

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

952 WRIT PETITION NO.6207 OF 2020

**MADAN BANSILAL BADKANE
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SUB DIVISIONAL
OFFICER AND ANOTHER**

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Advocate for the Petitioner : Shri A. M. Hajare
AGP for Respondent No.1 : Shri R. D. Sanap

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CORAM : N. J. JAMADAR, J.

DATE : 18th MARCH, 2021

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ORAL ORDER :

The challenge in this petition is to the order dated 30th December, 2019 passed by the learned 5th Joint Civil Judge, Senior Division, Aurangabad on an application (Exhibit 16) preferred by the petitioner, in L.A.R. No. 58/2018, to release the entire amount of compensation, to the tune of Rs. 69,19,691/-, deposited by the Sub-Divisional Officer and competent authority in the Court. The Reference Court was persuaded to reject the application holding that the dispute regarding apportionment is to be first determined and thereafter the order for disbursement of the said amount can be passed.

2. Two pieces of land admeasuring 1900 sq. mtrs. and 1200 sq. mtrs. out of gat No.32 situated at village Jambhala, Taluka Gangapur, District Aurangabad were acquired by respondent No.1 for National Highway No.211. An award came to be passed on 20th April, 2017. When the notice of payment of compensation in terms of the award was issued to the petitioner, respondent No.2 filed an objection and laid claim over the amount of compensation. Thereupon, respondent No.1 made the Reference to the Civil Court under Section 3-G of the National Highways Act, 1956.

3. In the said Reference, the petitioner preferred the application (Exhibit 16) for disbursement of the entire amount deposited by respondent No.1. Respondent No.2 resisted the prayer of the petitioner and sought apportionment of the said amount in the ratio of 75% and 25%, in favour of respondent No.2. By the impugned order, the learned Civil Judge, Senior Division, Aurangabad was persuaded to reject the application. Hence, this petition.

4. Respondent No.2 did not appear despite service of notice before admission. By an order dated 18th February 2021, notice was ordered to be re-issued for final hearing. Affidavit of service to the effect that the notice of final hearing is served on respondent No.2, is filed.

5. None appears for respondent No.2.

6. The learned counsel for the petitioner submitted that in the written arguments filed before the Reference Court, respondent No.2 has asserted that both the petitioner and respondent No.2 are entitled to get 1/2 share each in the compensation deposited by respondent No.1. In the backdrop of the aforesaid submission, according to learned counsel for the petitioner, the Reference Court could have allowed the petitioner to withdraw at least 50% of the amount of compensation.

7. The fact remains that in the application, Exh. 16, the petitioner had sought disbursement of the entire amount of compensation. In the circumstances, no fault can be found with the impugned order as the Reference Court was justified in taking a view that till the question of apportionment was decided, there could be no disbursement of the amount.

8. Evidently, there appear to be only two claimants, before the Reference Court. In the written notes of argument, respondent No.2 claimed that he is entitled to half share of the compensation. In the reply to the application, respondent No.2 had claimed 75 % of the compensation amount.

9. In the aforesaid backdrop, it would be expedient to allow the petitioner to renew the prayer for disbursement, and, in the light of the submissions on behalf of the petitioner and respondents, also request the Reference Court to determine the Reference itself expeditiously.

10. Since the controversy, as projected by the petitioner, revolves around the share to which the petitioner and respondent No.2 are entitled to, in the amount of compensation, the Reference Court may make an endeavour to decide the Reference itself as expeditiously as possible and preferably within a period of four months from the date of communication of this order.

11. With the aforesaid liberty and directions, the petition stands disposed of.

12. All concerned to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)

shp/-