

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

901 WRIT PETITION NO.8947 OF 2022

VILAS KASHINATH BAVISKAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND
ANOTHER

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Mr. A. R. Syed, Advocate for the petitioner
Mr. S. B. Yawalkar - AGP for respondent/State
Mr. S. S. Deve - Advocate for respondent no. 2
Mr. D. S. Manorkar - Advocate for respondent no. 3

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

DATED : 13th JULY 2023

PER COURT : -

1. The petitioner has tendered a *purhsis* through the signature of advocate Shri. A. R. Syed, dated 13.07.2023, stating that the Petitioners desire to withdraw this Petition and approach the Civil Court for challenging the charge created on their property. It is further prayed that they may be allowed to take back the amount of Rs.35,56,300 and the interest amount of Rs.2,50,000. Along with the said *purshis* (2 pages), documents from page nos. 3 to 9 have been tendered. The *purshis* with compilation of documents (9 pages), is taken on record and marked as "X-1" collectively, for identification.

2. The learned advocates representing Respondent nos.2 and 3

have seriously opposed the Purshis contending that the Petitioner is attempting tricks on the Court as well as the Respondents. They have narrated the entire events of the last 15 years to indicate the conduct of the Petitioner.

3. We have heard the learned Advocates for the respective sides.

4. If the history of this litigation in Writ Petition No. 381 of 2022 is noted, it would be obvious that the petitioner is not only playing tricks with the Court, but, has shrewdly put forth different stands, one after the other, only to take chances with the court. The sequence of events are set out as under : -

[i] It is an admitted position that excess amount of compensation for land acquisition was received by one Mr. Mahesh Kashinath Baviskar, the elder brother of petitioner no. 1 and the son of petitioner no. 2. He is also the co-owner of the land in Gut No. 100 along with the other petitioners. The excess amount was to the tune of Rs. 35,56,300/- as on 16.03.2010.

[ii] The petitioners and Mahesh, after receiving this amount on 16.03.2010, retained the amount and did not return it to

the authorities and enjoyed the said amount until June-2022.

- [iii] Respondent no. 2 / Competent Authority, immediately noticed the mistake of excess payment and addressed a letter to the petitioners as long ago as on 31.03.2011, intimating them that the amount of Rs. 35,56,300/- has to be returned. The Petitioners did not return the same.
- [iv] A mutation entry no. 6921 was effected for creating a charge over the property of the petitioners.
- [v] On 17.03.2021, Mahesh passed away.
- [vi] These petitioners have now taken a stand that Mahesh did not disclose the excess payment received by him on behalf of these petitioners. Since they have now learnt that the amount was received in excess, a statement was made before this Court on 20.12.2022 that Rs.35,56,300/- would be re-deposited in this court within four (04) weeks. This Court recorded the said statement vide order dated 20.12.2022.

[vii] The petitioners did not deposit the said amount for quite sometime. On 16.06.2023, this Court passed an order granting a last chance to the petitioners to deposit the said amount in this Court.

[viii] Finally, vide Demand Draft dated 23.06.2023, drawn on Bank of Maharashtra, Dr. Babasaheb Ambedkar Marathwada University Branch, the petitioners deposited an amount of Rs. 35,56,300/- in this Court. The Petitioners volunteered to deposit this amount in the court only after realizing that this amount is accumulating interest and the NHAI was seeking interest on the said amount which was enjoyed for 13 years.

[ix] Thereafter, an approximate interest was calculated and the petitioners deposited Rs.1,50,000/- in this Court vide Demand Draft No. 262898, dated 03.07.2023.

5. The learned advocate appearing on behalf of the National Highway Authority of India / respondent no. 3 submits that the excess amount which was paid to the petitioners in 2010 and sought to be recovered in 2011, will now have to be paid to the other land owners who received lessor share of compensation amounts. Had the petitioners

returned the amount in 2011, the statutory interest which now the NHAI will have to pay to those who are deprived of that amount, to be calculated over a period of 12 years, will have to be paid by the NHAI from its pocket. He, therefore, submits that the charge created on the property should not be vacated and if the petitioners desire to approach the Civil Court for which the *purshis* has been filed, let the charge be subject matter of the decision of the Civil Court.

6. The learned advocate for the petitioners submits, on instructions, that the petitioners would approach the Civil Court with a substantive suit and let all contentions of the parties be left open. He prays that the amount may be returned to the Petitioners.

7. The records have sufficiently exposed the conduct of the Petitioners. No litigant should be allowed to play tricks on the Court. The Petitioners enjoyed the excess payment for 12 years. After they realised that it was high time to return the excess amount since large interest had accumulated, that they tried to impress this Court that they are voluntarily depositing the amount. They have not obliged the Court. They deposited the amount only when they realised that the DAMOCLES sword (principle amount + interest) was hanging over them. Now, when they feel that they may not get a desirable order, that they intend to withdraw this Petition along with the deposited amount.

8. In view of above, **this petition is disposed off**, the Petitioners still intend to withdraw this Petition and approach the Civil Court.

9. The amounts deposited in this court shall be withdrawn by respondent no. 2 / Competent Authority, since it is an admitted position that the excess amount had to be refunded. The said amount was deposited in this court. The further interest on this amount will not be calculated by NHAI from the dates the amounts were deposited. The charge created on the property vide Mutation Entry No. 6921 would be subject to the result of the suit. Without prejudice to their rights, if the Petitioners deposit the entire interest amount, they may pray for vacating the charge. All contentions of the litigating parties are kept open.

[Y. G. KHOBRADE]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE