

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION**PRACHI
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Date: 2022.11.23
15:39:20 +0530**WRIT PETITION NO.7821 OF 2022**

Rajesh Ramkishor Dixit & Ors.

.. Petitioners

Versus

State of Maharashtra & Ors.

.. Respondents

Mr.Sanjiv A. Sawant a/w Mr.Abhishek Matkar for the petitioners.

Mr.A.I.Patel, Addl. GP a/w Mrs.M.S. Bane, AGP for the respondent nos.1 to 3-State.

Dr.Milind Sathe, Dr.Birendra Saraf, Senior Advocates a/w Mr.Vaibhav Charalwar i/by Mr.Jagdish Reddy for the respondent nos.4 to 6.

CORAM : R.D. DHANUKA &**S.G. DIGE, JJ.****DATE : 21st November 2022****P.C.:-**

1. Rule. Mr.Patel, Addl.GP waives service for the respondent nos.1 to 3. Dr.Sathe, learned senior counsel waives service for the respondent nos.4 to 6. Rule is made returnable forthwith.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners seek a writ of mandamus against the respondent no.2 to refer the proceedings to the decision of the Civil Judge, Senior Division, Palghar as per the provisions of Section 20H (4) of the Railways Act, 1989. The petitioners also seek a writ of ceriorari for quashing and setting aside the order dated 27th June 2022 passed by the respondent no.2 thereby requesting to refer the matter to the Civil Court.

3. Mr.Sawant, learned counsel for the petitioners vehemently urged that the competent authority had decided the dispute on merits about the apportionment in the writ property and had exceeded its

jurisdiction.

4. Learned counsel for the petitioners, on instructions, states that his clients would file a civil suit for adjudication of their claims on the title of the property and for the payment of compensation deposited by the respondent no.2 in this Court within three weeks from today. He further states that his clients would apply before the Civil Court in the Civil Suit for interim reliefs against the State of Maharashtra as well as the respondent nos.4 to 6 in so far as the payment of compensation deposited by the respondent nos.1 to 3 in this Court within three weeks thereafter.

5. We have perused the impugned order passed by the competent authority. The competent authority has rejected the objection raised in the impugned order. Since the petitioners propose to file a civil suit for adjudication of title of the property and for payment of compensation, we make it clear that if any civil suit is filed by the petitioners within three weeks from today, the Civil Court is to decide the said suit and the interim application, if any, that would be filed on its own merits without being influenced by the observations made and the conclusions drawn by the competent authority in the impugned order.

6. Office is directed to transmit the amount deposited by the respondent nos.1 to 3 in this Court in pursuance of the interim order passed by this Court on 6th July 2022 within two weeks after the suit proposed to be filed by the petitioners is communicated to the Registry of this Court.

7. It is made clear that if the petitioners do not obtain any stay against the respondent nos.4 to 6 herein from the Civil Court in the Civil Suit proposed to be filed for withdrawing the said amount from the Civil Court within six weeks from today, the respondent nos.4 to 6 would be at liberty to apply for withdrawal of the said amount. If any such application is made by the respondent nos.4 to 6 for withdrawal of the said amount, the Trial Court to permit the respondent nos.4 to 6 to withdraw the said amount which shall be subject to the undertaking that would be furnished by the respondent nos.4 to 6 that if on the conclusion of the Trial Court, the plaintiff succeeds, the said amount shall be refunded on such terms and conditions as the Trial Court may deem fit.

8. It is made clear that this Court has not expressed any views on the merits of the contentions raised by the petitioners in the suit that would be filed by the petitioners. All the contentions of both the parties are expressly kept open. It is made clear that the petitioners shall serve a copy of the plaint and the application for interim reliefs that would be filed by the petitioners, 72 hours in advance before making the said application for staying the civil suit for the withdrawal of the said amount. If the petitioners do not file a civil suit within a period of three weeks before the Civil Court, the respondent nos.4 to 6 would be at liberty to apply for the withdrawal of the said amount unconditionally.

9. Writ petition is disposed off in aforesaid terms. No order as to costs. Parties as well as the Trial Court to act on the authenticated copy of this order.

S.G. DIGE, J.

R.D. DHANUKA, J.