



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 951 OF 2025

Sow. Padminbai Prabhakar Honrao

.. Petitioner

Versus

The Competent Authority, Chakur-Ahmedpur
and Deputy Collector Land Acquisition
and others

.. Respondents

Mr. P. P. More, Advocate for the Petitioner.

Mr. Ravi R. Bangar, Advocate for Respondent No. 1.

Mr. Sachin S. Panale, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 24th JANUARY, 2025.

P. C. :-

. Looking to the interest of the parties this Court finds that, no notice is required to respondent No. 3.

2. Heard the parties.

3. This petition is directed against the order passed by the learned Civil Judge Senior Division, Latur dated 15.11.2024 in Land Acquisition Reference No. 43/2022. The reference is under Section 3H(4) of the National Highways Act (for short "the said Act"). By way of impugned order the learned Civil Judge has allowed the application of the present respondent No. 2 and permitted him to withdraw the amount of

compensation deposited with the Court.

4. Few facts giving rise to the present petition are, it is the case of the petitioner that she sold her land to respondent No. 2 by way of sale deed bearing No. 698/2008 and 968/2010. However, the said sale transaction was only towards money lending and is not absolute sale. In the meantime, some of the portion from the suit land came to be acquired for widening of the highway. Since the name of the respondent No. 2 appeared in the revenue record, notice was issued to him. The petitioner filed civil suit bearing R.C.S. No. 159/2018 for declaration of ownership by cancelling the sale deed. It is also a prayer to restrain the respondent No. 2 from withdrawing the compensation amount. The petitioner therefore raised an objection before the competent authority. The competent authority, in view of objection raised by the petitioner, referred the matter to the learned Civil Judge under Section 3H(4) under the said Act. When the reference is pending the respondent No. 2 has filed an application for withdrawal of the amount. By the impugned order the learned Trial Court has permitted to withdraw the amount.

5. The learned advocate for the petitioner strenuously submits that, there is a genuine dispute pending in respect of the ownership of the suit land. There is already a suit filed by the petitioner for declaration

of the sale deeds being illegal. There is one more suit filed by her son against the respondents bearing Special Civil Suit No. 14/2021 seeking 1/4th independent share in the suit properties and the compensation amount. He thus submits that, the learned Reference Court has to decide the reference finally. Pending the reference the learned Trial Court could not have permitted the respondent No. 2 to withdraw the amount. He challenges the maintainability of interim application for withdrawal in a reference proceedings. He invites attention to the earlier order passed by this Court in Writ Petition No. 4420/2024 dated 12.06.2024 wherein, this Court has specifically deleted wording in the order passed on an application below Exh. 5 in the civil suit to the effect by which it was recorded that, ad interim order is granted not to withdraw the amount. He prays for allowing the writ petition by quashing and setting aside the impugned order. He further prays that, at least still disposal of the reference the amount needs to be secured. As on today, the amount is not withdrawn. It is still lying in the fixed deposit made by the learned Trial Court.

6. The learned advocate Mr. Panale for respondent No. 2 vehemently opposed the petition. He submits, from the conduct of the petitioner that, the entire litigation is without any merit. The sale deed was executed in the year 2008 and another in 2010. For about ten

years no suit was filed. The suit was filed only after the notification for acquisition of the land came to be issued. The suit, in fact, is barred by limitation. He further submits that, though the suit is pending since last seven years, till now the plaintiff has examined only one witness. In another suit filed by the son of the petitioner, application below Exh. 5 is rejected by the learned Civil Judge Senior Division holding that, no prima facie case is made out by the plaintiff. He submits that, the said order is not challenged by any of the parties. Even in the reference, since last two years though there were 21 dates after service of notice, the petitioner has not bothered even to file a say and no say order is therefore passed. Now the petitioner has filed an application on 09.11.2024 seeking stay to the impugned order till filing of the petition in this Court. He submits that, looking to overall conduct of the petitioner it is clear that, she is interested only in protracting the litigation and keeping this respondent away from getting the compensation. He submits that, the conduct of the petitioner also needs to be taken into account while deciding the writ petition. The petitioner has not approached with clean hands. He thus prays for rejection of the writ petition.

7. The learned advocate for respondent No. 1 submits that, appropriate order be passed. The competent authority has already

deposited the amount in the learned Trial Court.

8. Considering all these arguments this Court finds that, it is clear that, the petitioner for about ten years maintained silence after executing the sale deed. Though it is submitted that, in the meantime she had filed an application, however, there is nothing on record. This Court need not go into that. Even in the suit there is no interim order passed in her favour. Mainly for the reason that, the Court has no jurisdiction to deal with the amount of compensation in the civil suit. Be that as it may, for the present, the question is only about as to whether it is necessary to secure the amount deposited by the competent authority in the learned Trial Court.

9. This Court finds some substance in the submissions of the learned advocate for respondent No. 2 that, the petitioner is not prosecuting the suit and the application diligently and is only interested in prolonging the proceedings. Even if there is remote interest of the petitioner this Court finds that, a care can be taken only till disposal of the reference before the learned Trial Court i.e. L.A.R. No. 43/2022. Without interfering in the order, the respondent No. 2 is only directed to keep the said amount in fixed deposit till the decision of the reference. The reference be decided by the end of 30.04.2025. If the reference is not decided even by that time, the respondent No. 2 shall

be entitled to utilize the amount.

10. At this stage, learned advocate for the respondent No. 2 submits that, from the website, the said reference is shown as disposed of. This position is disputed by the learned advocate for the petitioner. He maintains that the reference is still pending.

11. If the reference is not already decided and disposed of, the same be disposed of by 30.04.2025. The amount be kept in fixed deposit till 30.04.2025. If the reference is already disposed of, then there is no question of keeping the amount in fixed deposit.

12. With this, the writ petition stands disposed of.

(KISHORE C. SANT, J.)

P.S.B.