

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

**923 CIVIL APPLICATION NO.7343 OF 2021
IN FA/2724/2018 WITH CA/5665/2021 IN FA/2724/2018**

**JAGANNATH VITHAL SURYAWANSHI
VERSUS
THE STATE OF MAHARASHTRA THROUGH COLLECTOR, OSMANABAD AND
OTHERS**

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Advocate for Applicant : Annasaheb S. Kadam
AGP for Respondents: Mr. B.V.Virdhe
Advocate for Respondent No. 4 : Mr. V.V.Kabade

**CORAM : SHRIKANT D. KULKARNI, J.
DATE : 26-10-2021**

PER COURT :

01. In Civil Application No. 5665/2021, the applicant is making prayer for intervention and in another Civil Application 7343/2021, he is praying for re-calling the order passed by this Court dated 19.7.2021 regarding permission to withdraw the amount of compensation deposited by the State.

02. Heard Mr. Kadam, learned Advocate for the intervenor and Mr. V.V.Kabade learned Advocate for respondent No. 4 and Mr. B.V.Virdhe learned A.G.P. for respondent Nos. 1 to 3. Perused the record and order

passed earlier by this Court in Civil Application No. 5666/2021 dated 19.7.2021.

03. According to Mr. Kadam learned Advocate for the applicant, the applicant happened to be the brother of respondent No. 4. The suit for partition is subjudice amongst them before the Civil Court. If the respondent No. 4 is allowed to withdraw the amount as per order passed by this Court, then the legal rights of the applicant would be hampered. Mr. Kadam submits that the order of payment may be subject to the outcome of the decision in partition suit which would take care of the legal interest of the applicant. He submits that the name of the applicant has been shown as project affected person in the certificate granted by the Collector and as such, his legal rights needs to be protected.

04. Mr. V.V. Kabade learned counsel for respondent No. 4 strongly opposes to allow both the applications. He submits that the applicant was not party to the proceedings before the reference Court under Section 18 of the Land Acquisition Act, 1894. He submits that respondent No. 4 has no concern with the compensation amount. Mr. Kabade, learned counsel invited my attention

to the order passed by the Division Bench of this Court in Civil Application NO. 9393/2018 in FA No. 2190/2016 with connected matters and submits that both applications are liable to be dismissed.

05. It is an admitted position that present applicant was not party to the proceedings initiated by respondent No. 4 before the reference Court under Section 18 of the Land Acquisition Act, 1894. Admittedly the civil suit for partition is pending amongst them before the concerned Civil Court which would decide the entitlement of the applicant for the share in the compensation, if any. At this stage, the applicant is nowhere in the picture for getting any share in the compensation. The intervention application moved by the applicant is meritless and same deserves to be dismissed.

06. So far as another prayer made by the applicant and order passed by this Court is concerned, it is in respect of granting permission to respondent No. 4 to withdraw the amount of compensation deposited by the State. In view of earlier part of discussion, I do not find any reason to re-call the order passed by my learned brother dated 19.7.2021.

ORDER

Both the Civil Applications stand rejected.

[SHRIKANT D. KULKARNI]

JUDGE

Dahibhate/-