

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8236 OF 2020

Aminabee d/o. Shaikh Hamid,
(W/o. Abdul Aziz Patel),
Age 71 years, Occu. Household,
R/o. Takli (R), Tq. Khultabad,
District Aurangabad.

Through her Special Power of Attorney Holder,
Imran S/o. Abdul Aziz Patel,
Age 36 years, Occu. Agricultural,
R/o. As above

.. Petitioner

Versus

1. The Sub-Divisional Officer and
Land Acquisition Officer,
Paithan-Phulambri Division
at Mukundwadi, Taluka and
District Aurangabad
2. Shaikh Jameel s/o. Shaikh Bashir,
Age 50 years, Occu. Agricultural,
R/o. At Jambhali, Post Nilajgaon,
Taluka Paithan, District Aurangabad
3. Shaikh Asad s/o. Shaikh Bashir,
Age 38 years, Occu. Agricultural,
R/o. At Jambhali, Post Nilajgaon,
Taluka Paithan, District Aurangabad
4. Shaikh Mobin s/o. Shaikh Bashir,
Age 32 years, Occu. Agricultural,
R/o. At Jambhali, Post Nilajgaon,
Taluka Paithan, District Aurangabad
5. Shaikh Moin s/o. Shaikh Bashir,
Age 32 years, Occu. Agricultural,
R/o. At Jambhali, Post Nilajgaon,
Taluka Paithan, District Aurangabad
6. Shaikh Jameel s/o. Shaikh Bashir,
Age 50 years, Occu. Agricultural,
R/o. At Jambhali, Post Nilajgaon,
Taluka Paithan, District Aurangabad

7. Parveen w/o. Hharun Patel,
@ Parveen d/o. Shaikh Bashir,
Age Major, Occu. Household,
R/o. Loni, Post Bodkha,
Taluka Khultabad, District Aurangabad
8. Shamabee wd/o. Shaikh Bashir,
Age 62 years, Occu. Agricultural,
R/o. At Jambhali, Post Nilajgaon,
Taluka Paithan, District Aurangabad
9. Shaikh Rafiq s/o. Shaikh Gafur,
Age 47 years, Occu. Agricultural,
R/o. At Jambhali, Post Nilajgaon,
Taluka Paithan, District Aurangabad
10. Shaikh Shafiq s/o. Shaikh Gafur,
Age 34 years, Occu. Agricultural,
R/o. At Jambhali, Post Nilajgaon,
Taluka Paithan, District Aurangabad
11. Shaikh Mosin s/o. Shaikh Kayyum,
Age 28 years, Occu. Agricultural,
R/o. At Jambhali, Post Nilajgaon,
Taluka Paithan, District Aurangabad
12. Shaikh Mubeen s/o. Shaikh Kayyum,
Age 28 years, Occu. Agricultural,
R/o. At Jambhali, Post Nilajgaon,
Taluka Paithan, District Aurangabad
13. Shaikh Baba s/o. Shaikh Zabbu,
Age 28 years, Occu. Agricultural,
R/o. At Jambhali, Post Nilajgaon,
Taluka Paithan, District Aurangabad
14. Shaikh Mubeen s/o. Shaikh Kayyum,
Age 28 years, Occu. Agricultural,
R/o. At Jambhali, Post Nilajgaon,
Taluka Paithan, District Aurangabad .. Respondents

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Mr. Kiran D. Jadhav, Advocate for Petitioner

Mr. P. G. Borade, Assistant Government Pleader for Respondent
No.1 – State

Mr. C. R. Thorat, Advocate for Respondents no. 2 to 14

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 13-12-2021

JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Advocate for the parties.

2. This petition challenges order dated 27-10-2020 passed by the learned 5th Joint Civil Judge, Senior Division, Aurangabad, below Exhibit-7, in Land Acquisition Reference No. 91 of 2017, thereby rejecting the application filed by the Petitioner for release of the amount deposited in the Court which has come to her share.

3. Heard the rival submissions of learned Advocate for the petitioner and learned Advocate for the respondents no. 2 to 14 as well as learned Assistant Government Pleader for the respondent no. 1 – State.

