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

13 WRIT PETITION NO.4600 OF 2021

KAMLAKAR SUDHAKAR MARDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

....

Mr A. N. Sabnis, Advocate h/f Mr V. D. Gunale, Advocate for petitioner;

Mr P. S. Patil, A.G.P. for respondent No.1

Mr D. S. Manorkar, Advocate for respondent No.2

Mr S. S. Deve, Advocate for respondent No.3

Mr S. P. Urgunde, Advocate for respondent No.4

**CORAM : RAVINDRA V. GHUGE
AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 6th June, 2022

PER COURT:

1. By this petition, the petitioner has put forth prayer clauses (C) and (D) as under :

“C) By writ of certiorari or any other appropriate writ, order or directions, the impugned order / endorsement dated 15/10/2020 made / passed by the respondent No. 3 on the application of the petitioner dated 04/03/2020 made U/Sec. 3-H (4) of the National Highway Act, 1956 be quashed and / or set aside and consequently the said application dated 04/03/2020 filed by the petitioner U/Sec. 3-H(4) of the National Highway Act, 1956 be allowed.

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D) Pending hearing and final disposal of this writ petition, the respondent No. 3 be restrained for making the payment of compensation to the respondent No. 4 as per the award dated 25/01/2018 in File No.2016/land acquisition/NH-361/CR-02 and for that purpose necessary orders be passed.”

2. Respondent No.4 is said to be the purchaser of Block/Survey No. 467 to the extent of 0.40 Are. The said parcel of land is subject matter of acquisition under the National Highways Act, 1956, at village Mahalangra, Tq. Chakur, District Latur. The wife of the petitioner, namely, Sou. Ayodhya, along with two minor children, preferred Regular Civil Suit No.688/2018, for seeking partition and separate possession as well as the recovery of possession of land, sold to respondent No.4 before us. A case is sought to be built up by the plaintiffs before the Trial Court that Sou. Ayodhya is estranged from the present petitioner husband on account of a family discord and that the land is surreptitiously sold by the present petitioner to respondent No.4 before us. The ground taken is that the petitioner was an alcoholic and he has sold the land in an intoxicated condition.

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3. An application seeking injunction against disbursement of compensation amount insofar as the acquired land, Exh.5, was decided by the Trial Court, vide order dated 19/08/2020. It was noticed that an earlier suit, bearing Regular Civil Suit No.689/2018, seeking same reliefs, filed by Sou. Ayodhya, was suppressed from the Court. No relief apparently was granted to Sou. Ayodhya in the said suit. It is also undisputed that the present petitioner, who has sold the land at issue to respondent No.4 before us, has not preferred any proceedings before the Civil Court, alleging a fraud played upon him by respondent No.4, when he purchased the land from the present petitioner.

4. We find from the entire memo of the petition, filed on 01/03/2021, that the petitioner has suppressed the fact of the Trial Court, having rejected the T.I. Application, Exh.5, on 19/08/2020 in Regular Civil Suit No.688/2018. It has also been suppressed from us by the present petitioner that, Misc. Civil Appeal No.37/2020, filed by Sou. Ayodhya has also been dismissed. Consequentially, the Trial Courts applied their minds to the case and have concluded that, there cannot be any injunction against the disbursement of the compensation amount to respondent No.4 before us.

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5. On 27/08/2020, this Court had passed an order in Writ Petition No.5868/2020, filed by the present petitioner, that his application under Section 3-H(4) of the National Highways Act, 1956, which is pending before the competent authority, be decided. Apparently, this Court was not informed about the T.I. Application, Exh.5, having been rejected by the Trial Court in Regular Civil Suit No.688/2018, on 19/08/2020. The present petitioner is defendant No.1 in the earlier two suits as well as in the Misc. Appeal. It is not his case that he was defrauded by present respondent No.4 in selling the portion of land (which was under acquisition) much prior to the acquisition.

6. It was in the above stated circumstances that, this Court, while issuing notice to the respondents on 05/04/2021, directed status quo to be maintained as regards the disbursement of amount in favour of respondent No.4, whose title to the acquired portion of the land has not been interfered with, by any Court.

7. The Hon'ble Apex Court has concluded in **Bhaskar Laxman Jadhav Vs. Karmveer Kakasaheb Wagh Education Society, (2013) 11 SCC 531**, that the petitioner does not have discretion to decide what facts to be told to the Court and what is to be suppressed

from the Court. The petitioner has to place before the Court the entire facts, notwithstanding whether pending proceedings or orders passed therein, are likely to be an obstacle in his path. Similarly, the Hon'ble Apex Court has held in **Kishor Samrite Vs. State of Uttar Pradesh, (2013) 2 SCC 398**, that an attempt by litigant to acquire relief from the Court, on the basis of suppression of facts, dis-entitles the petitioner from being granted any relief.

8. In the present case, the petitioner has already sold the parcel of land to respondent No.4, with regard to which, he has not initiated any proceedings on the grounds that a fraud was played upon him, when he sold his land to respondent No.4. The wife of the present petitioner, Sou. Ayodhya, initiated litigation by taking a stand that there is a marital discord between her and the present petitioner. The learned Advocate for the petitioner submits that, there are no proceedings pending before any Civil Court or Family Court pertaining to the marital discord between Sou. Ayodhya and the present petitioner.

9. We, therefore find that, the stand of estrangement is taken by Sou. Ayodhya for self serving purposes, which also suits the

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convenience of the petitioner, who has not taken a stand that he has sold the land due to a fraud played upon him. He, being the defendant in the earlier two civil suits, should have brought it to our notice that the Trial Court has refused injunction on disbursement of compensation amount to respondent No.4 herein, namely, Vishwanath Karbasappa Mitkari. Suppression of this fact has suited the convenience of the petitioner as well as his purported estranged wife Sou. Ayodhya, due to which ad-interim injunction was granted by us.

10. In view of the above, this petition is dismissed on account of an attempt by the petitioner to play a fraud on the Court, with costs of Rs.10,000/- (Rs. Ten Thousand), which shall be deposited in this Court, on or before 30/06/2022. Upon depositing the said amount, respondent No.4 – Vishwanath Karbasappa Mitkari, would be at liberty to withdraw the said amount without conditions.

11. At this juncture, the learned Advocate for the petitioner seeks a stay to the disbursement of the amount. We have already come to a conclusion that, on account of suppression of material facts, we had granted such relief when we issued notice. Now,

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that we are convinced that the petitioner had played a fraud upon us, such request cannot be entertained and the same is rejected.

(SANDIPKUMAR C. MORE, J.) (RAVINDRA V. GHUGE, J.)

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