

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

921 WRIT PETITION NO.6208 OF 2022

**BALASAHEB SHAHURAO PATIL AKHADE
VERSUS
KAMALBAI SHAHURAO PATIL DECEASED THROUGH LRS RAJARAM
SHAHURAO PATIL AKHADE AND OTHERS**

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Advocate for Petitioner : Mr. Nikhil S. Tekale
Advocate for Respondent nos. 1 & 2 : Mr. Ramraje A. Deshmukh
Advocate for Respondent No.3 : Mr. S.S. Khoche h/f. P.D. Dadpe

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CORAM : SANDEEP V. MARNE, J.

DATE : 21-12-2022

PER COURT :

. By this petition, petitioner has challenged the order dated 01.04.2022 passed by the Reference Court rejecting the objection of petitioner and holding that respondent no.1 is entitled to get 100% compensation in respect of the land acquired.

2. The grouse of petitioner is that he could not avail the opportunity of leading evidence in respect of his objection. The learned counsel for petitioner therefore makes out a case for remand of the proceeding to the reference Court so as to grant him an opportunity to lead evidence and also to cross-examine witnesses of respondent no.1.

3. However, at the time when the reference was made to the Court, the contesting parties were petitioner (son) and Kamlabai (mother). The mother of petitioner unfortunately expired during pendency of the reference and her other son (Rajaram) and two sisters Anuradha and Uma were brought on record as legal heirs. The reference was thus fought between Balasaheb on one side and Rajaram, Anuradha and Uma on the other. It appears that sisters Anuradha and Uma did not contest the objection nor lead any evidence.

4. Mother Kamalbai has apparently executed a Will bequeathing the entire suit property in the reference in favour of her son Rajaram. The validity of that Will is a subject matter of R.C. S. No.320 of 2022 instituted by petitioner (Balasaheb). In addition to challenging the Will, petitioner has also sought $\frac{1}{2}$ share in the suit property described in that plaint, which also includes the property which has been acquired. Thus, it appears that the exact entitlement of petitioner - Balasaheb in respect of the acquired property shall be determined in R.C.S. No.320 of 2022. In that view of the matter, no practical purpose would be served in remanding the land reference to the reference Court.

5. This Court by its order dated 20.06.2022 has permitted respondent no.1 - Rajaram to withdraw the amount of compensation by furnishing solvent security to the extent of 1/4th of the amount of compensation. It appears that in proceedings bearing M.A. No.22 of 2022, the reference Court has permitted Rajaram to withdraw that amount by accepting his solvent security to the extent of 1/4th share in the compensation amount by order dated 03.10.2022. It is submitted that the sisters have not objected to such withdrawal by Rajaram.

6. In my view the contention of respondent no.1 Rajaram that petitioner can claim only 1/4th share in the amounts of compensation does not appear to be *prima facie* correct. The objection was filed by petitioner Balasaheb during lifetime of the mother - Kamalbai and thus it cannot be stated that petitioner is claiming share in the compensation only as a legal heir of mother. He appears to be claiming share in the acquired land in addition to the share of the mother. This possibly is the reason why 1/2th share in the acquired land / compensation is claimed by petitioner - Balasaheb in his R.C.S. No.320 of 2022.

7. Thus there appears to be dispute between the parties in respect of 50% share in the compensation. In that view of the matter,

respondent no.1 Rajaram can be permitted to withdraw only 50% of the amount of compensation at the moment. Interim order passed by this Court on 20.06.2022 stands modified to that extent.

8. As observed herein above, no practical purpose would be served by remanding L.A.R. No.378 of 2018 as the issue of determination of shares between the parties in respect of acquired lands / compensation is already subject matter of R.C.S. No.320 of 2022. Accordingly the present writ petition is disposed of by passing following order.

ORDER

(i) The order dated 01.04.2022 passed by the Civil Judge Senior Division, Bhoom in L.A.R. No.378 of 2018 shall not be construed to mean determination / entitlement of shares in the acquired lands / compensation between the parties and that question shall be determined by Civil judge Junior Division, Washi in R.C.S. No.320 of 2022 without being influenced by the order dated 01.04.2022.

(ii) Respondent No.1 Rajaram Shahurao Patil (Akhade) is permitted to withdraw 50% amount of compensation along with interest accrued thereon. He has already provided solvent surety to

the extent of 25% of the compensation amount. In respect of balance 25%, he shall submit an undertaking before the reference court to bring back the amount along with 9% per annum interest in the event he is not held entitle to compensation of that 25%.

(iii) The balance 50% amount of compensation along with interest accrued thereon shall be transferred by the reference court to the Court of Civil Judge Junior Division, Washi in R.C.S. No.320 of 2022 and the same shall form part of the suit property. The Court of Civil Judge Junior Division, Washi shall invest 50% of the compensation amount along with accrued interest thereon in Fixed Deposit in any Nationalized Bank.

9. With the aforesaid observations / directions, writ petition is disposed of.

(SANDEEP V. MARNE, J.)

GGP