

MHND080006732022



ORDER BELOW EXH.09 in Civil M. A. NO.46/2022

The present application is filed by the applicant requesting to direct the respondent No.1 to handover the possession of the acquired land.

2. It is not disputed that, development work of road widening of National Highway-361, Malegaon to Derla is transferred to the applicant by the Central Government (MORTH). It is also not disputed that, the respondent No.1 is the owner and possessor of land Gut No.450 situated at village Loha Tq. Loha Dist. Nanded. It is also not disputed that, an area ad-measuring 121 sq.m. from the said land is acquired for the purpose of NH-361. It is also not disputed that, the respondent No.3 is the Sole Arbitrator and Additional District Collector, Nanded, established under the National Highways Authority of India Act, 1956. It is also not disputed that, on 02/02/2021 the respondent No.2 has passed the Award.

3. According to the applicant, the acquired land comes under the Urban area and the multiplier applied to it is to be of "1". However, the respondent No.2 has wrongly applied multiplier of "2". It is contended that, the respondent No.2 has acted against the Circular and has wrongly passed the Award. It is contended that, the applicant is entitled for possession of the acquired land and the respondent No.1 has failed to do so. It is contended that, the respondent is seeking equitable remedy without fulfilling their legal obligation of handing over the peaceful possession of the

acquired land. It is contended that, the acquisition has taken place 5 years ago and still the possession is not handed over. It is further contended that, the applicant is ready to deposit the undisputed compensation amount i.e. market rate + Multiplying factor (1) + Valuation of assets + 100% solatium + 12% interest from the date of passing of the Award. It is contended that, the applicant is suffering financial loss, which works for the interest at public at large. Ultimately, it is prayed for directing the respondent No.1 to handover the possession.

4. The respondent Nos.1 to 3 are duly served. However, they remained absent hence, the application proceeded ex parte against them. As the application is proceeding ex parte, there is no say of the respondents on the Exh.09.

5. Heard the learned advocate for the applicant.

6. In case of **The Project Director NHAI Vs. Saraswatibai Chandrakant Shinde and ors, Spl. Leave to Appeal No.12409 of 2022 dated 01/08/2022** of the Hon'ble Supreme Court of India and in **National Highways Authority of India Vs. Sheetal Jaidev and ors, Civil Appeal No.5256 of 2022 dated 24/08/2022** of the Hon'ble Supreme Court of India. The Hon'ble Apex Court in the above cited rulings has directed the National Highway Authority of India to deposit 50% of the compensation amount as awarded by the Arbitral Court and has directed the Executing Court to release the amount in favour of the land owners subject to the rights and remedies available to the parties in law.

7. Here, in this case, the applicant is challenging the arbitral Award, it will take some time to decide. The respondent No.1 is ready to handover the possession subject to payment of

50% of the compensation amount by reserving **his** rights. Therefore, considering the law laid down by the Hon'ble Apex Court in the above cited rulings, it will be just and proper to allow the application. Hence, by placing reliance on the above cited rulings, the following order is passed:-

Order

1. The application is allowed.
2. The applicant is directed to deposit 50% of the compensation amount in this Court alongwith interest @ 9%pa from the date of order of the respondent No.2 without prejudicing rights of the parties.
3. After deposit of the 50% of the compensation amount by the applicant, the respondent No.1 i.e. **Raosaheb Masaji Manjalwad** is directed to handover the possession of an area ad-measuring **121** sq.m from Gut No.**450** situated at village Loha Tq. Loha Dist. Nanded within 2 weeks.
4. After depositing of the said amount the respondent No.1 is at liberty to withdraw the same.

Date : 14.11.2024

(M. N. Patil)
District Judge-1, Kandhar.

Certificate

I affirm that the contents of this PD.F.file Judgment are same word to word, as per the original judgment.

Name of Stenographer :- P. V. Jadhav, Stenographer G.1

Court name :- Sessions Judge-1,Kandhar.

Date :- 14.11.2024

Judgment signed by

Presiding officer on :- 14.11.2024

Judgment uploaded on :- 14.11.2024

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