

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

WRIT PETITION NO.1949/2017

Arun S/o Trimbakrao Lokare
Age: 67 Years, Occ.: Pensioner
R/o: Flat No.09, Nivedita Building
Sarda Nagari, Sahyog Nagar,
Tq.-Beed, District.- Beed.

..PETITIONER

Versus

1]The State of Maharashtra,
Through the Secretary,
Department of Urban Development,
M.S. Mantralaya, Mumbai.

2]The Collector, Beed,
Tq. and District. Beed.

3]The Deputy Collector, Beed,
(Land Acquisition Officer,
Jaikwadi Scheme), District.-Beed.

4]Ashruba S/o Rangnath Rasal,
Age: 76 Years, Occ.: Agriculturist,
R/o.: Manjarsumba, Tq. Beed,
District. Beed.

..RESPONDENTS

Mr.Govind Kulkarni, Advocate h/f Mr. Rajendra
Deshmukh, Advocate for petitioner.

Mr.S.B. Yawalkar, AGP for Respondent Nos. 1 to 3.

Mr.R.G. Hange, Adv.for Respondent No.4.

**CORAM : S.C.DHARMADHIKARI &
MANGESH S.PATIL,JJ.**

**RESERVED ON :12/06/2017
PRONOUNCED ON :29/06/2017**

JUDGMENT: (PER MANGESH S. PATIL,J.)

1] Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2] Interpretation of the provisions of Section 3-H of the National Highways Act, 1956 (hereinafter referred to as the Act), and particularly interpretation and distinction between Sub Section(3) and (4) of Section 3-H apparently is in dispute in this writ petition, seeking a certiorari under Article 226 of the Constitution of India.

3] Shorn of unnecessary details, the petitioner's averments are to the effect that his father purchased agricultural land admeasuring 5 Acres 14 Are from land survey nos. 11/1 and 10/01 of village Manjarsumba, District Beed under the sale-deed dated 17.07.1979. In pursuance of the sale deed, Revenue record was also mutated vide Mutation Entry No.332 dated 28.12.1980 in the name of his father. It was, in fact, an undivided $\frac{1}{4}$ th share of the vendee Shri. Gopal Agwan in those lands. Later on, the vendor sold a portion of 6 Acres 15 Are from the land survey No.10/1 to respondent No.4.

4] According to the petitioner, the portion admeasuring 16

Are from survey No.10/1 was acquired by the respondent Nos.1 to 3 under the Act. Being one of the co-owners, the petitioner applied to the respondent No.3 for a share in the compensation by moving an application dated 30.01.2016. The latter called upon the respondent No.4 to appear and file his say to that application and ultimately the petitioner's claim was rejected by the order dated 05.01.2017, which is impugned in the present petition.

5] With the consent of the parties, the matter is heard finally and was reserved for order.

6] At the outset, it is necessary to mention that there is apparently no dispute about any of the facts averred in the petition. The whole controversy therefore, revolves around the interpretation and distinction between Sub-Section (3) and (4) of Section 3-H of the Act. The relevant provisions are reproduced hereinafter for ready reference :

“ 3-H. Deposit and payment of amount.-

(1) The amount determined under section 3-G 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 before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(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 3-G 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 3-D 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-section (2) to (4) shall apply to such deposit. "

7] The National Highways Act, 1956 is an Act to provide for the declaration of certain highways to be national highways and for matters connected therewith. By Section 2, certain highways can be declared as national highways. By Section 3, the terms "competent authority" and "land" have been defined. Section 3-A confers the power to acquire the land etc.. By Section 3-B,

there is power to enter for survey, etc..

8] Then comes an important provision, namely, Section 3-C which provides for hearing of objections. Thus, any person interested in the land may object to the use of the land for the purpose or purposes mentioned in that sub-section, namely, sub-section (1) of Section 3-A. How objections have to be considered and the order to be made thereon is provided by sub-section (2) of Section 3-C. Then follows the declaration of acquisition by Section 3-D and by Section 3-E the power is conferred to take possession. By Section 3-F there is a right to enter into the land where the land has vested in the Central Government.

9] A bare reading of these provisions together and harmoniously would reveal as to how a comprehensive legislation is made enabling the acquisition of land for National Highways. The object is to build, maintain, manage or operate a National Highway. When such comprehensive legislation and which is a Code by itself, is enacted, naturally it must contain provisions for determination of the amount payable as compensation. That determination takes place in terms of

Section 3-G. A reading of all sub-sections of Section 3-G would reveal as to how the compensation has to be determined for the right of user or any right in the nature of an easement on any land acquired under the Act and for that an amount is paid to the owner or any other person whose right of enjoyment in such land has been affected in any manner whatsoever by reason of such acquisition. The claims from all persons interested in the land to be acquired have to be invited in terms of the public notice and thereafter, an opportunity to substantiate that claim by stating the nature of interests in such lands, has to be given. Then, there is determination of the amount by the competent authority in terms of sub-section (1) or sub-section (2) of Section 3-G. If the amount determined by the competent authority under these sub-sections is not acceptable to either of the parties, then, the amount shall, on application by either of the parties, be determined by the Arbitrator to be appointed by the Central Government in terms of sub-section (5) of Section 3-G. The factors which have to be taken into consideration for determining the amount payable are set out in sub-section (7).

