

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

Writ Petition No.7356/2022

Manan and others V State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. Pranit Vairagade h/f Mr. Bhushan Dafle, Advocate for petitioners.
Ms. Winy Daigavane, Advocate for intervenor/applicant.
Ms K. Deshpande, AGP for respondent.

CORAM : Rohit B. Deo and M.W. Chandwani, JJ.
DATE : 02-08-2023

The prayer clauses in the petition read
thus :-

"a) direct the respondent authority to pay compensation to the present petitioner towards the acquisition of their land bearing Survey No.202/1A and 202/2 and 205/1A of Mouza Pawnar, Tah. Seloo, District Wardha forthwith alongwith accrued interest thereon, till the date of realisation of the entire amount, in the interest of justice;

b) allow this petition with costs;

e) grant any other relief which this Hon'ble Court thinks fit in the facts and circumstances of the case."

2. In the cryptic petition, it is averred that the

land of the petitioners as described in para 2 is acquired and award dated 16-02-2018 is passed by the Land Acquisition Officer, Wardha. It is submitted that being aggrieved by the award the petitioners challenged the quantum of compensation by preferring an application under Section 3 (D) (5) of the National Highways Act, 1956, seeking enhanced compensation. It is further averred that while the compensation was enhanced, the National Highway Authority (NHA) has challenged the enhancement by the arbitrator by preferring an application under Section 34 of the Arbitration and Conciliation Act, 1996. The next relevant averment is that subsequently there was a settlement before the National Lok Adalat which culminated in award dated 07-05-2022.

3. The cause of action for approaching this Court is stated to be the refusal of the authority to release the compensation despite the proceedings referred to supra. It is averred in the petition that the mother of the petitioner 1 Late Jaishree Shyam Murarka was the co-owner of the property alongwith petitioners and she expired on 01-02-2021. Mrs. Jaishree Murarka had executed Will dated 10-11-2020 in favour of the father of petitioner 1 and subsequently she executed another Will dated 04-01-2021 bequeathing her share in favour

of petitioner 1.

4. It is averred in the petition that the sister of petitioner 1 Megha Agarwal objected to the mutation entry in favour of petitioner 1 and preferred an appeal under Section 247 of the Maharashtra Land Revenue Code 1966, which is dismissed. These are the broad facts on the basis of which the prayer is sought.

5. The learned Counsel for the petitioners has requested that the petition be disposed of as withdrawn unconditionally inasmuch as the amount of compensation is already released in favour of the petitioners in December, 2022. Ordinarily, we would have rested by permitting the petitioners to withdraw the petition. However, we note that the sister of petitioner 1 was not impleaded although even according to the petitioners she had objected to the mutation entry. Be that as it may, the sister of petitioner 1 Mrs. Megha Agarwal has preferred an application seeking intervention and issuance of appropriate directions. Mrs. Megha asserts that she is also entitled to the share which was held by her late mother Mrs Jaishree. According to her, even otherwise the land which is acquired forms part and parcel of joint family property in which she has a right whether or not her name appears in the revenue record. Mrs. Megha further asserts in paragraph 6 that

she has already filed suit for declaration, permanent injunction, partition and separate possession pertaining to her share which Special Suit No.240 of 2022 is pending before the Civil Judge, Senior Division, Nagpur. Mrs. Megha contends that although the petitioner 1 has received the notice of the suit, in the entire petition there is no disclosure that such a suit is pending. Certain other averments are made which make an endeavour to demonstrate that Mrs. Jaishree, who is the mother of petitioner 1 and Mrs. Megha was suffering from Cancer since 2019 and she did not have the testamentary capacity to execute the Will. We are not required to delve deeper in such allegations.

6. We are told that the civil Court has already passed an injunctive order on 03-05-2023 restraining the defendant 1 from creating third party interest in the suit property which also includes the land acquired by the NHA. If this be so, it would be more appropriate if the intervenor places all the facts before the Civil Court and claims an appropriate order, in respect of her claimed share in the compensation received. We have no doubt in our mind that in the partition suit the Civil Court has adequate power to even pass mandatory orders if a prima facie case is made out notwithstanding that the compensation is already released in favour of the

petitioners. If any such application is moved by the intervenor before the Civil Court, the same shall be decided within 30 days and on its merit, uninfluenced by the observations made in the instant order.

7. The petition is disposed of as withdrawn.

JUDGE

JUDGE

Deshmukh