



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.5911/2024
Latabai and others V Prashant and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. D.R. Bhoyar, Advocate for petitioners.
Mr. K.D. Bhende, Advocate and Mr. A.A. Dhawas, Advocate for resp. no.1.
Ms Sapkal, AGP for resp. no.2.

CORAM : PRAFULLA S. KHUBALKAR, J.
DATE : 11-11-2025.

Heard learned Counsel for the petitioners as well as
learned Counsel for the respondents.

2. Petitioners have challenged order dated 20-08-2024
passed by the District Judge-2, Wardha, rejecting the applications for
permission to withdraw the amount of 1/4th share of the petitioners
as determined in Other Misc. Civil Application No.78/2019 by
judgment and order dated 23-06-2023. Petitioner nos.1 to 3 are the
sisters of respondent no.1.

3. In the proceedings of land acquisition a reference was
made to the District Judge, Wardha under Section 19(C)(iv) of the
Maharashtra Highways Act, 1955 (for short, 'Highways Act') about
apportionment of amount of compensation against the acquisition of
land belonging to the father of petitioners and respondent no.1. By
judgment and order dated 23-06-2023 reference was decided and it
was held that each of the four persons i.e petitioner nos. 1 to 3 and
respondent no.1 have equal share i.e 1/4th share each in

compensation amount of Rs.1,22,63,632/- as per award dated 26-11-2018 alongwith interest. Thereafter, the petitioners submitted separate applications for permission to withdraw the amount 1/4th shares. These applications are rejected by the trial Court by observing that in view of pendency of Regular Civil Suit No.228/2023 the rights of the parties have not been crystallized and the applications are premature. Feeling aggrieved by this order, the instant petition is filed.

4. Learned Counsel for the petitioners submits that the entitlement of the petitioners for 1/4th share has been determined in the proceedings of Other Misc. Civil Application No.78/2019 under Section 19(C)(iv) of the Highway Act and accordingly each of the petitioner is entitled for withdrawal of their respective shares. It is pointed out that judgment and order dated 23-06-2023 was subjected to challenge before this Court vide Writ Petition No.5070/2023, filed by respondent no.1, which was disposed of as withdrawn by order dated 08-07-2024. It is thus submitted that after this writ petition was withdrawn, the challenge to the order of apportionment came to an end and the petitioners became entitled for withdrawal of their respective shares. It is also submitted that pendency of Regular Civil Suit No.228/2023 cannot be a reason to reject the petitioners applications particularly because the fact of

pendency of the said regular civil suit was taken into consideration by this Court while passing order dated 08-07-2024.

5. *Per contra*, Mr Dhawas, learned Advocate for respondent no.1 opposed the petition and he submitted that the rights of the parties have not been crystallized since Regular Civil Suit No.228/2023 filed by respondent no.1, seeking declaration and permanent injunction based on the document of Will executed in favour of respondent no.1 is still pending. He submits that respondent no.1 is entitled for a declaration about absolute ownership of the suit properties and since the rights of parties with respect to their respective shares are not yet crystallized, the petitioners cannot be permitted to withdraw the amount of compensation.

6. It has to be seen that by judgment and order dated 23-06-2023, in the proceedings of apportionment of compensation shares of the parties have been determined to be 1/4th share each, in the amount of compensation. This judgment and order was although challenged vide Writ Petition No.5070/2023, the same was withdrawn by respondent no.1. Although, it is submitted by the Counsel for respondent no.1 that judgment dated 23-06-2023 was passed when no other suit was pending, it is crucial to note that even after considering the fact of pendency of Regular Civil Suit No.228/2023, this Court has expressed disinclination to grant any

relief and therefore respondent no.1 has withdrawn the writ petition. Thus, even though Regular Civil Suit No.228/2023 is pending, there can be no impediment to allow the petitioners to withdraw the amount of their respective shares. Attention is drawn to a Pursis dated 24-07-2024 which was filed by respondent no.1 in the proceedings of Other Misc. Civil Application No.78/2019 stating therein that this Court has granted time to file appropriate proceedings till decision of the civil suit and no amount of compensation can be distributed amongst the non-applicants till the final decision of the civil suit. A perusal of the pursis shows that respondent no.1 has attempted to mislead the Court only to deprive the petitioners from getting the respective shares.

7. A perusal of the impugned order shows that the Court has rejected the applications only because the civil suit is pending by terming the applications as premature. Considering the fact that judgment and order dated 23-06-2023 in Other Misc. Civil Application No.78/2019 was subjected to challenge in Writ Petition No.5070/2023, which came to be withdrawn on 08-07-2024, pendency of the said civil suit cannot be a reason to reject the applications filed by petitioner nos. 1 to 3. Hence, I am of the considered view that the applications filed by the petitioners were required to be allowed. True it is, the rights of respondent no.1 as raised in the civil suit bearing Regular Civil Suit No.228/2023 would

be determined after the conclusion of the said civil suit. However, at this stage, the applications filed by the petitioners need to be allowed and hence, I pass the following order :-

ORDER

- (a) Writ Petition is allowed.
- (b) Order dated 20-08-2024 passed by District Judge-2, Wardha in Other Misc. Civil Application No.78/2019 is quashed and set aside.
- (c) Applications dated 17-07-2023 and 11-08-2023 filed by petitioner nos.1 to 3 for withdrawal of the amount are allowed.
- (d) Petitioners are entitled to withdraw the amount of 1/4th share of compensation as granted by the Court of District Judge-2, Wardha by judgment and order dated 23-06-2023, subject to the petitioners submitting an undertaking to the Court that in case the rights of the parties are finally decided in Regular Civil Suit No.228/2023 the petitioners will be required to refund the amount with interest as charged by the nationalized banks.

8. Writ Petition is accordingly disposed of.

(Prafulla S. Khubalkar, J.)