, the reference Court is directed to decide the same as expeditiously as possible in accordance with law. The reference Court is directed to decide the reference as expeditiously as possible.

8. Petition is dismissed with directions as above.

[V.L.ACHLIYA]
JUDGE

KNP.