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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.14562 OF 2022
WITH
INTERIM APPLICATION NO.7850 OF 2023
WITH
INTERIM APPLICATION NO.7848 OF 2023
WITH
INTERIM APPLICATION NO.299 OF 2024

Shri Roopchand Kaluram Ambekar & Anr. ...Petitioners/
Applicants

Versus

Shri Gulab Mohammed Mulani and Ors. ...Respondents

WITH
INTERIM APPLICATION NO.6813 OF 2024
IN
WRIT PETITION NO.14562 OF 2022

Ganesh Dnyaneshwar Sable and Ors. ... Applicants

In the matter between

Shri Roopchand Kaluram Ambekar & Anr. ... Petitioners

Versus

Shri Gulab Mohammed Mulani and Ors. ...Respondents

Mr.Nachiket Khaladkar a/w Mr.Dinesh Nagarkar for the
Petitioners/Applicants
Ms.M.S.Bane, A.G.P. for the Respondent No.18
Mr.Vivek Salunke a/w Mr.Anuj Tiwari for the Applicants

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 24th OCTOBER, 2024

P.C.

1. Interim Application Nos.7850 of 2023, 7848 of 2023 and 299 of 2024 are not on board. The same are taken on board.
2. We have heard the learned counsel for the parties on these proceedings which includes main Writ Petition as also the Interim Applications which are filed and pending in these Petitions.
3. We have also perused the Orders passed on the Writ Petition. The dispute in the Writ Petition primarily appears to be on the apportionment of the amount of land acquisition compensation in respect of the land which is the subject matter as described in the Petition.
4. There are rival claims in respect of the compensation, i.e., on behalf of the Petitioners who are two in number and on behalf of the private respondents who are seventeen in number. The prayers made in the Writ Petition reads thus:

“a) This Hon'ble Court be pleased to issue writ, certiorari and/or any other writ, order or direction in the nature of certiorari and thereby be pleased to quash and set aside the impugned Order dated 7th November 2022 passed by the learned Respondent No.18 herein passed aforesaid Application filed by the Petitioner herein and further this Hon'ble Court be pleased to direct the Respondent No.18 herein to refer the said dispute / matter to the Competent Civil Court.

b) Pending the hearing and final disposal of the present Writ Petition, this Hon'ble Court be pleased to restrain all the concerned Authorities from disbursing the compensation amount in lieu of acquisition of the land to any of the co- owners till the final disposal of the present Petition.

- c) *Interim / ad-interim relief in terms of prayer clauses (b) above be granted.*
- d) *Cost of this Petition may kindly be granted.*
- e) *Any other just, equitable and consequential relief/ order may kindly be passed in favour of the present Petitioner as this Hon'ble Court may deem fit and proper in the interest of justice.”*

5. A coordinate bench of this court on 28th November 2022 passed a detailed order on the Writ Petition while issuing notice to the respondents. The Court also granted ad-interim protection which reads thus:

“ *Mr.Vivek Salunke, the learned counsel for Respondent Nos.2,3,11 to 13 and 15 seeks time to file Vakalatnama and to take instructions. He states that till date his clients have not received any payment of the compensation in pursuance of the impugned order passed by the Competent Authority. The statement is accepted.*

2. *The short grievance of the Petitioner is that the Competent Authority has not only passed the order for disbursement of the compensation but has made observations about the rival claims of the parties on the subject matter of the property under acquisition.*

3. *In our prima facie view the learned counsel is right in his submission that the Sub Divisional Officer could not have determined the disputes relating to title in respect of the property under acquisition and simplicitor ought to have referred the parties to Civil Court under Section 3(h) of the National Highway Authorities Act.*

4. *The learned AGP waives service for Respondent No.18.*

5. *Issue notice to rest of the Respondents, returnable on 12 January 2023. Humdast is permitted.*

6. *In addition to the court notice, the petitioner is also permitted to serve the*

unserved Respondents by private notice, by all permissible modes of services available in law.

