

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1275 OF 2020

Shaikh Taufik Shaikh Shahu

PETITIONER

VERSUS

Shakilabee Sheikh Gaffur and Others

RESPONDENTS

.....

Mr. Vijay Bhalerao Patil, Advocate for the petitioner

Mr. Ameya N. Sabnis, Advocate for respondents No.1

Mr. S. R. Yadav – Lonikar, AGP for respondent – State

.....

WITH

WRIT PETITION NO. 5667 OF 2022

Shaikh Taufik Shaikh Shahu

PETITIONER

VERSUS

The Sub Divisional Officer & Land Acquisition
Officer, and Others

RESPONDENTS

.....

Mr. Vijay Bhalerao Patil, Advocate for the petitioner

Mr. S. R. Yadav – Lonikar, AGP for respondent No.1 – State

Mr. N.T. Tribhuvan, Advocate for respondents No.2A to 2H

Mr. Ameya N. Sabnis, Advocate for respondents No.3

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 31st JULY, 2023

ORDER :

1. Writ Petition No. 1275 of 2020, filed under Article 227 of the Constitution of India, challenges order dated 18th January,

2019 passed by the learned 10th Joint Civil Judge, Senior Division, Aurangabad below Exhibit-21 in Land Acquisition Reference No. 23 of 2017.

2. Application Exhibit-21 was filed by respondent No.1 – Shakilabee under Order 1 Rule 10 of the Civil Procedure Code, seeking her impleadment as party in the Land Acquisition Reference.

3. Mr. Patil, learned advocate for the respondent, by relying on "*Chintaman Barbaji Dupare V/s Vithabai Deoraji Wahane and Others*" 2009 (4) *Mh.L.J.* 313, submits that the Reference Court has erred in adding respondent – Shakilabee as party to the Reference, when admittedly Shakilabee did not raise objection to the Award passed by the Land Acquisition Officer.

4. Writ Petition No. 5667 of 2022, challenges order dated 25th February, 2022 passed below Exhibit-1 in Land Acquisition Reference No. 23 of 2017, passed by learned 3rd Joint Civil Judge, Senior Division, Aurangabad, staying the proceedings of Land Acquisition Reference No. 23 of 2017 under section 10 of the Civil Procedure Code, till the decision of Regular Civil Suit No. 651 of 2021.

5. Heard learned advocate for the petitioner, learned advocates for the respondents and the learned Assistant Government Pleader for the Sub Divisional Officer. Perused the memos of the writ petitions, documents annexed with it and the impugned orders.

6. It is not in dispute that the Reference is made by the Sub Divisional Officer, for apportionment of the compensation amount awarded for acquisition of 81 R land out of Gut No. 71 of village Jabhali, Taluka – Paithan, District - Aurangabad. It is also a matter of record that respondent - Shakilabee has filed Regular Civil Suit No. 651 of 2021 seeking partition of the ancestral properties. It is also an admitted position that Regular Civil Suit No. 621 of 2021 (Old RCS No. 433 of 2012) is filed by respondent – Fatimabee claiming 1/3rd share in the suit properties, claiming the same to be ancestral properties.

7. Regular Civil Suit No. 670 of 2016 was filed by respondent Shakilabee claiming 1/7th share in the ancestral properties. The said suit, RCS No. 670 of 2016, is disposed of by the Trial Court in view of pendency of RCS No. 651 of 2021 for the same relief between the same parties and on the ground that there is possibility of cross decrees and considering the fact that the suit property bearing Gut No. 71 is acquired by the State for MIDC

and Land Acquisition Reference No. 23 of 2017 is pending for apportionment of the compensation amount before the same Court, as the plaintiff in RCS No. 670 of 2021 i.e. Shakilabee is party in LAR No.23 of 2017, Regular Civil Suit No. 670 of 2016 is disposed of and Shakilabee is directed to lead evidence in RCS No. 651 of 2021.

8. Admittedly, the parties have led evidence in the Reference in support of their respective contentions. The Reference Court, after considering the evidence, has come to the conclusion that Shakilabee is having some right in the acquired property and, therefore, it is the duty of the Court to give her opportunity to put her submissions and at the same time, claimant is having opportunity to disprove the submissions of Shakilabee. In partition suit, every party is the plaintiff and they shall have individual rights and shares in the properties and in such circumstances, interest of Shakilabee in the acquired property will necessarily be affected. Hence, Shakilabee is added as objectionist to the Land Acquisition Reference.

9. Considering the peculiar facts of the present case and since the matter is *subjudice* before the Reference Court, this Court, at this stage, is not inclined to go into the merits of the matter and interfere in the impugned orders. The parties are relegated to

the Civil Court and they shall lead their respective evidence in the partition suit i.e. Regular Civil Suit No. 651 of 2021. The Trial Court, before whom the suit as well as Land Acquisition Reference is pending shall decide the suit within a period of 6 months from the date of receipt of writ of this order.

10. Taking into consideration the fact that Shakilabee and Fatimabee are claiming 1/7th and 1/3rd shares in the suit properties and admittedly, there are other reference also pending between the parties claiming compensation / enhancement of compensation, at present, the petitioner is permitted to withdraw 50% of the amount deposited in LAR No. 23 of 2017 along with accrued interest, on furnishing an undertaking before the Reference Court that he shall repay the said amount in case any adverse order is passed or orders in the interest of Shakilabee or Fatimabee are passed holding them entitled for amount more than the amount withdrawn by the petitioner. Remaining 50% amount shall be deposited in fixed deposit till decision of the suit and the reference.

11. With these observations, both the writ petitions are disposed of.

[NITIN B. SURYAWANSHI]
JUDGE