

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

Writ Petition No.1652 of 2016

- 1) Balbhim S/o Vishwanath Tawaskar
Age 60 years,
Occupation : Business,
R/o B.V. Tawaskar Kirana Stores,
Electricity Board,
Near Tajmahal Talkies, Osmanabad,
Taluka & District Osmanabad.
- 2) Mallinath s/o Prabhakar Tawaskar,
Age 32 years,
Occupation: Business,
R/o Behind Mantri General Stores,
Marwadi Galli, Osmanabad. .. **Petitioners.**

Versus

- 1) The Competent Authority
and Deputy Collector,
Land Acquisition, Medium Project
No.2, Osmanabad,
Taluka & District Osmanabad.
- 2) Anil S/o Shivling Tawaskar,
Age 34 years,
Occupation: Business,
R/o Bhavani Niwas, Bhagwati Nagar,
Sutarwadi Road, Pashan,
Pune - 21. .. **Respondents.**

Shri. Sanjay A. Wakure, Advocate, for petitioners.

Shri. U.H. Bhogale, Assistant Government Pleader, for
respondent No.1.

Shri. D.A. Mane, Advocate, holding for Shri. Pankaj Bharat
Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 2nd SEPTEMBER 2016

JUDGMENT:

1) Rule. Rule made returnable forthwith. Heard both the sides by consent for final disposal.

2) The petition is filed to challenge the order made by competent authority, Deputy Collector, appointed under the Land Acquisition Act for one project. The competent authority has referred the dispute to Reference Court which is raised by respondent No.2 against the present petitioner under the special Act, National Highways Act, 1956.

3) The submissions made and the record produced in this proceeding show that in acquisition proceeding land admeasuring 61 R which was standing in the name of present petitioners was acquired for construction and expansion of national highway. The compensation declared under the award is to be paid to the present petitioners as per the award. Respondent No.2, Anil

Tawaskar made application before the competent authority under section 3H(4) of the National Highway At, 1956. Section 3-H(4) runs as under :

"3-H Deposit and payment of amount :-

(1)

(2)

(3)

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated."

4) It is the contention of the respondent No.2 that the acquired property was initially belonging to the common ancestor of the parties and this property is not yet partitioned and so he is entitled to get the share in the compensation amount.

5) The submissions made and the record show that in the year 1989 father of the respondent No.2, Shivling and his two brothers had filed suit for partition against the present petitioner. In the suit compromise

document was filed and as per the compromise, the said plaintiff i.e. predecessor-in-title of present respondent No.2 got other property and the suit property was given to the present petitioner. Decree was prepared on 28-4-1989 and mutation in the revenue record was made accordingly. The objection filed show that it is contended that father of the objection petitioner namely Shivling was deceived. It is also contended that Shivling was simpleton person and so he could be deceived. Special Civil Suit No.38/2011 is filed by present respondent No.2 for setting aside the decree given in the aforesaid suit viz. Regular Civil Suit No.110/1989. Admittedly, the application filed for relief of temporary injunction is rejected in the said suit. The said suit is filed for relief of partition also but there is no temporary injunction granted in favour of present respondent No.2.

6) It can be said that in the year 1989 not only Shivling but his two brothers had joined together to file suit and all of them had compromised the matter and so it cannot be said that only the present petitioners were interested in the said matter. In the said suit, there were

all five brothers and three brothers were arrayed as plaintiffs. Submissions made show that Shivling, predecessor of respondent No.2, was doing business and he had married two wives. In any case, when the matter had come before the competent authority there was civil suit, which was substantive, for partition pending in Civil Court and in that suit relief of injunction was refused in favour of the present respondents. These circumstances are ignored. The circumstance that, the decree was made in the year 1989 and the suit was filed to challenge that decree in the year 2011 is there and further the age of the plaintiff in the suit of 2011 shows that he cannot say that, he had no knowledge of the aforesaid decree or he was minor and he could not challenge the decree in time. Only because there is provision, like quoted above, in the special legislation, invariably the matter cannot be referred to the Court mentioned in the provision. On this point learned counsel for the respondent placed reliance on some observations made in the **Writ Petition No.1473/2016 Aurangabad Bench (Ashok More v Union of India)** decided on 13-7-2016. The facts of this reported case are not available. In such case it is always desirable

for party like respondent No.2 to get order from the civil Court where the substantive suit is pending and it is not expected for the authority to refer the matter to the Court mentioned in the aforesaid provision. As the present respondents had also failed in getting relief of injunction in the substantive suit it was not proper on the part of the competent authority to refer the matter to the Court under the aforesaid provision. It can be said that the respondent No.2 is trying to pressurize the present petitioners even when there are aforesaid circumstances. In the result, following order :

7) The writ petition is allowed. The order made by the authority of referring the matter under section 3-H(4) of the National Highways Act, 1956 to the Court is hereby set aside. The objection is rejected. Liberty is there to go to Civil Court where substantive suit for relief of partition is pending. Rule is made absolute in the above terms.

Sd/-
(T.V. NALAWADE, J.)

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