10] Thereafter, follows Section 3-H which we have reproduced above. By sub-section (1) of Section 3-H, the

amount determined under Section 3-G 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 before taking possession of the land. As soon as may be after the amount has been deposited under sub-section (1) of Section 3-H, the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto. Where such persons claim to be interested in the amount deposited under sub-section (1) of Section 3-H, the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them. However, the enactment and which contains provisions for building and maintaining of national highways has to be so comprehensive and complete that nothing is left out of its purview. The reason is obvious. The project of national importance and which a national highway is, should not be unnecessarily delayed. Therefore, the object being to pay the amount determined by the competent authority or by the arbitrator before taking possession of the land, that has to be disbursed to the person or persons entitled thereto. This follows deposit of the amount with the Central Government. Hence, sub-section (3) of Section 3-H takes care of the situation

where several persons claim to be interested in the amounts deposited. In that event it is the competent authority who shall determine the persons, who in its opinion, are entitled to receive the amount payable to each of them. However, 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, then, 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. The competent authority possesses certain powers of the Civil Court, but in the event of a dispute of the above nature, the summary power, vesting in the competent authority of rendering an opinion in terms of sub-section (3) of Section 3-H, will not serve the purpose. The dispute being of the nature triable by the Civil Court that the law steps in to provide for that to be referred to the decision of the Principal Civil Court of original jurisdiction. The dispute regarding apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, would then have to be decided by that Court.

11] A similar provision is to be found in Section 30 of the Land Acquisition Act, 1894. In the Right to Fair Compensation

and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No.30 of 2013) as well there are such provisions and particularly inserted from Section 22 onwards. Hence, there is no substance in the contentions of the learned AGP for the simple reason that the competent authority's powers to render an opinion in terms of sub-section (3) of Section 3-H and the powers of the Principal Civil Court to take cognizance and determine the dispute of the nature set out in Section 3-H are distinct. The opinion of the competent authority in terms of sub-section (3) of Section 3-H is not given a finality. If that is not given a finality and the dispute subsists, then, there is no option, but to refer it to the Principal Civil Court of original jurisdiction.

12] In the decision in Sharda Devi vs. State of Bihar, reported in AIR 2003 SC 942, the Honourable Supreme Court had an occasion to consider the ambit and scope of Sections 30 and 31 of the Land Acquisition Act, 1894. In analyzing and interpreting these provisions, the Honourable Supreme Court held as under:-

"23. The two provisions contemplating power of the Collector to make reference as contained in Section 18 and Section 30 of the Act need

a comparative study. Under Section 18 the subject-matter of reference can be a dispute as to any one or more of the following: (i) as to the measurement of the land, (ii) as to the amount or the quantum of the compensation, (iii) as to the persons to whom the compensation is payable, (iv) as to the apportionment of the compensation among the persons interested. Under Section 30 the subject matter of dispute can be: (i) the apportionment of the amount of compensation or any part thereof, (ii) the persons to whom the amount of compensation or any part thereof is payable. Though the expression employed in Section 18 is 'the amount of compensation' while the expression employed in Section 30 is 'the amount of compensation or any part thereof', this distinction in legislative drafting is immaterial and insignificant and a dispute as to entitlement or apportionment of part of the compensation would also be covered by Section 18 of the Act on the principle that the whole includes a part too. Thus, at the first blush, it seems that Section 30 overlaps Section 18 in part; but as will be seen shortly hereinafter, it is not so.

24. *Dr. G.H. Grant Vs. State of Bihar (supra)* is a three-Judge Bench decision of this Court wherein the scheme of the Act by reference to the power vesting in the Collector to make a reference came up for the consideration of the Court. The three-Judge Bench by a majority of 2:1 laid down the following principles :

(i) There are two provisions in the Act under which the Collector can make a reference to the Court, namely, Section 18 and Section 30. The powers under the two sections are distinct and may be invoked in contingencies which do not overlap. A person shown in that part of the award which relates to apportionment of compensation

who is present either personally or through a representative or on whom notice is issued under Section 12(2), must, if he does not accept the award, apply to the Collector to refer the matter to the Court under Section 18 within the time prescribed thereunder. But a person who has not appeared in the acquisition proceedings before the Collector may, if he is not served with notice of filing, raise a dispute as to apportionment or as to the persons to whom it is payable and apply to the Court for a reference under Section 30, for determination of his right to compensation which may have existed before the award, or which may have devolved upon him since the award. For a reference under Section 30, no period of limitation is prescribed.

