



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3012 OF 2022

Sachin Shivaji Mohite Dead Through Lrs Lrs Kavita
Sachin Mohite

VERSUS

The Sub Divisional Officer And Competent Officer
Acquisition Kannad And Others

- Mr. V. N. Shinde h/f Mr. A. R. Vaidya, Advocate for the Petitioner
- Mr. N. D. Raje, AGP for Respondent No. 1/State
- Mr. D. P. Madkar h/f Mr. D. S. Manorkar, Advocate for Respondent No. 2 (VC)
- Mr. V. B. Kulkarni, Advocate for the Respondent No. 5

CORAM : R. M. JOSHI, J

DATE : APRIL 09, 2025

PER COURT :

1. By consent of both sides, Petition is heard finally at the stage of admission.

2. This Petition takes exception to the order passed below Exh. 33 in LAR No. 62/2018 whereby application filed by the Petitioner for withdrawal of the amount of compensation before the Court came to be rejected.

3. The facts which led to the filing of this Petition can be narrated in brief as under:

Petitioner and contesting Respondents are owners of different portions of land bearing Gut No. 75 situated at village Tapargaon, Tq. Kannad, Dist. Aurangabad. A portion of Survey No. 175 came to be acquired for National Highway No. 211 from Aurangabad to Dhule. Necessary proceedings were initiated under the National Highways Act. Respondent Nos. 5 to 16 raised various objections to the apportionment of the amount of compensation. On 17.03.2018 Respondent No. 1 i.e., Competent Authority under the Act passed order under Section 3(H)(4) of the Act directing reference to the Civil Court for dispute of apportionment. Accordingly, proceeding was referred to the Civil Judge, Senior Division, Aurangabad and it was registered as LAR No. 62/2018. Parties contested the said proceedings. During the course of the proceedings, Petitioner and Respondent Nos.2 to 4 entered into compromise through mediation. Prior thereto, an application was filed by present Petitioner vide Exh. 24 for withdrawal of the amount, which came to be rejected. Against which, Petitioner filed Writ Petition bearing No. 14416/2019. Though order passed below Exh. 24 was maintained, liberty was granted to the parties

to move fresh application. Since the said order was not challenged by any party, it has attained finality. An application was filed by Satish for withdraw of the amount which was allowed by Reference Court. Petitioner thereafter filed application Exh. 33 seeking withdrawal of his share of amount of compensation. Respondent No. 5 by filing say opposed the withdrawal of the amount. It is the case of the Respondent No. 5 amongst other contentions that Respondent No. 1 has committed fraud in the course of measurement of the acquisition. Learned Reference Court rejected the application. Hence, this Petition.

4. Learned Counsel for the Petitioner submits that though the previous application Exh. 24 filed by the Petitioner was rejected, however, this Court has granted liberty to the Petitioner to file fresh application in Wit Petition No. 14416/2019. It is his submission that application of Satish was allowed by Reference Court and this order has not been challenged by Respondent No. 5. It is his submissions that Respondent No.5 claiming her share not in respect of the properties of Petitioner or Satish but claim is

made against the property of Vijay, who is vendor of Respondent No. 5. It is his submission that the Reference Court has failed to take into consideration these aspects and has erroneously rejected the application.

5. Learned Counsel for contesting Respondent No. 5 vehemently opposed the Petition by contending that this Respondent has raised various issues including the issue of apportionment of the compensation on the ground that she has purchased the portion of Gut No.75 from Vijay. It is submitted that Vijay and his two brothers have arrived at collusive compromise in order to deprive the Respondent No. 5 of her right to get compensation. It is submitted that in case if this Court finds reason to cause interference in the impugned order, any order passed on Exh. 33 shall not become a ground for Vijay to seek withdrawal of the amount.

6. Though it is a matter of fact that previous application filed by the Petitioner for withdrawal which came to be rejected by Reference Court, this order was confirmed by this Court in Writ Petition No.

14416/2019 but with liberty to the parties to file fresh application. In the meantime, application came to be filed by Respondent Satish seeking withdrawal of the amount of compensation came to his share. This application though was resisted by Respondent No. 5, came to be allowed. Admittedly, Respondent No. 5 or any other Respondents has not challenged the said order and the same has attained finality.

7. Perusal of the objection raised by Respondent No. 5 indicates that she claims to be purchaser of the portion of Gut No. 75 through her vendor Vijay. There is no claim made in respect of shares of Satish and Sachin nor they are her vendors. Thus, the case of Satish and Sachin is on same footing and as such, once the application was allowed by Reference Court permitting Satish to withdraw the amount, there is no reason or justification to reject the application filed by the Petitioner. Since no claim was raised by Respondent No. 5 in respect of share of Petitioner, the order impugned cannot sustain and deserves to be set aside. In the result, impugned order is set aside. Application Exh. 33 stands allowed. Petitioner be

permitted to withdraw the amount of compensation on usual undertaking.

8. It is clarified that though application Exh. 33 is allowed, the same shall not be construed as a right of Vijay to receive compensation at this stage. Application, if any, filed by Vijay be decided in accordance with law and without getting influenced by the fact that the applications for withdrawal of Satish and Sachin stood allowed.

9. Petition stands allowed in above terms.

(R. M. JOSHI, J.)