

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

WRIT PETITION NO. 5665 OF 2020

Arun Gopalrao Sherkar and another ... Petitioners

Versus

Digambar s/o Gopalrao Sherkar
(Since Died – through L.R's.)

1-A. Vandana Rajkumar Sherkar and others ... Respondents

....

Mr. V. D. Salunke, Advocate for petitioners

Mr. G. V. Mohekar, Advocate for respondent Nos. 1-A to 1-D.

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 13th JANUARY, 2021

PRONOUNCED ON : 19th JANUARY, 2021

PER COURT :-

1. Heard learned counsel for the parties.

2. The order impugned in this writ petition has been passed by the Court of 6th Joint Civil Judge, Senior Division, Osmanabad, on applications below Exh.101 and 103 in Land Acquisition Reference (L.A.R.) No.609 of 2016. By the impugned order, the application moved by the petitioners for release in their favour the amount of compensation payable to them on account of acquisition of land for construction of National Highway, came to be rejected.

3. Facts in brief:-

The petitioners are the brothers *inter se*. Deceased respondent – Digambar was real brother of the petitioners. They have one more brother, by name Suryakant and sister Chitrabai. Agricultural lands, Gat Nos. 369/9, 345/6, and 344/3 belonged to their father late Gopalrao, who passed away in November 1995. It is the case of the petitioners that partition of the family properties took place and the lands that have been acquired by the National Highway Authority, had fallen to the share of the petitioners.

4. Admittedly, the petitioners were the only parties before the Land Acquisition Authorities. The award has been passed in their favour. A sum of Rs.25,77,495/- and Rs.25,55,082/- has been awarded to both the petitioners, respectively as compensation under the award dated 12.04.2016.

5. The original respondent – Digambar, filed a suit being R.C.S. No.80/2010 for partition and separate possession of the family properties. The suit was dismissed. Late Digambar is unsuccessful in first appeal i.e. R.C.A. No.206/2014 preferred against the judgment and decree passed in R.C.S. No.80/2010. He, therefore, appears to have preferred Second Appeal in this Court.

The same is pending on stamp number i.e. Second Appeal Stamp No.24123/2019.

6. Meanwhile, the respondent preferred an objection to the Competent Authority for distribution of the amount of compensation in favour of the petitioners. The Competent Authority referred the dispute to the Principal District Judge, Osmanabad, for apportionment of compensation. The Principal District Judge, in turn referred the same to the Court of 6th Joint Civil Judge, Senior Division, Osmanabad, for decision. The learned Judge vide his order dated 05.12.2019, passed the order holding the petitioners to be entitled to receive the amount of compensation. The respondent, thereafter, preferred a writ petition being Writ Petition No.3839/2020 and challenged the impugned order. The writ petition was disposed of with an observation that the petitioner therein may seek the relief as may be permissible in pending Second Appeal.

7. It appears that the respondent has not yet sought circulation of the Second Appeal based on the order passed in the writ petition. The learned 6th Joint Civil Judge, Senior Division, Osmanabad, by his impugned order dated 23.06.2020, rejected the applications Exh.101 and 103 with a direction not to disburse the

compensation amount in favour of the petitioners until orders in that regard are passed in Second Appeal. The petitioners are therefore before this Court in this writ petition.

8. The learned counsel for the respondents submitted that he would seek necessary directions from the Court seized of the Second Appeal.

9. Learned counsel for the petitioners would on the other hand submit that the original respondent has been unsuccessful in a suit for partition and appeal preferred against it. The award has been passed in favour of the petitioners. Their another brother and sister have admitted the case of the petitioners.

10. True, this Court cannot sit in Second Appeal against the judgment and decree passed in R.C.S. No. 80/2010. The fact, however, remains that the original respondent has been unsuccessful in his claim for partition of the family properties. Both the Courts have concurrently held that the partition of the family properties did take place. I have perused the judgment passed by both the Courts. It appears that there was an oral partition. Memorandum thereof was executed. These are the *prima-facie* observations so far as regards

deciding the present writ petition. The amount of compensation has remained undisbursed for over four years. The petitioners are found to be entitled to receive the same. The interest of the respondents could very well be secured, directing the petitioners to furnish bank guarantee or solvent surety to the extent of share, if any, of the original respondent. This order would necessarily be subject to any order that may be passed in the Second Appeal as regards the claim of the respondent for amount of compensation.

11. In view of the above, the writ petition is allowed in terms of the following order:

ORDER

- (i) The impugned order dated 23.06.2020 passed by the 6th Joint Civil Judge, Senior Division, Osmanabad on applications belwo Exh.101 and 103 in L.A.R. No.609 of 2016, is set aside.
- (ii) The amount of compensation payable to the petitioners be released in their favour.
- (iii) Both the petitioners shall furnish bank guarantee or solvent surety to the extent of Rs.10,00,000/- (Rupees Ten Lakh) each and also furnish undertaking that in case any adverse order is passed against them as regards the amount of

compensation, they would repay the same or return it as may be directed in Second Appeal.

- (iv) The bank guarantee/surety shall remain in force until decision of the Second Appeal or any other order that may be passed as regards the respondents' claim for compensation pending in the Second Appeal, whichever is earlier.

[R. G. AVACHAT, J.]

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