



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

WRIT PETITION NO. 3220 OF 2024

Shaikh Kadar Shaikh Jamal

VERSUS

Shaikh Wajir Shaikh Jamal And Others

Mr. Ameya Sabnis i/b Devdatta Palodkar, Advocate for Petitioner
Mr. P. S. Shendurnikar, Advocate for Respondent No. 4

CORAM : R. M. JOSHI, J.

DATE : 18th February, 2025

PER COURT :-

1. Petitioner takes exception to the orders dated 18.10.2023 and 25.01.2024 passed in LAR No. 22/2017 by 08th Joint Civil Judge Senior Division, Aurangabad.

2. It is a case of the petitioner that the land admeasuring 80 R from Gut No. 43 situated at Village Jambhli, Tq. Paithan, District Aurangabad came to be acquired for the purpose of DMIC project. It was a compulsory acquisition. Reference came to be made under Section 34 of Maharashtra Industrial Development Act before Civil Judge Senior Division, Aurangabad. On 06.07.2022, respondent No. 2 who is daughter of petitioner entered into compromise with the petitioner and she agreed to receive the compensation of Rs. 7,00,000/-out of total compensation receivable by the petitioner. On 13.10.2022, learned Reference Court held that the petitioner is entitled to receive Rs.38,44,800/- and Respondent No. 2 to be entitled to receive Rs. 7,00,000/-. The

installment of Respondent No. 4 and 5 was also decided. It is thereafter on 31.02.2023, Petitioner and Respondent No. 5 filed application for withdrawal of their respective shares from the total amount of compensation. These applications were opposed by Respondent No. 2 and 3. Both Application for withdrawal of the amount came to be rejected by the Reference Court by passing similar order. It was observed that Respondent No. 2 has filed writ petition challenging the award of Reference Court and the same is pending. So also, recovery proceedings for maintenance amount of Rs. 3,06,000/- are pending against petitioner. On 14.09.2023, this Court set aside order dated 21.02.2023 in Writ Petition No. 3710/2023 with observation that since no proceeding is pending against the petitioner the ground on which, the application for withdrawal of the amount was rejected does not survive. The petitioner, therefore, filed application on 05.09.2023 for withdrawal of the amount of Rs. 2,00,000/- to deposit the same in Family Court. Thereafter, on 20.09.2023, petitioner filed application for the withdrawal of the amount of compensation, which came to be rejected by order dated 18.10.2023. A review application filed by the petitioner before the Reference Court also was dismissed on 25.01.2024.

3. Heard learned counsel for both sides.

4. Learned counsel for the petitioner submits that the amount of compensation is received in respect of the land owned by the petitioner

and petitioner along with other respondents and the entitlement of the petitioner is decided by the Reference Court. It is his submission that the Reference Court has lost the site of the fact that the petitioner is old aged landless person and he requires the said amount for his livelihood. It is also contended that there is absolutely no reason or jurisdiction for withholding the said amount. He argued that Respondent No. 2 never objected to withdraw the amount and the petitioner being Muslim, his daughter cannot claim any right in respect of the ancestral property during the life time of petitioner. In so far as the claim of Naseebabi is concerned, it is his submission that the appropriate proceedings for the recovery of the amount of maintenance are pending and that the petitioner has already deposited a sum of Rs. 3,00,000/- and the amount of Rs. 5,000/- per month is being deposited regularly before the Family Court.

5. There is no dispute about the fact that the subject property is ancestral property of petitioner and respondents other than Petitioner Nos. 2, 3 and 6. There is compulsory acquisition of the land and compensation amount is already determined. There is no dispute made by parties about quantum of compensation. The Reference Court has decided the share of each owner of the subject property and the amount of compensation is also separately carved out. The question arose before the Reference Court is as to whether it was open for the Respondent No. 2 to raise any objection with regard to the disbursement of the

compensation amount of the petitioner. In this regard, it is pertinent to note that there was compromise arrived at between petitioner and his daughter wherein she agreed to receive Rs. 7,00,000/- out of the amount of compensation payable to the petitioner. Later on, she took objection to the said compromise on the ground that the same is obtained by fraud. In this regard, it is pertinent to note that the subject property is the ancestral property of the Mumtazbi. The daughter of the petitioner would not get any right in the said property during the life time of her father. In the backdrop of these facts, when petitioner is old aged person and his land came to be acquired compulsorily, he is certainly entitled to receive the compensation for maintaining himself. In such circumstances, the interest of Respondent No. 2 Mumtazbi/daughter of the petitioner can be taken care by permitting the petitioner to withdraw the amount of compensation except for the sum of Rs. 10,00,000/-.

6. As far as grievance made by Naseebabi is concerned, she claimed right of maintenance against the petitioner. Since, she was not joined as a party, subsequently petitioner sought her to join as a respondent. She was served by paper publication. None appeared on her behalf. Her absence indicates that she is not interested in opposing the petition.

7. Learned counsel for the petitioner, on instructions, made

statement that a sum of Rs. 3,00,000/- has already been deposited before the Family Court. So also, an amount of Rs. 5,000/- per month is being deposited regularly towards her maintenance. This statement is accepted. On account of absence of Naseebabi, no contrary material thereto is brought on record. In any case, even if, the right of Naseebabi is accepted to receive maintenance from the petitioner, it will not be justified that the petitioner is prevented from withdrawing the amount which is otherwise due to him.

8. In view of the above, petition stands allowed. Petitioner is permitted to withdraw amount as determined by the Reference Court along with accrued interest except for a sum of Rs. 10,00,000/- and interest accrued thereon. The amount of Rs. 10,00,000/- be kept in Fixed Deposit. The said deposited amount would be subjected to the order passed by the Competent Court in respect of the right of Respondent No. 2 Mumtazbi.

9. An application filed before the Reference Court for withdrawal of the amount by the petitioner, therefore, stands allowed partly in the above terms.

10. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

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