

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

WRIT PETITION NO.2928 OF 2019

Rajiv S/o Kachru Khilare,
Age: 35 years, Occu: Agriculture,
R/o. Dongaon, Tq. Gangapur,
Dist. Aurangabad.

.. **Petitioner**

Versus

1. The State of Maharashtra,
Through District Collector,
Aurangabad.
2. Sub-Divisional Officer (Acquisition Officer)
Vaijapur, Tq. Vaijapur,
Dist. Aurangabad.
3. Tahsildar (Land Manager)
Maharashtra State
Rural Development Corporation Limited,
Officer at T-18, "Dhyanpeeth' Compo
Tecno Park, Garware Stadium, MIDC,
Aurangabd.
4. The Chief Officer Aurangabad,
Public Work Department,
(Maharashtra State Road Development
Corporation Limited)

.. **Respondents**

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Mr. M.K. Bhosale, Advocate for the Petitioner
Mr. A.R. Kale, Learned AGP for the respondent-State.
Mr. A.V. Patil, Advocate for R/3 & 4

...

**CORAM : MANGESH S. PATIL &
Y.G. KHOBRADE, JJ.
DATE : 15-12-2022**

ORAL JUDGMENT :-

Leave granted to correct the figure in prayer clause.

2. Heard. Rule. The Rule is made returnable forthwith. At the joint request of both the sides, we are disposing of this matter finally at the stage of admission.

3. The petitioners are questioning the conduct of the respondents in calling back a part of the consideration which was deposited in his account pursuant to the sale-deed executed to acquire his property by private negotiations.

4. The learned advocate for the petitioner submits that pursuant to the deliberations and strictly in accordance with the compensation / consideration determined by the Competent Committee, he had executed a sale-deed and the amount of consideration was deposited in his account. He submits that resorting to some independent inquiry behind his back the respondents caused the money standing in his name with his banker to be called back illegally and unauthorisedly.

5. The learned advocate Mr. Patil referring to the affidavit in reply filed on behalf of respondent nos.2 to 4 submits that it was a case of fraud. It was realised that trees were not valued correctly. Those were saplings planted only a year back and in ignorance or overlooking the actual state of affairs the

valuation was done. Pursuant to such objective scrutiny even by resorting to GPS, it was found that a fraud was practised on them and the excess amount was called back. He would submit that the fraud goes to the root of the validity of the sale-deed. Only the amount which was found to have been paid to the petitioner illegally that has been called back.

7. The learned advocate Mr. Patil also points out an order passed by this Court in Writ Petition No.6576/2018 (*Kiran Ashok Patil & Anr. V/s. Maharashtra State Road Development Corporation and Ors.*) dated 09.04.2019 to buttress his submission that in similar set of circumstances, this Court had exercised the jurisdiction and had directed the acquiring authorities to not to pay money in respect of such illegal assessment of trees.

8. We have carefully considered the rival submissions and perused the papers and even the order passed by this Court in the aforementioned writ petition. A bare perusal of the order clearly demonstrates that like we are doing now even that bench was not inclined to entertain the stand of the acquiring body about the fraud. It is only to the extent that the petitioner therein had agreed for some adjustment that the acquiring body was directed to pay the amount of compensation and the petitioner therein was directed to receive it without prejudice to his rights. Even in paragraph 9 it was expressly

indicated that this Court would not go into the stand of the acquiring body regarding fraud.

9. Assuming for the sake of arguments that pursuant to some investigation / inquiry the respondents have subsequently reached a conclusion about fraud having been practised while undertaking valuation, the inquiry being only a lopsided inquiry and cannot be treated as a finding of Court of competent jurisdiction regarding the alleged fraud. Admittedly, the sale-deed was executed and registered. If some exception was to be taken to such a registered document that could have been strictly in accordance with the provisions of law for rectification or may be even for declaring it to be void. The fact remains that so long as there is no finding of any Civil Court regarding the alleged fraud, conduct of the respondents in unilaterally reaching to such a conclusion and even approaching the petitioner's banker and calling back the money which was paid as a part of the consideration for the sale-deed is in clear disregard to the rule of law.

10. Suprisingly, accepting the respondents version about there being some fraud, considering the nature of the happenings, it could not have been a handiwork of the petitioner alone. He must have been paid strictly on the basis of the valuation made by the committee. If some officers of the respondents were involved which according to us must have been conniving

with the petitioner in committing the alleged fraud, we are surprised why the affidavit in reply is conspicuously silent as to what steps the respondents have thereafter initiated to proceed either departmentally or criminally against such officers.

11. We only point out that it was a registered sale-deed and the conduct of the respondents in calling back a part of the amount / consideration from the petitioner's banker cannot be approved on the touchstone of any law. The conduct is certainly arbitrary and needs to be deprecated. It would have been appropriate for the respondents to take recourse to law to get back the money by approaching the Civil Court and getting a declaration regarding the alleged fraud. The respondents have taken the law in their hands and have recovered money paid to the petitioner fraudulently. We cannot approve of such a course.

12. We allow the writ petition and direct the respondents to refund whatever has been recovered from the petitioner's banker within four weeks. Needless to state, it would always be open for the respondents to take appropriate steps in respect of the alleged fraud in executing the sale-deed. Civil Application also stands disposed of. Rule made absolute in above terms.

[Y.G. KHOBRAGADE, J.]

[MANGESH S. PATIL, J.]