7. *The Respondents who are present in Court are directed to file reply within two weeks from today.*

8. *Affidavit in reply, if any, shall be filed by the unserved Respondents within two weeks from the date of service of the papers and proceedings with a copy to be served upon the petitioners' advocate simultaneously.*

9. *Till the next date, the impugned order passed by the Competent Authority on 7 November 2022 referred in prayer clause (a) of the Petition shall remain stayed including the disbursement of the compensation amount in lieu of acquisition of the land to any of the co-owners.*

10. *The learned AGP shall communicate this order to the Competent Authority.*

11. *The Petitioners to communicate this order to other Respondents who are not before this Court today.*

12. *The learned counsel for Respondent Nos.2,3, 11 to 13 and 15 shall communicate this order to his clients for information and compliance."*

6. Thereafter, on 27th March 2023, the following orders were passed by a coordinate bench of this court:

"1. *Mr Khaladkar, learned counsel for the Petitioners state that some of the Respondents have expired and seeks time to take instructions whether to delete those Respondents or to bring their legal heirs on record.*

2. *We are informed that service is not complete on all the Respondents. Petitioner to take steps to complete service on the unserved Respondents. Affidavit in reply shall be filed within three weeks from today with a copy to be served upon the*

Petitioner's advocate simultaneously. Rejoinder, if any, shall be filed within one week thereafter with a copy to be served upon the Respondents' advocate simultaneously.

3. *Ad interim relief granted by this Court on 28th November 2022 shall be continued till the next date. Petitioner is directed to communicate this order to the Respondents for information and compliance.*

4. *Place the matter on 12th June 2023."*

7. Our attention is also drawn to a further order dated 26th April 2024 passed by a coordinate bench of this court which reads thus:

“ This application is taken out for vacating the ad-interim order which is granted on 28 November 2022. The Petitioners have filed this petition making a grievance that having raised an objection before the Competent Authority under Section 3-H of the National Highways Act, 1956 and raising a dispute that the matter ought to have been referred to the Competent Court under the said provision instead, the Competent Authority has rejected the objection. Prayer is also made in the Writ Petition that the disbursal of the amount be stayed pursuant to the impugned order since the matter will have to be referred to the Competent Court.

2. *This interim application is taken out making a grievance that the Petitioners have not disclosed and the Petitioners have withdrawn substantial amount and it is only now the share of the Applicants that has remained to be disbursed in view of the interim order. According to the Applicants, the fact that the Petitioners have withdrawn the amount, was material fact, which was suppressed when the interim order was passed and had this fact been placed before the Court, different view would have been taken.*

3. *According to us, if the Petitioners are praying that the matter be referred to the Civil Court and that without disclosing the fact that they have withdrawn the amount, then the Petitioners must redeposit the amount that they have withdrawn so that the Competent Court can consider the entire matter regarding apportionment.*

4. *The learned counsel for the Applicants/Respondents on instructions states that if the Petitioners redeposits the amount, then the matter can be referred to the*

Civil Court and the entire matter then reconsidered by the Civil Court. We find this stand taken by the Applicant to be reasonable. Therefore, in spite of the fact that the interim order could have been vacated for suppression of material facts, we grant time to the Petitioners to redeposit the amount with the concerned Authority by 22 June 2024. If the amount is not so deposited and receipt thereof is not placed on record by way of affidavit with copy to the Applicants, the ad-interim order granted in this petition will stand vacated.

5. *If the amount is so deposited, the Court may proceed to pass appropriate order referring the dispute to the Civil Court.*

6. *Place the matter on board on **21 June 2024** under caption ‘for Directions’.*”

8. The learned counsel for the Petitioners has fairly stated that the orders passed by the court in terms of paragraph 4 thereof have not been complied, that is, the amount of compensation which was withdrawn by the Petitioner was not re-deposited, hence by virtue of the aforesaid order, the ad-interim order granted in this Petition has stood vacated. The obvious consequence as brought about, is to the effect that the Respondents are permitted to avail and/or have the land acquisition compensation which has come to their share in the award in question.

9. We may observe that, if the petitioners are seeking compensation on the ground that they have a larger share in the land in question, which is a dispute on title, in that event, the petitioners need to resort to an appropriate remedy / proceedings in that regard, as may be available in law. The learned counsel for the Petitioners fairly states that in such context the Petitioners, be permitted to adopt appropriate legal remedy. The petitioners are free to do so.

10. All contentions of the parties on the merits of such proceedings are expressly kept open.

11. In this view of the matter, we are of the opinion that further adjudication of the Petition is not called for. As there is no stay, Special Land Acquisition Officer shall now proceed to disburse the amount of compensation, as payable to the parties.

12. The Respondents would also be permitted to withdraw the undisputed portion of the compensation. This shall be subject to any contention which the petitioners may raise in any independent Suit they may file. All contentions in this regard are expressly kept open.

13. Petition is disposed of.

14. Interim Applications would also not require further adjudication. Interim Applications would also stand disposed of in terms of our observations made hereinabove. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)