

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6918 OF 2021

Sou. Suman Rajaram Vhanmane and Anr. ..Petitioners

Versus

The Sub Divisional Officer,
Sub Division, Miraj, District Sangli and Anr. ..Respondents

Mr. Umesh R. Mankapure, for the Petitioners.

Mr. A. P. Vanarase, AGP for Respondent No.1.

Mr. Kuldeep U. Nikam a/w Prasad Avhad, for Respondent No.2.

CORAM : NITIN W. SAMBRE, J.

DATE : 21st MARCH, 2022

PC.

1. Heard.

2. Impugned in the petition is an order dated 24th September, 2021 passed by the Principal District Judge, Sangli in exercise of powers under Section 3(H)(4) of the National Highways Act, 1956.

3. The petitioners were respondent Nos.1 and 2 to the Land Reference M.A. No.1 of 2020. It is claimed that they have acquired title to the suit property by virtue of registered sale-deed dated 14th May, 2018 to the extent of 2.22 Are out of Gat No.535. Based on said title petitioners claim right in the compensation against acquisition of 19 Are land. It is claimed that the respondents have executed various affidavits in favour of the

petitioners thereby giving no objection for apportionment for the amount of compensation of land to the extent 19 Are. It is urged that respondent owner have neither produced aforesaid consent affidavits nor the Court below applied its mind to the recitals in the sale-deed. My attention is specifically invited to the recitals on page No.4 of the sale-deed referred above. As such, contentions of Mr. Umesh Mankapure, learned counsel appearing for the petitioners are that respondent/land owner practiced fraud on the petitioners which vitiates the impugned order. According to him, the Court below has failed to consider recitals in the sale-deed which amounts failure on the part of the Court below to give opportunity of hearing. Allegations of malafide intention were also made against the Sub Divisional Officer.

4. Mr. Kuldeep Nikam, learned counsel for respondent No.2 would oppose the contention and supports the order impugned.

5. Having appreciated the submissions made by counsel for the petitioners, what can be noticed is petitioners are resting their claim for entitlement of the compensation based on recitals of the registered sale-deed dated 14th May, 2018. The recitals in express terms provide for non-vesting of title in the petitioners to the extent of 19 Are land which was subjected to acquisition. The other recitals contrary to above claimed to be providing vesting of right in the petitioners to seek release of compensation in their favour. The petitioners have also drawn support from the affidavit executed by the respondents to that effect. Fact remains that when the order

impugned was passed, petitioners have not placed on record such affidavit. Since the petitioners claim for release of compensation in their favour is based on recitals of registered sale-deed, failure on the part of respondents to honour such commitment in terms of sale-deed referred above will give lever to the petitioners to proceed against the respondents by taking out appropriate proceedings for establishing such right.

I am informed that respondent/land owner has already withdrawn compensation after the impugned order was passed. Though allegations of malafide during the course of arguments are levelled against the authority i.e. Sub Divisional Officer, such officer is not impleaded by name in the present petition or the proceedings and that being so, Court cannot appreciate such allegations of malafide.

6. In the backdrop of dispute between the petitioners and respondents on the issue of right to claim compensation, this Court is not inclined to exercise jurisdiction under Article 227 of the Constitution of India, as such remedy can be kept open for the petitioners.

7. In the aforesaid background, I hardly see any reason which warrants interference in the order impugned.

8. The petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]