

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

**WRIT PETITION NO.3379 OF 2020**

**KHANDERAO JALBAJI SAKHRE  
VERSUS  
COMPETENT AUTHORITY / SUB DIVISIONAL OFFICER  
NANDED AND ANOTHER**

...

Advocate for the Petitioner : Shri Bora Satyajit S.  
Advocate for Respondent 1 : Shri A.N. Patale  
Advocate for Respondent 2 : Shri S.V.Kurundkar

...

**CORAM : RAVINDRA V. GHUGE  
&  
S.G. MEHARE, JJ.**

**DATE :- 31<sup>st</sup> August, 2021**

**Per Court :-**

1. This matter was heard briefly. With the assistance of the learned advocates for the respective sides, we have gone through the petition paper book and the scope of Section 3H(4) of the National Highways Act, 1956. The affidavit in reply filed by respondent No.1 (Vikas Rajaram Mane), is taken on record.

2. There is no dispute that the petitioner has filed Special Civil Suit No.77/2008 before the learned Civil Court with reference to 38 R land, which he claims to be in his possession and out of which, 1637 square meters has been

acquired for a public project under the National Highways Act. The said suit has been dismissed with costs by judgment dated 13.11.2019. Regular Civil Appeal No.158/2019 is pending before the learned District Court at Nanded.

3. Shri Kurundkar, the learned advocate representing respondent No.2/ Shivaji Ramji Kokate, submits that once the civil suit has been dismissed with costs and the claims of the petitioner have been turned down by the learned Civil Court, it is a clear indication that none of his rights are involved to the extent of the land that has been acquired for a public project. In this backdrop, there would be no purpose in referring the dispute as regards the apportionment of compensation amount to the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated, under Section 3H(4).

4. Shri Kurundkar further submits that even if the said dispute is referred to the said Court, it would amount to a second adjudication on the claims of the petitioner since he holds a claim on the misconceived belief that he has a right to 38 R land out of which some portion has been acquired. It, therefore, turns upon the issue as to whether, the petitioner has any right, which can be asserted to the extent of his right, title and interest with reference

to the said land. This aspect was squarely before the learned Civil Court in Special Civil Suit No.77/2008.

5. In view of the above and since the regular civil appeal is pending before the learned Appellate Court, we suggested to the learned advocate for the petitioner as to whether, the petitioner would cooperate in the appeal proceedings for an expeditious disposal of the appeal and the interim protection granted by this Court on 27.02.2020 could be continued only upto such decision.

6. Shri Bora, learned advocate for the petitioner, sought a pass-over and submitted, after lunch in the second session, that the petitioner is agreeable.

7. Shri Kurundkar submits that the wife of respondent No.2/ Shivaji is presently suffering from severe ailment and medical treatment is extremely costly. She desperately needs the said compensation amount for medical treatment. To reassure the petitioner, he would preserve the land at least to the extent of 38 R in the same area which belongs to him, until the appeal is decided. On this condition, he prays for leave to withdraw the said amount.

8. Considering the submissions as recorded above, we

deem it appropriate to grant a time-frame to the learned Appellate Court to decide the pending appeal in order to avoid further complications or any dispute as to whether, the land has been preserved by respondent No.2/ Shivaji or whether, the amount withdrawn cannot be re-deposited in the event the petitioner succeeds, etc..

9. In view of the above, this Writ Petition is disposed off. We request the learned District Court at Nanded to decide Regular Civil Appeal No.158/2019 as expeditiously as possible and preferably on or before 30.10.2021. The litigating parties have agreed to dispense with the appeal paper book, if not already tendered. They would rely upon the record and proceedings. Both the plaintiffs and the defendants would advance their oral submissions on or before 30.09.2021. The written notes of submissions are permitted. The learned Appellate Court would close the matter for judgment and deliver it's judgment on or before 30.10.2021.

10. Needless to state, ad-interim protection granted to the petitioner (Khanderao Sakhre) on 27.02.2020, would continue to protect him only till 30.10.2021 or till the decision in the appeal, whichever is earlier. Thereafter, the Appellate Court

shall keep in mind that the interim protection granted by this Court would not be a ground for the Appellate Court to continue the same relief, save and except on merits of the matter.

11. Considering the grounds of necessity to withdraw the amount having been expressed by respondent No.2/Shivaji, we leave it to the said defendant to make an application before the Appellate Court for withdrawal of the amount on such conditions as the Appellate Court may deem appropriate to impose.

*kps*

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)