

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

44 WRIT PETITION NO.10602 OF 2018

SAHEBRAO ZIPA CHAVAN

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Ravindra Vitthal Gore, Advocate for the Petitioner.

Mr. P. K. Lakhotiya, AGP for Respondents-State.

Mr. Anilkumar B. Dhongade, Advocate for Respondent No.2.

Mr. Yuvraj V. Kakde, Advocate for Respondent Nos.4 to 6.

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

DATED : 10th APRIL, 2019.

PER COURT:-

1. Mr. Gore, learned counsel for the petitioner submits that the land has been acquired under the provisions of the National Highways Act. Though the land stood in the name of respondent no.5 the petitioner has a share in the property being a joint family property. According to the learned counsel though the status quo order was passed by this Court, the amount was disbursed in favour of respondent no.5. The objection has not been properly dealt with by the respondent. The

competent authority ought to have referred the objection to the Court of Original Civil Jurisdiction as per the Section 3-H(4) of the National Highways Act.

2. Mr. Kakde, learned counsel for respondent nos.4 to 6 submits that in fact the land acquired belongs to respondent no.5. The sale deed is in the name of respondent no.5. The matter is also subsequently settled between respondent no.5 and the petitioner, however, the petitioner has not brought this fact to the notice of this Court.

3. We have heard the learned counsel for the other respondents.

4. The amount is already disbursed to respondent no.5. It is not disputed that the present petitioner has already filed a suit for partition and separate possession and the same is pending. The competent authority has also observed that the withdrawal of the amount by the respondent no.5 is subject to the decision in the Civil Suit.

5. As the substantive Civil Suit for partition and separate possession is already filed by the petitioner bearing R.C.S. no.36/2018, no purpose would be served by now referring the dispute to the Principal Court of Original Civil Jurisdiction, as that would delay the proceedings. The competent authority has already observed that

the withdrawal of the amount by the respondent no.5 would be subject to the decision of the Civil Suit filed by the petitioner that would safeguard the interest of the petitioner.

6. In light of the above, no further orders are necessary. Needless to state that the amount that has been withdrawn by respondent no.5 pursuant to the Award passed under the National Highways Act would be subject to the decision of the Civil Suit filed by the petitioner bearing R.C.S. No.36/2018. In case the suit is decided in favour of the petitioner, then respondent no.5 will be liable to redeposit the amount as per the decision of the Civil Court. The petitioner may file an application for amendment of the plaint with regard to the amount in question.

7. Writ Petition is disposed of. No costs.

(A. M. DHAVALÉ)
JUDGE

(S. V. GANGAPURWALA)
JUDGE