

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3279 OF 2021

1. Ramchandra Digambar Jagtap	]	
2. Gorakh Sukhdev Jagtap	]	
3. Mahavir Sukhdev Jagtap	]	
4. Keshav Shivaji Jagtap	]	
5. Nitin Shivaji Jagtap	]	
All R/o. Bondle, Tal. Malshiras, Dist.Solapur	]	... Petitioners

Versus

1. The State Of Maharashtra	]	
At the instance of the Collector,	]	
Solapur, Dist. Solapur.	]	
2. The Sub Divisional Officer and	]	
The Competent Authority,	]	
Malshiras Division,	]	
Tal. Malshiras, Dist. Solapur.	]	
3. Vishal Hanumant Jagtap	]	
R/o. Bondale, Tal. Malshiras,	]	
Dist. Solapur.	]	... Respondents

Mr. L. S. Deshmukh for Petitioners.
 Mr. S. B. Kalel, A.G.P. for Respondent Nos.1 & 2 (State).
 Mr. Kirankumar J. Phakade for Respondent No.3.

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

DATE : 24th FEBRUARY 2022.

ORAL JUDGMENT (Per : R. D. DHANUKA, J.) :-

1. Rule. Rule made returnable forthwith.
2. Mr.S.B. Kalel, learned A.G.P waives service for Respondent Nos.1 and 2 (State). Mr.Phakade, learned counsel waives service for Respondent No.3. By consent of learned counsel for parties, Writ Petition is heard finally.
3. By this Petition filed under Article 226 of the Constitution of India, the Petitioners seek a writ of certiorari for quashing and setting aside the Order dated 29th September 2020 and seek an Order and direction to the Respondent No.2 to refer the dispute in respect of entitlement to receive compensation for acquisition of the subject land to the Civil Court as per the applications dated 30th September 2020 and 1st October 2020.
4. The applications made by the Petitioners before the Respondent No.2 are rejected. It is not in dispute that the Petitioners have already filed a partition suit bearing Regular Civil Suit No. 519 of 2020 before the Civil Judge Junior Division, Malshiras. The Respondent No.3 is also a party to the said suit.
5. It is also not in dispute that the acquiring body has already transmitted the amount of compensation to the Respondent No.3. However, in view of the complaint made by the Petitioners, the Respondent No.3 is restrained from withdrawing the said amount deposited in the bank account of the Respondent No.3.

6. There appears to be a dispute about the apportionment of the compensation between the Petitioner and Respondent No.3.

7. In the partition suit filed by the Petitioners in respect of various properties, the property under acquisition is also subject matter of the said partition suit. They seek to amend the plaint in the said partition suit so as to claim compensation instead of partition of the said property now acquired and the compensation is already transmitted in the account of the Respondent No.3. If any application for amendment is made, a copy thereof shall be served upon the Respondent No.3 and the other parties to the said partition suit. The Civil Court shall decide the said application for amendment after hearing all the parties concerned expeditiously and not later than eight weeks from the date of filing of such application by the Petitioners.

8. The Respondents shall not withdraw the amount lying in the account of Respondent No.3, which was transmitted by the acquiring body by way of compensation for a period of 10 weeks from today. The parties are at liberty to apply before the Civil Court in the same proceedings by filing Interim Application for seeking liberty to withdraw the said amount. If any application for withdrawal is made by the Petitioners or by the Respondent No.3, the same will be considered by the Civil Judge Junior Division on its own merits and in accordance with law.

9. This Court has not expressed any views on the merits of the rival claims of compensation made by the Petitioners and Respondent No.3.
10. All contentions on merits on the entitlement of the claim for compensation are kept open.
11. Writ Petition is disposed off in the aforesaid terms.
12. Rule is made absolute accordingly. No Order as to costs.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]

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