4. Admitted position on record is that petitioner-original plaintiff filed Special Civil Suit No. 340 of 2014 for partition and separate possession of the ancestral property bearing Gat No. 59 admeasuring 8 Hectar 69 R. situated at Chincholi, Taluka Paithan, District Aurangabad, against the respondents-original defendants.

During the pendency of the said suit, entire suit property was acquired for the project of DMIC and Award was declared.

5. The petitioner filed writ petition No. 9314 of 2016, in which an order was passed that the amount to the extent of $1/9^{\text{th}}$ share of the petitioner be deposited in the trial Court in Special Civil Suit No. 340 of 2014, which was directed to be disbursed after the decision of the suit. The amount of Rs.55,92,633/- (Rs. Fifty Five Lakh Ninety Two Thousand Six Hundred Thirty Three Only) to the extent of $1/9^{\text{th}}$ share of the petitioner, which ought to have been deposited in Special Civil Suit no. 340 of 2014, was deposited by the competent authority, by filing Land Acquisition Reference No. 91 of 2017.

6. On 16.01.2019, Special Civil Suit No. 340 of 2014 came to be decreed thereby declaring that the plaintiff has $1/9^{\text{th}}$ share in the suit property i.e. in the amount to the extent of her share. Defendant No. 1 has $2/9^{\text{th}}$ share, defendants no.2 to 6 have in all $2/9^{\text{th}}$ share, defendants no. 7 to 13 have in all $2/9^{\text{th}}$ share, defendant no. 14 has $1/9^{\text{th}}$ share and defendants no.15 to 17 have in all $1/9^{\text{th}}$ share in the suit property i.e. in the amount to the extent of their respective shares.

7. It is also not in dispute that the said Judgment and Decree

was challenged by the respondents-original defendants by filing Regular Civil Appeal No. 41 of 2019 and 44 of 2019. Both these appeals were dismissed by common Judgment dated 17.01.2020. The respondents-original defendants have filed Second Appeal No. 117 of 2020 on 11-02-2020, which is pending for admission.

8. Learned 5th Civil Judge, Senior Division, Aurangabad, rejected the application of the petitioner for withdrawal of the amount of her share on the ground that Second Appeal is nothing but continuation of the suit and entitlement of the petitioner is still sub-judice, and therefore, it is not appropriate to disburse amount at this stage. The amount needs to be released only when the right of petitioner is finally decided.

9. The trial Court has erred in ignoring the fact that the respondents-original defendants have already withdrawn the amount of their respective shares to the tune of Rs.4,53,09,127/- (Rs. Four Crore Fifty three Lakh Nine Thousand One Hundred Twenty Seven Only), which was deposited in Special Civil Suit No. 340 of 2014. Now only the amount of share of the petitioner is remaining in the trial Court, probably because the same was not deposited in the civil suit, but it was deposited by filing Land Acquisition Reference No. 91 of 2017. The trial Court has also ignored a specific direction given by this Court to disburse the

amount of 1/9th share of the petitioner after decision of the suit. The suit is decreed in favour of the petitioner and the appeals filed by the defendants are dismissed. Mere pendency of the second appeal, cannot be a ground to deny the petitioner permission to withdraw the amount, particularly when all the defendants have already withdrawn the amount of their respective shares. The reasoning adopted by the trial Court is erroneous and the impugned order is unsustainable. Hence, the following order :-

ORDER

- I. Writ petition is allowed in terms of prayer clause 'B'.
- II. Application Exhibit-7 filed by the petitioner is hereby allowed.
- III. The petitioner is permitted to withdraw the amount of Rs.55,92,633/- (Rs. Fifty Five Lakh Ninety Two Thousand Six Hundred Thirty Three Only) along with accrued interest, deposited in the trial Court, subject to the petitioner furnishing solvent surety of that amount to be withdrawn to the satisfaction of the trial Court.
- IV. It is made clear that withdrawal of the said amount shall be subject to decision of second appeal filed by the original defendants/respondents.
- V. Rule is made absolute in above terms. No costs.

**(NITIN B. SURYAWANSHI)
JUDGE**