

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO.60 OF 2016**

Shahaji s/o Lalasaheb Kokate,
Age-65 years, Occu:Agriculture,
R/o-Ramnagar, Osmanabad,
Tq. & Dist-Osmanabad.

...PETITIONER**VERSUS**

- 1) The Union of India,
Through Secretary,
Road Transport and Highways,
New Delhi,
- 2) Deputy Collector (Land Acquisition),
Medium Project No.2,
Osmanabad, Dist-Osmanabad,
- 3) Deelip s/o Lalasaheb Kokate,
Age-65 years, Occu:Agriculture,
R/o-Ramnagar, Osmanabad,
Tq. & Dist-Osmanabad.

...RESPONDENTS**...**

Mr.N.L. Jadhav Advocate for Petitioner.
Mr.B.V. Virdhe, A.G.P. for Resp. Nos. 1 & 2.
Mr. V.D. Salunke Advocate for Resp. No.3.

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**CORAM: R.M. BORDE AND
A.I.S. CHEEMA, JJ.**

DATE : 29TH JANUARY, 2016

ORDER :

1. The Petitioner is praying for quashment of order dated 10th December 2015 passed by the competent authority rejecting application presented by him for reference of the matter to the Civil Court. The dispute relates to 81 R land out of Gut No.225 which has been acquired by the State Government for laying a National Highway.

2. The Petitioner claims that the property belongs to him and his brother does not have any title in the property. The Petitioner, as such, presented an application to the competent authority for making reference of the dispute within contemplation of Section 3-H (4) of the National Highways Act, 1956. The competent authority considered the entitlement of the Petitioner and prima facie found that the Petitioner does not have any entitlement and as such rejected application presented by the

Petitioner. It is observed that the Respondent No.3 - real brother of the Petitioner, is claiming his entitlement on the basis of partition reduced into writing in the form of memorandum which is allegedly executed on 17th December 2007. The Petitioner does not accept the genuineness of the partition and contends that the same is forged one.

3. On perusal of the document, it does appear that, it is a memorandum of partition recording the factum of distribution of the shares amongst the brothers. The memorandum of partition was considered in the earlier civil litigation between the brothers in Regular Civil Suit No.231 of 2009. The brother of the Petitioner i.e. Respondent No.3 herein, presented suit claiming injunction in respect of the house property, which is also part of the memorandum of partition, allegedly reduced into writing, by the parties. The Petitioner herein was impleaded as party

defendant in the aforesaid suit. Although the suit was for grant of relief of perpetual injunction, the question of recording of memorandum of partition and its consequence did arise before the Court and placing reliance on memorandum of partition, the Court came to the conclusion that the house property was allotted in favour of Respondent No.3 and as such decree was granted in his favour. The reference in respect of allotment of 81 R land out of Gut No.225 in favour of Respondent does appear in the said memorandum of partition executed between the parties. Since the document itself has been considered in substantive litigation between the parties and has been acted upon, the subsequent stand taken by the Petitioner questioning the genuineness thereof, does not appears to be bona fide.

4. Apart from this, the Petitioner herein presented Regular Civil Suit No.602 of 2015 claiming declaration of ownership and injunction

in respect of land Gut No.225 against Respondent No.3, the real brother of the Petitioner and the suit is stated to be pending. An application tendered by the Petitioner claiming temporary injunction restraining his brother from interfering in possession of Petitioner, has been turned down by the Civil Court in view of the order passed on 28th November 2015. The Sub Divisional Officer is impleaded as party to the proceedings of suit.

5. In view of peculiar facts of the case, we are of the view that the order passed by the competent authority under the provisions of Section 3-H (3) of the National Highways Act, 1956, does not appear to be perverse or erroneous. There is no merit in the instant Petition. The Writ Petition stands dismissed.

6. The Petitioner prays for continuation of interim relief for the period of two weeks. The

request stands rejected for the reasons
recorded above.

[A.I.S. CHEEMA, J.]

asb/JAN16

[R.M. BORDE, J.]