

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 8762/2018

(RAMESHWAR BALJU PAL **VERSUS** THE DEPUTY COLLECTOR AND LAND ACQUISITION (GENERAL)
WARDHA & ANOTHER)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.M. Bhangde, counsel for petitioner.
Shri J.Y. Ghurde, A.G.P. for R-1.
Shri A.C. Dharmadhikari, counsel for R-2.

CORAM : A.S. CHANDURKAR AND VINAY JOSHI, JJ.

DATE : MARCH 02, 2020.

The respondent no.2 had entered into an agreement to purchase 0.95 R land from the petitioner herein on 26.08.2008. Special Civil Suit No.150 of 2009 filed by the respondent no.2 against the petitioner for specific performance of that agreement has been decreed by the trial Court and the Appellate Court has confirmed the said decree. Second Appeal No.349 of 2017 filed by the petitioner came to be dismissed on 15.01.2018 and it is informed that the decree for specific performance has attained finality. When the said suit was pending, notification under Section 3 of the National Highways Act, 1956 was issued on 12.05.2015. The land acquired was from Survey No.128/1 to the extent of 11 R. The petitioner sought to withdraw the amount of compensation and made an application in that regard on 31.10.2018. The respondent no.1 did not release the aforesaid amount on the ground that there was no permission granted in that regard. The petitioner has thus challenged the said communication dated 01.11.2018.

After hearing the learned counsel for the parties, it is seen that the decree for specific performance has attained finality. That decree has been put to execution vide S.D. No.41 of 2011. While the petitioner seeks to rely upon the provisions of Section 21 of the Specific Relief Act, 1963 (for short, 'the said Act') for contending that the petitioner could claim compensation for 11 R land that has been acquired, it is the case of the respondent no.2 that as the decree has attained finality, the respondent no.2 is entitled to receive that amount.

We find that the question with regard to execution of the said decree is pending with the Executing Court in S.D. No.41 of 2011 and the questions relating to the provisions of Section 21 of the said Act as sought to be urged could be raised before the Executing Court.

The interests of justice would be served by directing the respondent no.1 to deposit the amount of compensation of Rs.37,17,467/- with the Executing Court within a period of four weeks from today. That amount shall be invested in Fixed Deposit by the Executing Court in a Nationalized Bank. The parties are free to have their rights determined in the matter of withdrawal of that amount in the Executing Court. All questions in that regard are kept open. The writ petition stands disposed of. No costs.

(VINAY JOSHI, J.)

(A.S. CHANDURKAR, J.)