

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

WRIT PETITION NO.13594 OF 2019

Nagnath s/o. Malkarjun Hundekar,
Age:45 years, Occu: Agri. & Business,
R/o. Bamni, Tq. Hadgaon,
District Nanded.

... **PETITIONER**
(Orig. Plaintiff)

VERSUS

1. The Collector,
Collector Office at Nanded,
Tq. and Dist. Nanded.
2. Land Acquisition Officer,
Sub-Divisional Office,
First Floor Nagar Parishad New Building,
Hadgaon, Tq. Hadgaon, Dist. Nanded.
3. Mandabai w/o. Malkarjun Hundekar,
Age : 66 years, Occu: Nil
4. Parvatibai w/o. Malkarjun Hundekar,
Age : 59 years, Occu: Household.
5. Ravindra s/o. Malkarjun Hundekar,
Age : 51 years, Occu: Agri.
6. Gajanan s/o. Malkarjun Hundekar,
Age : 49 years, Occu: Agri.
7. Mathura w/o. Sanjay Hundekar,
Age: 39 years, Occu: Household
8. Ramakant s/o. Malkarjun Hundekar,
Age : 45 years, Occu: Agri.
Respondent Nos.1 to 6
all R/o. Bamni, Tq. Hadgaon,
District Nanded.
9. Archana w/o. Vishwanath Halde,
Age : 39 years, Occu: Household,
R/o. Jintur, Tq. Jintur, Dist. Parbhani.

... **RESPONDENTS**
(Org. defendants)

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Advocate for Petitioner : Mr. Mahesh V. Ghatge
Advocate for Respondent Nos.4&9: Mr. B.N. Gadegaonkar h/f. Mr. S.R. Bagal
Advocate for Respondent No.2 : Mr. Anilkumar B. Dhongade
AGP for Respondent No.1 : Mr. K.B. Jadhavar
Advocate for Respondents 3 and 5 to 8 : Mr. A.S. Deshmukh

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CORAM : MANGESH S. PATIL, J.

DATE : 08.10.2021

ORAL 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 petitioner has filed a suit for general partition and separate possession which is pending before the trial court. Some of the suit property is acquired under the National Highways Act, 1956. By moving Application (Exhibit-5) he sought temporary injunction restraining the respondent Nos. 1 and 2, who are the original defendant Nos.8 and 9, from disbursing the amount of compensation in respect of the acquired property. He also prayed for temporary injunction restraining the respondent Nos. 3 to 9, who are defendant Nos.1 to 7, from alienating or creating third party interest in the suit property. The learned Civil Judge has allowed the Application partly. He granted temporary injunction restraining the respondent Nos.3 to 9 from creating any third party interest.

3. The Civil Judge, however, refused to grant temporary injunction against the respondent Nos.1 and 2 only on the ground that by virtue of the provisions of Sections 63 and 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (herein after 'the Act') the Civil Court had no jurisdiction to grant any such injunction. The learned Civil Judge also has assigned one more reason by holding that in view of an efficacious remedy available under Section 63 and

64 read with Section 76 of the Act, coupled with the provisions of Section 41(h) of the Specific Relief Act, 1963 injunction cannot be granted.

4. The petitioner preferred the Miscellaneous Civil Appeal under Section 104 of the Code of Civil Procedure and by the impugned judgment and order the learned District Judge has dismissed the Appeal confirming the observations and the conclusions that the Civil Court would not have jurisdiction in view of the provisions of Sections 63 and 64 of the Act read with Section 3(H)(4) of the National Highways Act.

5. After hearing both the sides it is quite apparent that the two courts below have refused to even consider the relief of temporary injunction being claimed by the petitioner on merits. They have proceeded to refuse the relief only by referring to the provisions of Sections 63 and 64 of the Act.

6. It also transpires that in fact, the parties were also before the respondent No.2 who is an authority under the National Highways Act. However, by the order dated 06.08.2019, in spite of the fact of pendency of the suit was brought to his notice, he simply directed disbursement to be made, making it subject to the out come of the suit, instead of making a reference under Section 3(H)(4) of the National Highways Act.

7. Suffice for the purpose to observe that going by the provisions of Section 3(H)(4) of the National Highways Act, whenever there is any dispute as to the apportionment or entitlement, raised before the competent authority he is obliged to refer the dispute for the decision of the Civil Court.

It is in view of such a statutory mandate, it was imperative for the respondent No.2 to have referred the dispute for the decision of the Civil Court under that provision instead of simply passing an order making it subject to the out come of the decision in the Suit.

8. Be that as it may, admittedly, the parties are already before the Civil Court. Admittedly a portion of one of the suit property has been acquired under the National Highways Act, 1956. In view of such state of affairs, any reference to Sections 63 and 64 of the Act, is incorrect. When the lands have been acquired under the National Highways Act, going by the provisions of Section 3(H)(4), it is only the Civil Court which can decide the dispute. Since the parties have been already before the Civil Court, the two courts below could not have refused to consider the prayer on its own merits. It is in view of such state of affairs, it would be just and proper to remand the matter for a fresh consideration by the trial court regarding the prayer for restraining the respondent/defendant Nos. 8 and 9 from disbursing the amount, on its own merits.

9. The Writ Petition is partly allowed. The part of the order passed by the learned Civil Judge on the Application (Exhibit-5) in RCS No.466/2018 as also the judgment and order passed by the learned District Judge in Miscellaneous Civil Appeal No.37/2019 are quashed and set aside. The matter is remanded to the trial court. The concerned Judge of the Civil Court shall now decide the Application (Exhibit-5) afresh by extending opportunity to both the side to address it, to the extent of the prayer

restraining the respondent Nos.1 and 2 herein (defendant Nos.8 and 9 in the suit) from disbursing the amount.

10. It is made clear that the portion of the order by which temporary injunction has been granted by the trial court restraining the respondent No.3 to 9 herein from alienating or creating third party interest in the suit property is not being disturbed.

11. The interim relief passed in the present matter shall continue till such decision by the trial court. The trial court shall decide the Application as early as possible and in any case within a period of two months.

12. The Rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

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