

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

917 WRIT PETITION NO.8308 OF 2021

PRAKASH SAHEBRAO PATIL AND OTHERS
VERSUS
PROJECT DIRECTOR NATIONAL HIGHWAY AUTHORITY OF
INDIA AND OTHERS

...

Mr. N.K. Tungar, Advocate for petitioners.

...

CORAM : **AVINASH G. GHAROTE, J.**

DATE : 03-08-2021.

ORDER :

1. Heard learned Counsel for the petitioners, who challenges the order dated 13.07.2021 passed by the respondent No.2, whereby compensation in respect of Gut No. 230 admeasuring 1600 sq.mtrs. to the tune of Rs. 80,87,163/- has been awarded to the respondent No.3 on account of acquisition of the land under the National Highways Act, 1956, by rejecting the objections as raised by the present petitioners. It is the contention of learned Counsel for the petitioners that Gut No. 230 was divided into six parts, one of which was given to the husband of respondent No. 3 who is no more and respondent No. 3 as well as Atharv Dinesh and Anushka Dinesh are her son and daughter, who have been held to be entitled, to receive the compensation by respondent No. 2. Learned counsel contends that a suit was filed bearing Special Civil Suit No. 87 of 2019, in which the present respondent No. 3 is

defendant No. 3 alongwith her son and daughters who are respondent Nos. 4 and 5 where the subject-matter was the portion of the land of Survey Nos. 49/1 and 49/2, and the dispute as to apportionment of the compensation payable therein, in which suit, on account of internal arrangement made between the parties, a sum of Rs. 30,00,000/- was given to respondent No. 3, which was sought to be recovered. On an admission by respondent No.3 that she had received the amount of Rs. 30,00,000/- from the other co-sharers, but was not entitled to refund the same, the learned trial Court by an order dated 01.01.2021 passed under Order 38 Rule 5 of the Code of Civil Procedure had directed the respondent No. 3 and her children, to given an undertaking that they shall not withdraw the amount of fixed deposit of Rs. 30,00,000/- till further order. It is contended, that the said fixed deposit is already broken and an amount of Rs. 18,00,000/- stands withdrawn therefrom by respondent No. 3 and in order to fill up the deficit, the amount payable to her, under the impugned order dated 13.07.2021, should be directed to be deposited in Special Civil Suit No. 187 of 2019.

2. It is material to note, that the allotment of land admeasuring 1600 sq. mtrs. from and out of the land of gut no. 230, to the husband of respondent No. 3 is not disputed, so also the entitlement of respondent No. 3 and her children to receive compensation on account of its acquisition is also not disputed in view of which, respondent No. 3 and her children would clearly be

entitled to the amount as granted by the respondent No. 2. The impugned order, therefore, cannot be challenged on this ground.

3. The contention that the deficit in the amount of Rs.30,00,000/- is required to be made up, by diverting the deficit from the amount of compensation payable under the impugned order dated 13.07.2021, is clearly without any substance, for the reason, that any such request, shall have to be made before the Court having session of Special Civil Suit No. 187 of 2019 in which respondent No. 3 is bound by the order dated 01.01.2021. Admittedly no such application has been made, inspite of the statement made by respondent No. 3, that she has withdrawn Rs.18,00,000/- from the fixed deposit of Rs. 30,00,000/- as submitted by learned Counsel for the petitioner. The compliance of the order dated 01.01.2021, is a matter between the parties to that suit and the Court, who has to ensure such compliance. For that purpose, the impugned order cannot be challenged, so as to ensure, that any deficit, in so far as the order in Special Civil Suit No. 187 of 2019 dated 01.01.2021 is complied with. There is therefore no merit in the petition. The same is accordingly dismissed. In the circumstances, there shall be no order as to the costs.

(AVINASH G. GHAROTE, J.)