

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAF) NO. 1572/2023 IN
FIRST APPEAL NO. 488/2022

(Vidarbha Irrigation Development Corporation, Nagpur & anr. Vs. Smt. Kesharbai w/o. Kashinath Aney
(died) thr. her legal heirs)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Amit M. Kukday, Advocate for appellants.
Mr. S.P. Bhandarkar, Advocate for respondent No.5.
Mr. V. G. Lohia, Advocate for respondent Nos. 1 to 4, 6 & 7.
Mr. P.M. Pandey, Advocate (intervener)

CORAM: VINAY JOSHI AND
VALMIKI SA MENEZES JJ.

DATED : 01/08/2023.

Heard.

2. The successful claimants before the Land Acquisition Authority have prayed for release of compensation amount which has been deposited by the appellant-acquiring body in pursuance of award passed by the competent authority in terms of Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The learned counsel appearing for the appellants has objected to release entire amount but would submit that 50% of the deposited amount can be permitted to be withdrawn. In this appeal, intervener has filed intervention application bearing intervener application (CAF) No. 1786/2023 by one Smt. Sulochana Shirsat seeking their impleadment as well as objection for withdrawal of the sum.

3. The land under acquisition was admittedly owned by one Kashinath. It is applicants' contention that Kashinath was survived by his wife Kesharbai and seven children. In short, the applicants are the only legal heirs of Kashinath and therefore, they are entitled for the entire compensation amount.

4. On the other hand, it is interveners' case that owner Kashinath had a second wife namely Sonabai from whom Kashinath had three issues namely Gajanan, Sulochana and Lochana. They claimed intervention by stating that three children of Kashinath from Sonabai would also acquire share in the property of deceased and therefore, the intervention.

5. There is no dispute that Sonabai and her children have raised objection before the competent authority, but it was turned down. Being aggrieved, they have applied to the Tribunal, but again remained unsuccessful. The said order was challenged in Writ Petition No. 115/2020. It was brought to the notice that already Sonabai and her children have filed suit for partition and separate possession bearing RCC No. 26/2019 which is pending on the files of Civil Court at Magrulpur, Dist. Washim. Taking note of pendency of civil suit, this Court in writ petition has stated that the amount which would be withdrawn, shall be subject to the result of the suit. The position remains that the interveners have failed before the authority, and substantive suit is pending. Obviously, the Civil Court is competent Forum to decide the rights of Sonabai and her children. Even if they succeed in suit,

concededly the share of three children of Sonabai would be 1/3 each. Taking note of the said aspect, we find no difficulty to release 75% of the compensation amount as it would safeguard the interest of interverner also.

6. In view of above, application is partly allowed. The applicants are permitted to withdraw 50% of the compensation amount on usual undertaking and 25% of the compensation amount on furnishing solvent surety/bank guarantee to that extent.

7. Application stands disposed of in above terms.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

Gohane