

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

WRIT PETITION NO.4007 OF 2023

Rajendra Shivmurti ArvePetitioner
Versus
Competent Authority and Sub-Divisional
Officer, Malshiras and others Respondents

Mr. Rupesh Bobade, Advocate for the Petitioner.
Mr. C.D. Mali, AGP for Respondent No.1-State.
Mr. P.B. Shah, Advocate i/b. Kayval P. Shah, for the
Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 3rd APRIL, 2023**

P.C. :

1. The Petitioner has challenged the order dated 6.3.2023 passed by the District Judge-1 at Malshiras below Exhibits-18, 20, 25 & 40 of Land Acquisition Reference No.34/2021. The Petitioner herein was described as the Respondent No.1 in that Land Reference and the Respondent No.2 herein was described as the Respondent No.2 in said Land Reference.

2. Heard Shri Rupesh Bobade, learned counsel for the Petitioner, Shri C.D. Mali, learned AGP for the

Respondent No.1-State and Shri P.B. Shah, learned counsel for the Respondent No.2.

3. The Competent Authority and the Sub-Divisional Officer, Akulj has deposited the compensation amount of Rs.66,21,870/- in respect of acquisition of some portion of land from Gat No.113 situate at village Malinagar, Taluka Malshiras, District Solapur for National Highway No.965G. The case of the Petitioner before the Reference Court was that he actually is entitled for compensation in respect of 30 Ares of land, however, only 21 Ares of land is shown in his name. There is a reference to some dispute between the Petitioner and the Respondent Nos.9A to 9C before the Reference Court.

4. The impugned order records that the Respondent No.2 herein was claiming compensation for the area 1298 sq. mtrs and for which she was willing to furnish the bank guarantee for that amount. Learned District Judge-1, Malshiras after hearing the parties passed the following order :

“
:: O R D E R ::

1. An amount of Rs.8,26,698/- be paid to the respondent No.1 Rajendra Shivmurthy Aarve on furnishing bank guarantee of the same amount with undertaking that if it is found that any excess amount is paid to him, he shall deposit the said excess amount in this Court forthwith.
2. An amount of Rs.40,39,091/- be paid to the respondent No.2 Pratibha Jagannath Girme on furnishing bank guarantee of the same amount with undertaking that if it is found that any excess amount is paid to her, she shall deposit the said excess amount in this Court forthwith.
3. An amount of Rs.5,49,130/- be paid to the respondent Nos.9A to 9C to their power of attorney holder Akshay Hanshraj Kodare on furnishing bank guarantee of the same amount with undertaking that if it is found that any excess amount is paid to them, they shall deposit the said excess amount in this Court forthwith.
4. The rights of the parties in case of any dispute about the area and any amount are reserved and they are at liberty to agitate their rights before this Court. The parties are at liberty to get their respective lands measured through competent authority.”

5. Learned counsel for the Petitioner submitted that if the Respondent No.2 herein is permitted to withdraw the

amount of Rs.40,39,091/- on furnishing the bank guarantee, the Petitioner herein will suffer irreparable loss. He submitted that instead of depositing this amount in the Court, the Court should have directed depositing that amount in a bank.

6. Learned counsel for the Respondent No.2 submitted that furnishing bank guarantee is a sufficient security and, therefore, if any order is passed it would be subject to bringing back the excess amount which the parties may withdraw. For this purpose, the bank guarantee is directed to be provided. He submitted that by this method the amount is secured.

7. I agree with the submission of learned counsel for the Respondent No.2 and I do not see any infirmity in the order passed by the District Judge-1, Malshiras dated 6.3.2023 which is impugned in this Petition. The exact entitlement of the parties is to be decided in the said Land Acquisition Reference No.34/2021 and ultimately if the figures are varied as per their entitlements, the excess

amount which is taken by the parties will have to be brought back to the Court to be distributed to the parties entitled for that amount. Therefore, I do not think that there is anything wrong in the impugned order. Consequently the Petition, for quashing of that particular order, is dismissed.

(SARANG V. KOTWAL, J.)

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
2023.04.10
10:40:24 +0530