

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3376 OF 2021

Jayant Vasant Deshpande

..... Petitioner

VERSUS

The State of Maharashtra & Ors.

..... Respondents

Mr. Kayval P.Shah for the Petitioner.

Mrs. R.M.Shinde, A.G.P. for the State – Respondent no. 1.

Mr.Drupad S.Patil for the Respondent no.4.

Mr.Vaibhav V.Ugale for the Respondent no.5.

**CORAM: R. D. DHANUKA AND
S.M.MODAK, JJ.**

**DATE : 4th FEBRUARY, 2022
(Through Video Conference)**

P.C:-

By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order dated 20th March, 2020 passed by the respondent no.3, Sub Divisional Officer and Land Acquisition Officer, Malshiras Division, Akluj directing the authority to transfer the compensation amount in favour of the respondent no.4.

2. The petitioner also seeks a writ of mandamus against the

respondent no.3, respondent nos. 4 and 5 to deposit the compensation amount before the Civil Court in Regular Civil Suit No. 1348 of 2019 and restraining the respondent nos. 4 and 5 to utilize the siphoning amount of Rs.1,46,70,507/-.

3. Land in question was acquired by the National Highway Authority. The compensation in respect of such acquisition has been already paid by the National Highway Authority. There is *inter-se* dispute between the petitioner on the one hand and respondent nos. 4 and 5 in respect of the compensation paid by the National Highway Authority to the respondent nos.4 and 5. The petitioner has already filed a partition suit bearing Regular Civil Suit No. 1348 of 2019 seeking partition of suit property and a separate possession and injunction of various properties including the suit property.

4. Mr.Shah, learned counsel for the petitioner states that the respondent no.3 ought to have referred the dispute to the Civil Court between the petitioner on one hand and the respondent nos. 4 and 5 on the other hand under sections 3-H, 3-G of the National Highway Act, 1956.

5. Learned counsel for the respondent nos. 4 and 5 on the other hand invited our attention to various *prima facie* findings recorded by the Civil Court below Ex.5 on the application filed by the petitioner.

6. Mr.Patil, learned counsel for the respondent no.4 states that no amount of any compensation paid to her is now available with her. Her client is handicapped and is 80 years old. Learned counsel for the respondent no.5 also opposed the petition.

7. A perusal of the record indicates that the National Highway Authority has already paid compensation to the respondent nos.4 and 5. The petitioner has already filed a suit for partition ascertaining his alleged right against the respondent nos. 4 and 5 in the said partition suit. The petitioner had filed an application (Ex.5) for injunction in the said suit. By a detailed order passed by the learned 2nd Joint Civil Judge, Junior Division, Malshiras on 7th March, 2020, the said application at Ex.5 came to be rejected. We are informed that the petitioner has not impugned the said order.

8. Be that as it may, the partition suit which is the substantial suit in which the petitioner seeks substantial right is still pending for final

disposal before the Civil Court.

9. If the petitioner files an application for seeking mandatory order against the respondent nos. 4 and 5 to deposit the amount of compensation received by them, the Civil Court to decide the said application on its own merit after hearing both the parties.

10. We are not inclined to grant any relief as prayed in this writ petition. The observations made by the respondent no.3 in the impugned order dated 20th March, 2020 are *prima facie*. The Civil Court shall not be influenced with such *prima facie* observations.

11. Writ petition is dismissed with the aforesaid clarification. No order as to costs.

[S.M.MODAK, J.]

[R.D.DHANUKA, J.]