

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

WRIT PETITION NO. 12043 OF 2023

Shridhar S/o. Rakhmaji Langde,
Age : 63 years, Occu : Agriculture,
R/o. Chite Pimpalgaon,
Tq. & Dist. Aurangabad.

...Petitioner

Versus

1. Babasaheb S/o. Kaduba Divte,
Age : 64 years, Occu : Agriculture,
R/o. Chitegaon, Goukul Nagar,
Post. Pimpalgaon,
Tq. & Dist. Aurangabad.
2. Prabhakar S/o. Kaduba Divte,
Age : 54 years, Occu : Agriculture,
R/o. As above.
3. Kamalbai Murlidhar Kulkarni,
Age : 65 years, Occu : Agriculture,
R/o. As above.

...Respondents

Advocate for Petitioner : Mr. M.K. Deshpande
Advocate for Respondent Nos. 1 & 2 : Mr. M.K. Bhosale
As per Court's order dtd. 27.10.2023, Respondent no. 3 is deleted.

CORAM : SHAILESH P. BRAHME, J.

Judgment reserved on : 10th November, 2023
Judgment pronounced on : 28th November, 2023

JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard learned counsel for both the sides for final disposal.
2. The petitioner is challenging judgment and order dated 24.08.2023, passed by learned 10th Joint Civil Judge Senior Division,

Aurangabad in LAR No. 83 of 2007, dismissing the claim of the petitioner.

3. The petitioner's claim was referred to the Civil Court under Section 3H(4) of National Highway Act (herein after referred as 'Act' for the sake of brevity). The land was acquired by the respondent nos. 2 and 3. The petitioner claims to be entitled to the compensation awarded by Competent Authority under the Act.

4. The petitioner's claim is contested by the respondents. The relevant facts to decide the controversy can be summarized as follows :

(i) An agreement to sale was executed on 17.10.2003, in favour of the petitioner by original owner Yogesh (being minor through guardian).

(ii) The petitioner had paid Rs. 2,00,000/- out of the total consideration of amount of Rs. 3,20,000/-.

(iii) In spite of executing agreement in favour of petitioner, original owner Yogesh executed sale deed in favour of present respondent nos. 1 and 2.

(iv) The petitioner had filed Special Civil Suit No. 129 of 2005 against original owner Yogesh, his guardian and the respondent nos. 1 and 2, for specific performance of contract, mandatory injunction, and refund.

(v) On 04.01.2007, the relief of specific performance of contract and mandatory injunction was refused but the decree of refund of Rs.

2,00,000/- at the rate pf Rs. 6 % per annum from the date of filing of the suit i.e. 21.03.2005 was passed.

(vi) Against the decree, First Appeal was filed in High Court. It was transferred to District Court, Aurangabad, and registered as RCA No. 202 of 2012. It is still pending.

(vii) The part of the suit land sold to the respondent nos. 1 and 2 was acquired by the Competent Authority under the Act. The petitioner claimed the compensation and there was dispute for the entitlement. The matter was referred to the Civil Court and registered as LAR No. 83 of 2017.

5. Learned counsel for the petitioner submits that his substantive Appeal bearing RCA No. 202 of 2012 is pending and is bound to succeed. He is, therefore, entitled to the compensation. It is vehemently submitted that agreement to sale issued in his favour is prior in time. The sale deed was executed in favour of the respondent nos. 1 and 2, fraudulently. The sale deed is void because it was minor's property alienated without permission of the Court. He would further submit that till the Appeal is decided finally, the amount of compensation be not disbursed to the respondent.

6. Learned counsel submits that when land was acquired it was in his possession. He is entitled to compensation because the sale deed is void. He further submits that the findings recorded by Trial Judge that

the Appeal of the petitioner has not been restored and he is not interested in prosecuting the Appeal is erroneous and perverse. Learned counsel expresses an apprehension that if the amount is disbursed to the respondents then his Appeal would become infructuous. He, therefore, urges to restrain the disbursement.

7. Learned counsel for the respondents has repelled the submissions of the petitioner by submitting that no right is created in favour of the petitioner on the basis of agreement. The respondents hold title document and entitled to compensation. He submits that even if the amount is disbursed that would be on the undertaking. He would further submit that the sale deed has not been challenged by the petitioner. His client cannot wait for the compensation endlessly.

8. I have considered rival submissions canvassed by the learned counsel across the bar.

9. The petitioner claims entitlement on the basis of agreement to sale which cannot be said to be title document. As against that, the respondents are armed with registered sale deed. The validity of the sale deed is not the part of enquiry presently. The submissions of learned counsel regarding transfer of the suit land of minor without seeking permission of the Court and validity of the title of the respondents cannot be gone into, at this stage. I restrain from expressing my view on the

validity of the sale deed because that may cause prejudice to the merits of RCA No. 202 of 2012.

10. Learned counsel for the respondents has rightly pointed out that the sale deed dated 26.08.2004 has not been challenged expressly by the petitioner in Special Civil Suit No. 129 of 2005. When petitioner was aware of execution of sale deed and according to him, his right to get sale deed executed was prior in time then sale deed ought to have been challenged. Whether the petitioner can succeed before the Appellate Court without challenging the sale deed is the question to be decided by Appellate Court. But at this stage of the proceeding, the respondent nos. 1 and 2, hold title of the suit land.

11. Learned counsel for the petitioner has heavily criticized the findings recorded by the learned Judge that the petitioner was not interested in prosecuting the Appeal and Appeal was not restored. The Appeal was dismissed for non prosecution on 27.10.2016. Thereafter, application for restoration bearing MARJI No. 388 of 2016, was filed and it was allowed on 16.11.2017. Appeal was restored. Therefore, I do not approve the findings recorded by the learned Judge in respect of conduct and readiness of the petitioner. Though these findings are erroneous that cannot take petitioner's case further.

12. In a suit for specific performance of the contract filed by the petitioner only decree of refund of an amount with interest is passed. As

on the date the petitioner is entitled to the amount of compensation to the extent of the amount directed to be refunded with interest. However, the petitioner on his own volition deleted the respondent no. 3 on 27.10.2023. Learned Judge vide impugned judgment and order has apportioned the amounts of compensation amongst the respondents including deleted respondent no. 3. To preserve the amount of refund, Rs. 2,00,000/- with interest, the respondent no. 3 is necessary party which is not before this Court. I am unable to issue direction to withhold the amount of refund with interest which is decreed in favour of the petitioner.

13. The Appeal of the petitioner is sub-judiced. Even if it is decided either way, the parties are likely to carry the matter in Appeal. Learned counsel for the petitioner vehemently submitted that amount be not disbursed till final decision of Appeal. This submission cannot be countenanced because there is no certainty when the decree will gain finality. The claimants cannot be stranded endlessly.

14. The findings recorded by the learned Judge cannot be said to be perverse. They are based upon material on record except the findings which I have dealt with in earlier paragraphs.

15. I do not find any case is made out to exercise writ jurisdiction to preserve the amount of compensation. However, out of abundant precaution and it is in the interest of justice it would be

appropriate to disburse amounts to the respondents by furnishing their undertaking.

16. I do not find it necessary to interfere with impugned judgment and order.

17. The Writ Petition is disposed of with a direction that the amount shall be disbursed to the respondent nos. 1 and 2 on furnishing undertaking or the security and subject to the outcome of RCA No. 202 of 2012.

[SHAILESH P. BRAHME, J.]

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