

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

WRIT PETITION NO.6391 OF 2021

1. Mankarnabai Ganpat Patil (Mali)
Age : 78 years, Occu: Agriculture,
2. Sajjan Ganpat Patil (Mali)
Age : 58 years, Occu: Agri. & Service,
3. Dnyaneshwar Ganpat Patil (Mali)
Age : 55 years, Occu : Agri. & Service,
All R/o: Tukaramwadi, Near Satsang Hall,
Jalgaon, Tq. & District : Jalgaon

... PETITIONERS

VERSUS

1. Kaushalabai Sampat Patil (Patil),
Age : 78 years, Occu : Household,
2. Dinesh Sampat Patil (Mali),
Age : 35 years, Occu : Service,
Res. No. 1 and 2 are R/o. Ghar No.742,
Joshi Peth, Tal. & Dist. Jalgaon.
3. Kokilabai Ramkrishna Kapade,
Age : 49 years, Occu: Household,
R/o. Tukaramwadi, Near Satsang Hall,
Behind Neri Naka,
Tq. & Dist. Jalgaon.
4. Suman Manoj Jaktap,
Age : 47 years, Occu: Household,
R/o. Navegaon Kalwadi, Nashik,
Tq. & Dist. Nashik.
5. Vijaya Shriram Borse,
Age : 43 years, Occu: Household,
R/o. Kalikamata Mandir,
Sat Koyala Kanchan Nagar,
Tal. & Dist. Jalgaon.
6. National Highway Authority,
Project Implementation Unit,
Dhule, through its Director,
Nhai, Survey No.10/2,
Plot No.11, Mansaramnagar,
Near Circuit House, Sakri Road,
Dhule, District Dhule.

... RESPONDENTS

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Advocate for Petitioners : Mrs. Rashmi S. Kulkarni
Advocate for Respondent Nos. 1 to 5 : Mr. Vinod P. Patil

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CORAM : MANGESH S. PATIL, J.

Date : 06.10.2021

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. At the request of the parties, the matter is heard finally at the stage of admission.

2. The petitioners are taking exception to the order passed by the learned Principal District Judge, Jalgaon in Miscellaneous Civil Application No.93 of 2019 whereby the respondents' request for allowing them to withdraw the amount of compensation in respect of a portion of land acquired by the National Highway Authority under the National Highways Act, 1956 has been allowed during pendency of a reference made under Section 3(H)(4) of that Act.

3. The learned advocate for the petitioners strenuously takes me through the chequered history of the litigation between the parties and makes a sincere attempt to demonstrate as to how the reference has to be made under Section 3(H)(4) of the National Highways Act to a Civil Court whenever there is a dispute between the parties in respect of shares in the amount of compensation determined under that Act. The sum and substance of her submission is to the effect that the impugned order permitting the respondents to withdraw the amount of compensation even before the reference is decided would amount to prejudging the issues which are still to be decided. The learned Principal District Judge ought to have waited for the reference to be decided instead of allowing the

respondents to withdraw the money. It would cause a serious prejudice to the petitioners' rights which are *sub judice* before the reference court.

4. The learned advocate for the respondents also takes me through some disputed documents and disputed facts in the form of partition deeds entered into between the parties, whereby, the property under acquisition has been allotted to the respondents and the petitioners having sold the properties allotted to their share as also the mutation effected pursuant to such partition.

5. Suffice for the purpose to bear in mind, at the outset that the petitioners are invoking the Writ Jurisdiction of this Court the scope of which is limited. It cannot undertake any exercise of deciphering the disputed question of fact. Without indulging into a threadbare scrutiny of the facts it would be suffice to refer only to some of the facts which are relevant.

6. Admittedly, the petitioners have already obtained a decree of general partition in Regular Civil Suit No.519/1992 on 13.09.1993. Asserting that in spite of such decree there was no partition by metes and bounds they have filed another suit bearing Regular Civil Suit No.117/2018 again for separation of their shares. By filing an application (Exhibit-6) under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure they claimed temporary injunction *inter alia* restraining the respondents from withdrawing the amount of compensation and restraining the respondent No.6 National Highways Authority from disbursing it to them. That

Application was rejected on merits after hearing both the sides by the order dated 02.11.2018 and the petitioners have challenged it by preferring an Appeal under Order 43 in Miscellaneous Civil Appeal No.60/2018 which is pending before the District Court.

7. A bare perusal of the order refusing temporary injunction in favour of the petitioners would reveal that all the contentions touching the facts which are now being agitated before me on behalf of the petitioners were duly considered. It is, therefore, quite apparent that the parties are already before a Civil Court in a substantive proceeding and all the disputes between the parties would be decided therein. It is sufficient for the time being to reiterate that the learned Civil Judge by giving elaborate reasons has refused to grant temporary injunction in favour of the petitioners. I am intentionally avoiding to refer to these grounds and examine their correctness as that could have a bearing on the decision of the Miscellaneous Civil Appeal preferred by the petitioners.

8. The important fact that needs to be borne in mind is that, irrespective of the fact as to whether the partition deeds being propounded by the respondents are admissible in evidence or otherwise, the conduct of the parties demonstrates that they have acted in terms of such arrangement. A mutation has been effected to give effect to such partition and subsequently even the petitioners have apparently executed registered sale deeds in respect of the lands allotted to them. It is precisely for this reason no exception can be taken to the observation of the learned Principal District

Judge in the impugned order that the parties have already effected partition and have received separate properties and the portion of lands acquired are from the lands allotted to the share of the respondents. In view of such a state of affairs, I do not find any perversity or arbitrariness in the impugned order.

9. Needless to state that the decision in the pending suit (RCS No.117/2018) would finally determine all the disputes between the parties.

10. The Writ Petition is therefore liable to be dismissed.

11. However, the amount of compensation as is informed by the parties is more than rupees 1 crore. The impugned order permits the respondents to withdraw the money by furnishing only an indemnity bond. In my considered view it would be appropriate to direct them to furnish some solvent security atleast in respect of some portion of the amount of compensation sought to be withdrawn. Therefore only to this extent, I am inclined to modify the order.

12. The Writ Petition is dismissed. The Rule is discharged.

13. However, the impugned order is modified only to the extent that the respondents are permitted to withdraw 50% of the amount on furnishing indemnity bond as is directed and remaining 50% amount by furnishing a bank guarantee to that extent which they shall keep alive/renewed till decision of the Reference.

(MANGESH S. PATIL, J.)