

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.189 OF 2022

VISHNU ASARAM KALASKAR AND OTHERS
VERSUS
CHHAYA DATTATRYA SHINDE AND OTHERS

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Advocate for Petitioners : Mr. Devdatt Palodkar
AGP for Respondent-State: Mr. S.B. Pulkundwar
Advocate for Respondents No. 1 and 2 : Mr. Aniruddha Awalgaoonkar
Advocate for Respondents No. 3 to 5: Mr. N.T. Tribhuvan
Advocate for Intervenor: Mr. G.J. Pahilwan

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 21st MARCH, 2022

ORDER :

1. The Petitioners are aggrieved by the order dated 04.12.2021 passed by the reference Court thereby rejecting the prayer of petitioners to accept the compromise.

2. The petitioners' land Gut No. 61, admeasuring 5 Hectare 81 R situated at Village Chincholi, Taluka- Paithna, District- Aurangabad, was acquired by the Maharashtra Industrial Development Corporation, for DMIC Bidkin Industrial area Phase-III. The

petitioners consented for acquisition of the land. The final award was passed and compensation of Rs. 3,25,04,610/- was awarded to the petitioners. The Respondents No. 1 to 5 objected to the disbursement of the compensation before Respondent No. 6-Land Acquisition Officer. The respondent No. 6 therefore, referred the dispute regarding disbursement of the amount of compensation to the learned Civil Judge, Senior Division, Paithan, District-Aurangabad. The same is registered as Land Acquisition Reference No. 14/2017.

3. Smt. Panchfula Atul Kalaskar (intervenor in the present matter) filed Regular Civil Suit No. 804/2016 claiming 1/6th share in Gut No. 61. She filed an application Exhibit-23 in Land Acquisition Reference No. 14/2017 seeking her addition as a party. The said application is rejected by the reference Court on 04.12.2021.

4. The respondent No. 3 by filing say to the reference claimed compensation amount to the extent of 22R. Similarly, Respondents No. 4 and 5 by filing say claimed compensation to the extent of 22 and 23 R respectively. Respondent No. 4 has also filed Regular Civil Suit No. 64/2012 for partition and separate possession of

land Gut No. 61. During the pendency of Land Acquisition Reference No. 14/2017, compromise took place between the petitioners and Respondents No. 1 and 2. The Respondents No. 1 and 2 agreed that the compensation amount may be released in favour of the petitioners. The compromise purshis Exhibit-66 is filed in the reference Court. The reference Court rejected the compromise purshis by the impugned order holding that the Regular Civil Suit No. 64/2012 filed by the objection petitioner-Respondent No. 4 for partition is pending before the learned Civil Judge, Junior Division, Paithan, and unless the said suit is disposed of, no compromise or any other order can be passed in land acquisition reference. Hence, rejected the compromise.

5. The petitioners filed application below Exhibit-69 contending that keeping aside the amount of compensation to the extent of 68R claimed by Respondent No. 5, remaining amount of compensation may be disbursed in favour of petitioners to the extent of their respective shares. The respondent No. 1 and 2 by filing say supported the said application.

The reference Court rejected the application Exhibit-69 observing that Regular Civil Suit No. 64/2012 and Regular Civil Suit

No. 804/2016 are pending before the concerned Court and unless those proceedings are disposed of, no orders can be passed in the present reference. The petitioners are aggrieved by the orders passed below Exhibit-66 and 69.

6. Heard the rival submissions of respective advocates.

7. Admittedly, the entire land of the petitioners which was their sole source of livelihood is acquired in the year 2016 and till date they have not received a single rupee towards compensation. The reference Court ought to have taken this fact into consideration while considering the application filed by the petitioners. The interest of intervenor who has filed Regular Civil Suit No. 804/2016, thereby claiming 1/6th share in land Gut No. 61 can be protected by keeping aside the compensation amount of her 1/6th share. Similarly, the interest of respondents No. 3 to 5 who have claimed 68 R land can be protected by keeping aside the compensation to the extent of 68R land claimed by respondents No. 3 to 5. The reference Court ought to have permitted the petitioners to withdraw the 50% amount of remaining compensation after keeping aside the compensation which may go to

the share of intervenor and respondents no. 3 to 5 as indicated above. Since the impugned orders are passed ignoring the factual conspectus, the same are unsustainable.

8. In the result, following order-

ORDER

1. The writ petition is allowed.
2. The orders dated 04.12.2021 passed below Exhibit-66 and 69 in Land Acquisition Reference No. 14/2017 by the learned Civil Judge, Senior Division, Aurangabad, are hereby quashed and set aside.
3. After deducting the compensation to the extent of 68R land claimed by respondents No. 3 to 5 and compensation to the extent of 1/6th share of the intervenor, the petitioners are permitted to withdraw 50% of the remaining amount of compensation, on the petitioners furnishing an undertaking before the reference Court.
4. No costs.

**[NITIN B. SURYAWANSHI]
JUDGE**