

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 610 OF 2022

Shantaram Narayan Patil	...	Petitioner
Versus		
Laxman Janu Patil Since Deceased		
Through Legal Heirs & Ors.	...	Respondents

Ms. Gauri Godse, Advocate for the Petitioner.

Mr. R. D. Suryawanshi, Advocate for the Respondent No.2.

Mr. Sanjay S. Patil, Advocate for the Respondent No.3.

Ms. R. M. Shinde, AGP for the Respondent No.4/State.

**CORAM: S.V. GANGAPURWALA &
VINAY JOSHI, JJ.**

DATED : MARCH 29, 2022

P.C.

1. The objection filed on behalf of the petitioner resorting to Section 3H(4) of the National Highways Act, 1956 is rejected. As such, the present petition is filed.

2. The learned Advocate for the petitioner submits that the father of the petitioner was the owner of land bearing No. 79 to the extent of 36R. The decree was passed in favour of the father of the petitioner in a civil suit filed by him. The appeal filed against the decree by Laxman was

dismissed. The second appeal is dismissed for non-prosecution. The learned Advocate submits that out of 79/1, 51 R land is acquired and out of 79/2, 23.22 R land is acquired. The amount of compensation has been paid to the respondents without authority. The learned Counsel submits that as the dispute of title exists, the Competent Authority ought to have referred the matter to the Civil Court.

3. The learned Counsel for the respondents submits that name of the father of the petitioner was mutated in the revenue record. After the enquiry, the names of petitioner and their father were mutated in the revenue record. Upon joint measurement, it is established that the land of the father of the petitioner was never affected in acquisition. The Competent Authority has considered all these aspects of the matter and has rightly passed the order.

4. It appears from the record that the father of the present petitioner filed suit bearing Regular Civil Suit No.255 of 1984. The Joint Civil Judge Junior Division, Bhiwandi decreed the suit holding father of the petitioner owner of 36 R land from Survey No. 79 situated at village Chinchwali. The mutation entry would not confer title. The

decree of the Civil Court in favour of the father of the petitioner holds the field. The land admeasuring almost 74 R from Survey No.79/1 and 79/2 has been acquired. Whether the land admeasuring 36 R allegedly owned by father of petitioner is also subject matter of the acquisition was required to be taken into consideration and decided. It appears that the dispute with regard to the extent of land held by the petitioner under acquisition exist.

5. In light of that we pass the following order :

ORDER

- (i) The impugned order dated 24/02/2020 passed by respondent No.4/Sub-Divisional Officer/Competant Authority, Bhiwandi is quashed and set aside.
- (ii) The Competent Authority shall refer the dispute to the Court of original civil jurisdiction. The same shall be referred preferably within six weeks from today.
- (iii) The Court to which the matter would be referred shall dispose of the same expeditiously.
- (iv) It is accepted by the learned Counsel for the respondents that amount approximately of Rs.123 Laks is not withdrawn and the same is lying in the

bank account of respondent No.4 and the said account is freezed.

- (v) The said freezed amount shall be remitted to the Court of original civil jurisdiction where the dispute is referred to and the same shall be invested in the Fixed Deposit.
- (vi) The concerned Court of original civil jurisdiction shall take decision with regard to the disbursement of the amount pursuant to the final decision taken by him in the proceedings.

(VINAY JOSHI, J.)

(S.V. GANGAPURWALA, J.)

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