

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1168 OF 2022

**KASHINATH MALLIKARJUN HONRAO AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Petitioners : Shri Mohekar Ganesh V.
AGP for Respondent 1 : Shri S.B. Yawalkar
Advocate for Respondent 2 : Shri S.W. Munde
Advocate for Respondents 3 and 4 : Shri Sachin S. Panale

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**CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.**

DATE :- 05th July, 2023

Per Court :-

1. After dictating an order in open court on 27.06.2023, but before formalizing the order, we noticed certain aspects pertaining to the controversy to the extent of the land purchased by Respondent Nos.3 and 4 from the father of the Petitioners. Hence, we suo moto listed this matter today and we heard the learned Advocates today.

2. The Petitioners have put forth prayer clauses B, C, D, E and F as under:-

"(B) Issue a writ of mandamus or any other

appropriate writ, order or direction thereby directing the Respondent No. 2 to refer the dispute about the entitlement of compensation amount receivable towards the acquisition of land Gut Nos. 197 for National Highway No. 361 u/s. 3-H(4) of the National Highway Act, 1956 and for that purpose issue necessary writ, order or directions.

OR IN ALTERNATE

- (C) Issue a writ of mandamus or any other appropriate writ, order or direction thereby directing the Respondent No. 2 to pay and disburse the amount of compensation payable towards the acquisition of land Gut Nos. 197 for National Highway No. 361 u/s. 3-H(3) of the National Highway Act, 1956 in favour of the Petitioners and for that purpose issue necessary writ, order or directions.*
- (D) Issue a writ of certiorari or any other appropriate writ, order or direction like in the nature, the impugned order dated 30.12.2021 passed by Res. No. 2 in proceeding No. क / आस्था-2 / अपील / एस. आर. 64 may kindly be quash and set aside.*
- (E) Pending hearing and final disposal of present Writ Petition issue an injunction in the nature of direction thereby restraining the Respondent no.2 not to disburse and pay the amount compensation payable towards the acquisition of land Gut Nos. 197 for National Highway No. 361 u/S. 3-H (3) of the National Highway Act, 1956 in favour of any of the Respondents and for that purpose issue necessary writ, order or directions.*
- (F) Pending hearing and final disposal of present Writ Petition, the Respondent No. 2 may kindly be directed to refer the dispute about the entitlement of compensation amount receivable towards the acquisition of land Gut Nos. 197 for National Highway No. 361 u/s. 3-H(4) of the National Highway Act, 1956 and for that*

purpose issue necessary writ, order or directions."

3. We have considered the strenuous submissions of the learned advocates for the Petitioners, Respondent Nos.2, 3 and 4 and the learned Assistant Government Pleader on behalf of Respondent No.1. The Petitioners have prayed, alternatively, in terms of prayer clause (C).

4. It is undisputed before us that the Petitioners are not connected with the land Gut No.197 considering the change of hands as regards ownership of that Gut number 197, as the share of the Petitioners was sold to Respondent Nos.3 and 4, years ago. The Respondent Nos.3 and 4 are concerned only with land gut No.197 to the extent of their share of 2 Acres and 20 Gunthas. By our first order dated 21.01.2022, we had directed status quo as on date with regard to payment of compensation.

5. There are innumerable issues raised before us beginning with, whether the Competent Authority has committed a gross mistake under the provisions of the Prevention of Fragmentation and Consolidation of Holdings Act, 1947. It is, however, undisputed that the Petitioners have preferred a suit R.C.S. No.629 of 2018 before the learned Civil Judge Senior

Division, Latur on 22 November, 2018, seeking declaration of ownership and perpetual injunction with regard to old Sy. No. 36/5 to the extent of 0 H 82R only from Gut No.197 and 0 H 47R from Gut No.113. This suit is pending adjudication. The authorities have prima facie concluded under the provisions of the National Highways Act that Respondent Nos.3 and 4 are undisputedly entitled to compensation for 02 Acres 20 Gunthas land from Gut No.197. Vide the suit lodged by the petitioners, they have put forth a claim only to the extent of 0.82R in land gut No. 197, excluding the share of Respondent nos. 3 and 4.

6. It is undisputed before us that the father of the Petitioners filed a consenting Written Statement in Regular Civil Suit No.46/1968 below Exhibit-9 and prayed that the suit be decreed. By such consenting Written Statement, the Trial Court delivered the order on 10.07.1968 declaring Respondent Nos.3 and 4 to be the owners of land admeasuring 2 Acres 20 Gunthas in the then Survey No.36(A). Strangely, the Petitioners contend that the share of Respondent Nos.3 and 4 to the extent of 2 Acres and 20 Gunthas has been acquired in the land acquisition proceedings more than four decades ago and compensation has been paid. Despite this admitted position, the Petitioners have

filed Civil Suit No.629/2018 putting forth the prayer which runs counter to the Written Statement of their father filed 55 years ago and the decree passed by the Court on 10.07.1968. Now the Petitioners seek possession of only 82 R land, whereas land admeasuring 2 Acres 20 Gunthas is admittedly owned by Respondent nos. 3 and 4. We, therefore, do not find any dispute about this portion of the land and disbursement of compensation.

7. In view of the above, **this Writ Petition is disposed off** with the following directions:-

A. The authorities are at liberty to disburse 50% of the compensation amount to Respondent Nos.3 and 4, who shall execute an individual affidavit undertaking that if it is, eventually noticed or proved that they have received excess compensation, they would refund the excess compensation within 45 days from the day of such verdict.

B. The remaining amount shall be invested in a fixed deposit receipt by the Competent Authority in view of the fact that the suit is pending and the same has been expedited.

C. We direct that suit R.C.S. No. 629 of 2018 which is almost five years old, shall be decided expeditiously and without seeking any extension of time upto on 31st July, 2024.

D. After the civil proceedings are concluded, subject to the decision therein, the Competent Authority shall initiate steps to disburse the amount according to the judgment and decree.

E. If R.C.S. No.629 of 2018 lodged by the Petitioners is found to be vexatious litigation, the Trial Court would be at liberty to award exemplary costs to the defendants in the said suit.

kps

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)