

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 309 OF 2016

Union of India

Thr. Deputy Sale Commissioner.

... Petitioner.

V/s.

Competent Authority @ Dy. Collector (Land
Acquisition) Raigad and others.

... Respondents.

S.R.Rajguru with Arun Kumar Roy for the petitioner.

N.P.Deshpande, Addl.G.P. for respondent Nos.1 and 4.

Rakesh Singh i/b. M/s.M.V.Kini & Co. for respondent No.2.

S.A.Sawant for respondent No.8.

N.D.Jaywant for respondent Nos.12-A to 12-D.

Agasthi Vibhute with Abhay Dhodiwala i/b. M/s.Jaykar & Partners
for respondent No.12-E.

**CORAM : DR.MANJULA CHELLUR, C.J.
AND M.S.SONAK, J.**

DATE : 20th December 2016.

PC. :

The petitioner who is Deputy Commissioner of Salt, Mumbai has come before this Court contending that the Salt Department is entitled to the benefit, if any, arising out of acquisition of land while implementing the project of National Highway Authority with regard to expansion of Mumbai-Goa National

Highway No.17. This acquisition was for conversion of four lanes into six lanes, therefore, the land required for the expansion of the road had to be acquired under the provisions of National Highways Act, 1956 ("said Act" for short). It is not in dispute that the competent authority was appointed for exercising and conducting the formalities as contemplated in the said Act. The lands for the purpose of expansion of road were identified and declaration of acquisition was also complied with in terms of section 3D of the said Act. After taking possession of the lands in terms of section 3E, determination of amount payable towards compensation had to be done by the competent authority. The competent authority after complying with the provisions contemplated in section 3G of the said Act had to deposit and pay the compensation amount. At this stage, the dispute arising in this matter seems to be between the Salt Department and the lessee/ occupants/ the persons interested or in possession of the lands in question.

2. It is not in dispute that in terms of section 3H of the said Act, the competent authority had to deposit the amount before taking possession of the land. The dispute is, who should get the amount of compensation which is kept in deposit. Sub-sections (3); (4); (5); and (6) of section 3H of the said Act are relevant so far as the present issue or controversy is concerned, which read as under:

“3H. Deposit and payment of amount.--

(1)

(2)

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(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.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.”

3. Apparently, there were other persons claiming entitlement so far as amount deposited towards compensation is concerned and even reference is made to this effect in the award at annexure- N page 62 onwards. At pages- 68 and 70, there is reference with regard to the claim made by the present writ petitioner. The competent authority though expressed its mind as to what is justified and what is not justified, has not determined as to who will be entitled to compensation amount and proceeded to pass the award and deposited the amount towards compensation with the District Court within whose jurisdiction the subject lands are situated. Sub-section (4) of section 3H of the said Act clearly indicates that 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 authority has to refer the dispute to the decision of the Principal Civil Court of original jurisdiction. In this view of the matter, we are of the opinion that none of the exercises contemplated in section 3H of the said Act can be addressed by us since the dispute *inter se* between the parties had to be determined by the Civil Court of original jurisdiction in terms of sub-section (4) of section 3H of the said Act. In that view of the matter, we make it clear that we have not expressed any opinion as to which of the parties are entitled to get the amount of compensation, whether whole amount or part amount. It is left to

the competent Civil Court having original jurisdiction to decide the same, if it is not decided till date.

4. With the aforesaid observations, writ petition is disposed of. In view of disposal of petition, civil application does not survive and stands disposed of accordingly.

(M.S.SONAK, J.)

CHIEF JUSTICE