

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10813 OF 2019

SHIVRAJ MADHAVRAO SARTAPE

VERSUS

THE COMPETENT AUTHORITY AND OTHERS

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Advocate for Petitioner : Mr. A.B. Dhengle

Advocate for Respondent No.1 : Mr. S.S. Deve

Advocate for Respondent No.2 : Mr. N.K. Tungar

Advocate for Respondent No.3 : Mr. B.V. Andure

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 6th June, 2022

ORDER :

. This petition, filed under Articles 226 and 227 of the Constitution of India, challenges the order passed by respondent No.1 under Section 3H(3) of the National High Ways Act, 1956, thereby directing to pay amount of compensation, to respondent No.2.

2. By filing Special Civil Suit No.31 of 2012, the petitioner claimed specific performance of contract in respect of open plot survey No.140 to the extent of sheet No. 36 of length; South-North from East side 175 feet and width; East-West 50 feet. The petitioner contended that, father of respondent Nos.2 and 3 agreed to sale said plot to the petitioner for consideration of Rs.11,00,000/-. He paid an amount of

Rs.7,00,000/- to the father of respondent Nos.2 and 3 and agreement of sale was notarized. Father of respondent Nos.2 and 3 expired thereafter, hence the suit is filed for specific performance. In the suit application (Exh.5) came to be allowed, thereby restraining respondent Nos.2 and 3 from creating third party interest in the suit plot.

3. The suit property is acquired by respondent No.1 and compensation amount of Rs.35,54,524/- is sanctioned. Respondent No.2 filed an application for withdrawal of the compensation amount contending that, suit plot is self acquired property of his father, who has bequeath the said suit plot to the respondent No.2 by way of registered Will-deed No.3999 of 2010 dated 01.12.2010. The petitioner also submitted objection on 01.12.2018 for releasing amount of compensation to respondent No.2. Respondent No.1 after considering the record and hearing the petitioner and respondent Nos.2 and 3, permitted respondent No.2 to withdraw the amount of compensation. The petitioner is aggrieved by this order.

4. According to the petitioner Regular Civil Suit seeking specific performance of the suit plot is pending in the

competent Civil Court and as injunction is operating in his favour. The amount should have been disbursed to respondent No.2. The petitioner claims that, permitting respondent No.2 to withdraw the amount of compensation is in violation of interim injunction granted in his favour.

5. It appears from record suit property is self acquired property of late Rajabhau Dagadoba Pende, father of respondent Nos.2 and 3. By way of registered Will-deed dated 01.12.2010 deceased Rajabhau Dagadoba Pende gave the suit plot to respondent No.2. On the basis of said Will-deed Circle officer entered the name of respondent No.2 to the suit plot.

6. According to the respondent No.2, the petitioner is brother-in-law, and by forging the signature of his father, the petitioner has fabricated the agreement to sale. In respect of the said forgery, a criminal complaint is lodged in criminal Court, wherein process is issued against the petitioner.

7. Admittedly, the agreement of sale is not a registered document. On the other hand, Will-deed executed in favour of respondent No.2 is a registered document. As on today the petitioner has no right to claim the compensation of the suit

property, which admittedly stands in the name of respondent No.2.

8. The respondent No.1 being Competent Authority and by giving cogent reasons has held that, respondent No.2 is entitled for the compensation amount. There is no illegality or perversity in the order passed by respondent No.1, impugned in the present petition. There is no substance in the challenge raised by the petitioner. No case is made out by the petitioner to warrant interference in exercise of extraordinary writ jurisdiction. The petition, being devoid of merits, is dismissed.

9. No costs.

10. Needless to mention that, the observations in this order shall not influence the Civil Court while deciding the Special Civil Suit on merits.

[NITIN B. SURYAWANSHI]
JUDGE