- (ii) It is not predicated of the exercise of the power to make a reference under Section 30 that the Collector has not apportioned the compensation money by his award.*
- (iii) The award made by the Collector under Section 11 is not the source of the right to compensation. An award is strictly speaking only an offer made by the Government to the person interested in the land notified for acquisition; the person interested is not bound to accept it and the Government can also withdraw the acquisition u/s 48. It is only when possession of the land has been taken by the Government u/s 16 that the right of the owner of the land is extinguished. Therefore the appellant's contention that title to compensation is derived solely from and on the date of the award could not be accepted.*
- (iv) The liability of the Government u/s 31 to pay compensation to the person entitled thereto under the award does not imply that only the persons to whom compensation is directed to be paid under the award may raise a dispute u/s 30. The scheme of apportionment by the Collector under Section 11 is conclusive only between the Collector and the persons*

interested and not among the persons interested. Payment of compensation u/s 31 to the persons declared in the award to be entitled thereto discharges the State of its liability to pay compensation leaving it open to the claimant to compensation to agitate his right in a reference u/s 30 or by a separate suit.

- (v) *Under the Bihar Land Reforms Act the title of the appellant to the land noticed for acquisition became vested in the State and therefore the right to compensation for the land acquired devolved upon the State. A dispute then arose between the State Government and the appellant "as to the persons to whom" compensation was payable. The State had no right to the compensation payable for the land under a title existing before the date of the award of the Collector and no application could be made by it as a person interested within the meaning of Section 18. But a dispute between the appellant and the State as to their conflicting claims to the compensation money was clearly a dispute which could be referred u/s 30 of the Act to the Court.*

There is nothing in Section 30 which excludes a reference to the Court of a dispute raised by a person on whom the title of the owner of the land has since the award, devolved.

30. *The scheme of the Act reveals that the remedy of reference u/s 18 is intended to be available only to a 'person interested'. A person present either personally or through representative or on whom a notice is served u/s 12(2) is obliged, subject to his specifying the test as to locus, to apply to the Collector within the time prescribed u/s 18(2) to make a reference to the Court. The basis of title on which the reference would be sought for u/s 18 would obviously be a pre-existing title by*

reference to the date of the award. So is Section 29, which speaks of 'persons interested'. Finality to the award spoken of by Section 12(1) of the Act is between the Collector on one hand and the 'persons interested' on the other hand and attaches to the issues relating to (i) the true area, i.e. measurement of the land, (ii) the value of the land, i.e. the quantum of compensation, and (iii) apportionment of the compensation among the 'persons interested'. The 'persons interested' would be bound by the award without regard to the fact whether they have respectively appeared before the Collector or not. The finality to the award spoken of by Section 29 is as between the 'persons interested' inter se and is confined to the issue as to the correctness of the apportionment. Section 30 is not confined in its operation only to 'persons interested'. It would, therefore, be available for being invoked by the 'persons interested' if they were neither present nor represented in proceedings before the Collector, nor were served with notice u/s 12(2) of the Act or when they claim on the basis of a title coming into existence post award. The definition of 'person interested' speaks of 'an interest in compensation to be made'. An interest coming into existence post award gives rise to a claim in compensation which has already been determined. Such a person can also have recourse to Section 30. In any case, the dispute for which Section 30 can be invoked shall remain confined only (i) as to the apportionment of the amount of compensation or any part thereof, or (ii) as to the persons to whom the amount of compensation (already determined) or any part thereof is payable. The State claiming on the basis of a pre-existing right would not be a 'person interested', as already pointed out hereinabove and on account of its right

being pre-existing, the State, in such a case, would not be entitled to invoke either Section 18 or Section 30 seeking determination of its alleged pre-existing right. A right accrued or devolved post award may be determined in a reference u/s 30 depending on Collector's discretion to show indulgence, without any bar as to limitation. Alternatively, such a right may be left open by the Collector to be adjudicated upon in any independent legal proceedings. This view is just, sound and logical as a title post award could not have been canvassed upto the date of the award and should also not be left without remedy by denying access to Section 30. Viewed from this angle, Section 18 and 30 would not overlap and would have fields to operate independent of each other.

37. *The Collector acts as a representative of the State whilst holding proceedings under the Land Acquisition Act. In fact, he conducts the proceedings on behalf of the State. The award of the Collector is not the source of the right to compensation; it is the pre-existing right which is recognized by the Collector and guided by the findings arrived at in determining the objections, if any, the Collector quantifies the amount of compensation to be placed as an offer of the appropriate Government to the owner recognized by the State. The offeree may accept or decline the offer. If he accepts the offer and the Government takes possession over the land, the title of the offeree is extinguished and vests absolutely in the Government free from all encumbrances. The power to make an award under Section 11 and to make a reference under Sections 18 or 30 of the Act is a statutory power. The sweep of jurisdiction of Court to determine the disputes is also statutory and is controlled by the bounds created by Section 17 or 30*

whereunder the reference has been made to the Court. The power has to be exercised to the extent to which it has been conferred by the Statute and on availability of pre-existing conditions on the availability of which and which alone the power can be exercised.

