



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

WRIT PETITION NO. 13177 OF 2022

**VITTHAL MADHAV SUTAR THROUGH ITS
POWER OF ATTORNEY HOLDER BHIMRAO PRALHAD SUTAR
VERSUS
SATISH SATYANARAYAN DANDNAIK AND OTHERS**

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Advocate for the Petitioner : Mr. Deshmukh Ramraje A.
AGP for Respondents/State : Mr. V. S. Badakh
Advocate for Respondent No.1 : Mr. Salunke Vasant Digambarrao
Advocate for Respondent No.2 : Mr. Sushant Baburao Choudhari

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CORAM : ROHIT W. JOSHI, J.

DATE : 26th AUGUST 2025

PER COURT :

1. The present petition takes exception to the order dated 07.01.2022 passed by the learned Civil Judge, Senior Division, Osmanabad in Land Acquisition Reference No.437/2016, whereby the application filed by the present Petitioner at Exhibit-38 praying for stay to the reference proceeding, has been rejected. A portion of land ad-measuring 1490 sq. mtrs. out of Gat No.417 situated at Village Chorakhari, Tahasil Kallam, District Osmanabad, came to be acquired under the provisions of the National Highways Act, 1956. This acquired land was standing in the revenue record in the names of Respondent Nos. 3, 4 and 5. However it is not in dispute that the Respondent Nos. 3, 4 and 5 have sold the said land to the Respondent No.1 vide sale deed dated 05.08.2008. The present

Petitioner claims to be a tenant of the said Gat number. It is claimed that tenancy rights are enjoyed by the Petitioner for years together and that these tenancy rights are inherited by him for his forefathers. The award under the National Highways Act came to be passed on 06.10.2015. The award was passed in the name of Respondent Nos. 3, 4 and 5 who were the recorded as owners of the land, although the land was already sold by them to Respondent No.1. The Petitioner who claims to be the tenant of the acquired land, raised an objection. In view of the objection raised, a reference as contemplated under Section 3-H(4) of the Act came to be made to the learned Civil Court. In this reference, the Petitioner filed an application vide Exhibit-38. It is stated in the application at Exhibit-38 that the Tahasildar (Tenancy) Kallam had vide order dated 23.10.2016 ordered deletion of the name of Madhav Babu Sutar, the tenant from the revenue record. It was stated that this order directing deletion of name was subjected to appeal filed before the Deputy Collector, Osmanabad. The prayer in the application is that till the appeal is decided proceeding in the reference must be stayed. The learned Reference Court has rejected the said application vide order dated 07.01.2022. This order dated 07.01.2022 is subject matter of challenging the present petition.

2. Perusal of the order passed by the learned Reference Court will demonstrate that the learned Reference Court observed that the order was passed by the Tahasildar on 23.10.2016 and although the copy of appeal preferred by the present Petitioner demonstrated that

the same was filed on 02.01.2017, the Petitioner was not in a position to clarify the status of the appeal. It is also observed that in spite of lapse of period of around five years, no interim order was passed granting stay to order passed by the Tahasildar. It is also observed that the application was filed after 22.09.2021 when the evidence of the objector/Petitioner was ordered to be closed in the reference and the reference was posted for final argument.

3. The learned Advocate for the Petitioner has filed affidavit on 24.08.2025 alongwith certain applications filed in the appeal pending before the Deputy Collector. Perusal of the said documents will demonstrate that the learned Deputy Collector has passed order dated 21.08.2025 to call for the records and order issuing notice to the Respondent in the said appeal is not yet issued. There are two documents filed on record alongwith additional affidavit. Perusal of the document indicates that on 24.02.2023 and 04.10.2023, the Petitioner had tendered two applications to the Appellate Authority for issuing notices in the matter. It appears that no orders are passed on the said applications. The said applications appear to have been tendered with the inward Section. It does not appear that these applications were filed in the appeal. The Petitioner has not produced on record the order sheet to demonstrate that these applications were filed in the appeal.

4. In view of the aforesaid this Court was not inclined to show any indulgence in favour of the Petitioner. In that view of the matter

and in the considered opinion of this Court, the petition deserves to be dismissed and is dismissed accordingly.

5. However the learned Advocate for the Petitioner states that the order passed by the Tahasildar directing deletion of name is an order passed against the dead person. He contends that the Respondent Nos. 1 and 2 are the landlords and the Respondent No.3 in the proceeding before the Tahasildar is the tenant who had expired somewhere in the year 1970. He therefore contends that the order dated 23.10.2016 passed by the learned Tahasildar (Tenancy) on application filed by the Respondent No.1 is a nullity in the eyes of law. It will be open for the Petitioner to prove that the Respondent No.3 in the proceeding before the Tahasildar namely Madhav had expired in the year 1970 and that the said order was passed against the dead person. It is clarified that in the event the Petitioner is able to establish that the order passed by the Tahasildar was passed against the dead person, the learned Reference Court will take into consideration the effect of the said order as to whether it is a nullity in the eyes of law inasmuch as it is passed against the dead person and whether it affects the rights of legal heirs/representatives of such person.

6. Perusal of the order dated 23.10.2016, prima facie indicates that it is not an order determining the tenancy right but an order with respect to recording mutation entries. In the event, the Petitioner is able to demonstrate some prima facie material showing

his status or status of his predecessor as tenant, it will be open for the learned Reference Court to consider as to whether issue with respect to tenancy is required to be referred to the competent authority under the relevant Tenancy Act.

7. In view of the above, the Writ Petition is disposed of.

ROHIT W. JOSHI
JUDGE

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