

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13489 OF 2021

1. Laxman S/o Maroti Navale
Age: 73 years, Occ.: Agril,
R/o.: Dongaon, Tq. Gangapur
District Aurangabad.

2. Laxmibai W/o. Asaram Navale
Age: 73 years, Occ.: Agril,
R/o.: Dongaon, Tq. Gangapur
District Aurangabad.

.... Petitioners

Versus

1. Laxman S/o. Shivilal Aher
Age: 35 years, Occ.: Agril,
R/o.: Dongaon, Tq. Gangapur
District Aurangabad.

2. State of Maharashtra
Through Collector, Aurangabad.

3. Land Acquisition Officer and
Sub-Divisional Officer, Vaijapur,
Tq. Vaijapur, Dist. Aurangabad/

4. Maharashtra State Road Transport
Corporation, having office
Opp. to Garware Stadium,
Aurangabad.

.... Respondents

.....

Mr. Pramod F. Patni, Advocate for the Petitioners

Mr. D.A. Bide, Advocate for Respondent No.1

Mr. P.G. Borade, AGP for Respondent No.2

Mr. A.V. Patil Indrale, Advocate for Respondent Nos.3 and 4

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th JUNE, 2023

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. By this petition, filed under Article 227 of the Constitution of India, the petitioner takes exception to the order passed below Exhibit-8 by the learned Joint Civil Judge, Senior Division, Vaijapur in Land Acquisition Reference No.201 of 2019.

3. Respondent No.1/original plaintiff filed Regular Civil Suit No.525 of 2018 for declaration that he is the owner and possessor of 1 Acre area each from Gut Nos.250 and 251 situated at *Mouje* Dongaon, Taluka Gangapur, District Aurangabad. A permanent injunction is also sought that from 2 Acres area of the plaintiff out of Gut Nos.250 and 251, compensation of 31 *Guntha* land should not be given to defendant Nos.1 and 2 by defendant Nos.3 to 5. It is the contention of the plaintiff that defendants have encroached on 3 *Guntha* land from Gut Nos.250 and 28 *Guntha* land from Gut No. 251. Since the plaintiff claimed 31 R land in the suit, a reference was filed, which was numbered as Land Acquisition

Reference No.210 of 2019, which is being contested on merits by the parties.

4. In the reference, the petitioners filed application Exhibit-8, contending that keeping aside the compensation awarded for 31 R land, claimed by respondent No.1, remaining amount of compensation deposited by the acquiring body be paid to the petitioners. The said application was opposed by respondent No.1, contending that there is a dispute between the petitioners and respondent No.1 as to the area of acquired land, and unless the said dispute is decided, the amount cannot be disbursed. The Reference Court has rejected the application on the ground that unless the Suit filed by the respondent is decided, it cannot be ascertained as to who is the owner of the said disputed 31 R land. The present reference is also pending on the same point, and dispute of ownership can be resolved only after adducing evidence at the time of trial. The Petitioners are aggrieved by this order.

5. Heard the learned advocate for petitioners, learned advocates for respondent Nos.1, 3 and 4 and the learned Assistant Government Pleader for respondent Nos.2. Perused Perused the writ petition memo, annexures thereto, affidavit-

in-reply filed by respondent No.1 and respondent Nos. 3 and 4, and the impugned order.

6 Admittedly, respondent No.1 is claiming that the petitioners have encroached on 31 R land owned by him. The said 31 R land claimed by respondent No.1 is part of the acquired land out of Gut Nos.250 and 251. The suit filed by respondent No.1 claiming ownership of 31 R land is *sub judice*. Reference is also pending before the reference Court. In case, respondent No.1 succeeds in the suit, he will be entitled for compensation amount of 31 R land out of Gut Nos.250 and 251. If he succeeds in the Reference, he will be entitled for enhanced compensation.

7. The respondent Nos.3 and 4/acquiring body has deposited total compensation amount of Rs.1,80,61,014/- for the acquired area of 1 Hectare 88.26 R out of Gut Nos.250 and 251. As per the award passed by the Special Land Acquisition Officer, and as per the calculations given in paragraph 5 of affidavit-in-reply of respondent Nos. 3 and 4, the compensation amount for 31 R land comes to Rs.30,48,251/-.

8. There appears some dispute raised by respondent No.1 about the irrigated land and *jirayat* land, which would be resolved by the Civil Court in the Suit filed by respondent No.1. In that view of the matter, there is no impediment in permitting the petitioners to withdraw the amount of compensation of their acquired lands.

9. For the aforestated reasons, the impugned order cannot be sustained, and the same is liable to be quashed and set aside.

10. In the result, the writ petition is allowed.

11. Impugned order dated 25/10/2021 passed by the learned Civil Judge, Senior Division, Vaijapur, below Exhibit-8 in Land Acquisition Reference No.201 of 2019, is quashed and set aside.

12. Application Exhibit-8 is allowed.

13. The petitioners are permitted to withdraw the compensation amount deposited by the respondents in the Reference Court along with accrued interest thereon, by deducting amount of Rs.30,48,241/- i.e. compensation for 31 R land, subject to the petitioners filing undertaking before the Reference Court.

14. Amount of Rs.30,48,241/- shall be kept in fixed deposit in any nationalized Bank initially for a period of one year, and thereafter, be renewed from time to time till the final adjudication of the dispute between the parties.

15. Reference and the suit are expedited.

16. Considering the fact that Suit as well as Reference are pending before the same Court, they are clubbed together and are directed to be decided simultaneously by recording separate evidence.

Rule is made absolute in the above terms.

No costs.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane