

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4008 OF 2023

Bhagwan Sarjerao KapasePetitioner
Versus
Gangabai Baban Shinde
and another Respondents

Mr. Vishwanath S. Talkute, Advocate for the Petitioner.
Mr. Rushabh U. Phade, Advocate for Respondent
No.1/Caveator.
Smt. V.S. Nimbalkar, AGP for the Respondent No.2-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 3rd APRIL, 2023

P.C. :

1. The Petitioner has challenged the order dated 15.3.2023 passed by the District Judge-1, Malshiras in Land Acquisition Reference No.21/2020.

2. Heard Shri Vishwanath Talkute, learned counsel for the Petitioner, Shri Rushabh Phade, learned counsel for the Respondent No.1 and Smt. V.S. Nimbalkar, learned AGP for the Respondent No.2-State.

3. Learned counsel for the Respondent No.1 submitted that the Respondent No.1 has filed a caveat and that he shall file his appearance at the earliest. The statement is accepted.

4. By the impugned order following order is passed on 15.3.2023 :

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ORDER

1. The application is allowed.
2. The amount of Rs.11,91,000/- (in words Rs. Eleven Lakh, Ninety one thousand only) be paid to the respondent No.7 Gangubai alias Gangabai Baban Shinde, R/o Shripur, Tal. Malshiras, Dist. Solapur on furnishing surety of Rs.12,00,000/-.
3. She is directed to give undertaking on oath that she shall deposit the entire amount of Rs.11,91,000/- along with interest if any in case it is found that she is not entitled for the compensation amount.”

5. Learned counsel for the Petitioner submitted that in the past a suit for partition was filed in which the Respondent No.1 had filed a written statement along with other Defendants in that suit in which she had mentioned that the partition was already effected in the past and she had no right in the suit property.

6. Learned counsel for the Petitioner, therefore, submitted that on the basis of this admission, since the Respondent No.1 herein does not have any right, the impugned order could not have been passed. The learned Judge was required to record at least *prima facie* opinion that the Respondent No.1 herein was entitled for the said amount of Rs.11,91,000/-.

7. Learned counsel for the Respondent No.1 submitted that she is suffering from brain-hemorrhage and she is scheduled to undergo surgery on 13.4.2023 and for that purpose she will be needing money to pay the medical expenses.

8. I have considered these submissions. The rights of the parties are subject to the decision in the said Land Acquisition Reference No.21/2020 pending before the District Judge-1 Malshiras. Ultimately whether the Respondent No.1 has a right or not will be decided only at the conclusion of the said Land Acquisition Reference. In the meantime, only by way of interim measure, learned Judge

has permitted the Respondent No.1 to withdraw Rs.11,91,000/- on furnishing surety of Rs.12 Lakhs. I do not see any illegality or impropriety in the said order. Even on the humanitarian ground, since the question of entitlement is still pending, as the Respondent No.1 is in dire need of money, I am not inclined to interfere with the impugned order. With the result, the Petition is dismissed.

(SARANG V. KOTWAL, J.)