38. *Award made by the Collector is final and conclusive as between the Collector and the 'persons interested', whether they have appeared before the Collector or not, on two issues : (i) as to true area, i.e. measurement of land acquired, (ii) as to value of the land, i.e. the amount of compensation, and (iii) as to the apportionment of the compensation among the 'persons interested' again, between the Collector and the 'persons interested' and not as amongst the 'persons interested' inter se. In the event of a reference having been sought for u/s 18, the Collector's award on these issues; if varied by Civil Court, shall stand superseded to that extent. The scheme of the Act does not attach a similar finality to the award of the Collector on the issue as to the person to whom compensation is payable; in spite of the award by Collector and even on failure to seek reference, such issue has been left available to be adjudicated upon by any competent forum."*

13] Taking into consideration the scheme of the Act and the provision of Section 3-H (supra), the Central Government is expected to deposit the amount of compensation determined under Section 3-G in respect of the land acquired for building, maintenance, management or operation of a National Highway or part thereof. As per Sub-section (2) of Section 3-H the competent Authority has to disburse that amount to the

person/persons entitled there to. Sub-Section (3) then provides that where there are several persons staking claim to be interested in the amount of such compensation, the competent authority is under obligation to determine and record its opinion as to the entitlement of such person/persons to receive the amount. Sub-Section (4) then provides that wherever there is any dispute as to the apportionment of the amount or any part thereof the competent authority has to refer the dispute to the decision of the Principal Civil Court of original jurisdiction within limitation of whose jurisdiction the land situates.

14] According to the learned AGP, no sooner the petitioner raised the objection for disbursement of amount to the respondent No.4 alone, the respondent No.3 being the competent authority conducted an enquiry and decided the objection holding latter to be entitled to the amount of compensation and thus he has duly exercised the jurisdiction vested in him under Sub-Section (3) of Section 3-H of the Act.

15] Per contra, the learned Advocate for the petitioner adverted our attention to Sub-Section (4) of Section 3-H and submitted that the petitioner in fact had raised dispute about apportionment of compensation amount between him and respondent No.4 and the respondent No.3 was duty bound to refer the matter to the Principal Civil Court of original jurisdiction.

16] It is a settled principle of interpretation of statute that the provisions of any statute are to be so interpreted as to give

effect to each of them to the extent possible without giving rise to any conflict or overlapping. This principle of harmonious construction needs to be applied in the matter before hand vis a vis Sub-Section (3) of Section 3-H, while interpreting Sub-Section (3). Such application would lead us to interpret these provisions in harmonious manner putting neither of them otiose. A careful reading of these provisions would reveal that when several persons are entitled to claim compensation, the competent authority has power and jurisdiction to record an opinion and determine the persons who are entitled to receive share/s and only enables him to apportion the amount of compensation amongst them according to the share they are entitled to. As against this, Sub-Section (4) contemplates a situation where the dispute is raised as to the entitlement of the compensation by several persons and the jurisdiction to decide such dispute is conferred upon the Principal Civil Court of original jurisdiction. In other words, whenever there is dispute raised by any person as to the right to receive either the whole or portion of the compensation, the competent authority is obliged to refer the matter to the Principal Civil Court of original jurisdiction.

17] In view of such legal position, when Sub-Section (4) of Section 3-H specifically requires the dispute as to entitlement to receive compensation determined under Section 3-G of the Act to be referred to and decided by the Principal Civil Court of original jurisdiction, it by implication necessarily excludes jurisdiction of the competent Authority which is entitled to merely decide the point of apportionment of the compensation amongst

several persons under Sub-Section (3) of Section 3-H. Such interpretation, in our view, strikes a balance between Sub-section (3) and Sub-section (4) of Section 3-H of the Act and make them operative in separate spheres. The submission of the learned Advocate for the petitioner, on these lines therefore deserves to be accepted.

18] Under the circumstances the writ petition deserves to be allowed and is accordingly allowed. The impugned order dated 05.01.2017 passed by respondent No.3 is quashed and set aside and he is directed to refer the matter to the Principal Court of original jurisdiction, as contemplated under Section 3-H (4) of the National Highways Act, 1956 within two weeks of receiving a copy of this order.

19] The writ petition is accordingly disposed of. Rule made absolute.

(MANGESH S.PATIL,J.) (S.C.DHARMADHIKARI,J.)

rmk