

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10209 OF 2016

WITH

CIVIL APPLICATION NO. 2961 OF 2016

Shri Krishnakumar Pandharinath Patil

.. Petitioner

V/s

Union of India & Ors.

.. Respondents

Mr. Prajakt Arjunwadkar for the petitioner.

Mr. Mr. Siddharth Munghate for the applicant in CAW No.2961/2016.

Mr. P.P. Kakade, AGP for the State.

**CORAM: DR. MANJULA CHELLUR, CJ. &
G.S. KULKARNI, J.**

DATE : 17th APRIL 2017

P.C.:

Heard learned counsel for the petitioner and the respondents.

2. The present petition is filed seeking the following reliefs:

“(a) That this Hon'ble Court may be pleased to issue Writ of Mandamus or any other appropriate Writ, Order or Direction in the nature of Writ of Mandamus and be further pleased to hold and declare that, the Impugned Communication and Order dt. 28.06.2016 passed by Respondent No.2 is ultra-vires and without jurisdiction;

- b) *That this Hon'ble Court may be pleased to issue Writ of Mandamus or any other appropriate Writ, Order or Direction in the nature of Writ of Mandamus and be further pleased to hold and declare that, the Respondent No.2 is bound by the provisions of the Railway (AMENDMENT) Act, 2008 and may further be pleased to direct the Respondent No.2 to follow the procedure as contemplated under Section 20(H)(4) of the Railways (Amendment) Act, 2008;*
- c) *That this Hon'ble Court may be pleased to issue Writ of Mandamus or any other appropriate Writ, Order or Direction in the nature of Writ of Mandamus and be further pleased to direct the Respondent No.2 to refer the dispute of entitlement of compensation in respect of the agricultural land bearing New Revision Survey No.72(Old Revision Survey No.167/9), Hissa No. 9/1 (out of it) admeasuring 0.78.4, Out of it the land adm. 0.08.8 R Situated at Village Ambewadi, Taluka: Dahanu, District: Palghar to the Principal Civil Court of Original Jurisdiction within the limits of whose jurisdiction the land under the acquisition is situated;*
- d) *That this Hon'ble Court may be pleased to issue Writ of Mandamus or any other appropriate Writ, Order or Direction in the nature of Writ of Mandamus and be further pleased to direct the Respondent No.2 to invest the amount of compensation of Rs.4,26,808/- in the Nationalised Bank till the final adjudication of the rights between the parties in respect of the land under the acquisition;*
- e) *That this Hon'ble Court may be pleased to issue Writ of Certiorari or any other appropriate Writ, Order or Direction in*

the nature of Writ of Certiorari and be further pleased to quash and set aside the impugned communication and Order dt. 28.06.2016 passed by the Respondent No.2 in Roznama (being Exhibit “F”) annexed to the present Writ Petition;

- f) Pending hearing and final disposal of the present Writ Petition, this Hon'ble Court may be pleased to direct the Respondent No.2 as not to release the amount of payment of compensation in favour of the Respondent No.5;*
- g) Pending the hearing and final disposal of the present Writ Petition, all further proceeding before Respondent No.2 may kindly be stayed.”*

3. So far as prayer (a) is concerned, the petitioner is seeking a direction in the nature of writ of mandamus and also seeking a declaration that the impugned order dated 28th June 2016 passed by respondent no.2 is ultra vires and without jurisdiction. The order dated 28th June 2016 passed by the 2nd respondent directed the petitioner to approach the Competent Court to bring an order of stay so far as disbursement of the amount. All the other prayers pertain to compensation amount determined by the Competent Authority alleged to be paid to the 5th respondent.

4. The petitioner as well as the 5th respondent (private respondent) are none other than brothers, both claiming interest and title over the property in question which came to be acquired for the purpose of Railway Project. As a matter of fact, by virtue of

Railways (Amendment) Act, 2008 [for short “2008 Act”], by an order of the Governor of State of Karnataka, this Amendment Act came to be made which has come into force with effect from 31st January 2008. This 2008 Act clearly indicates who is the Competent Authority and who could be brought under the persons interested. So far as the disputes between the parties, section 20H sub-section (4) of the 2008 Act reads as under:

“20H. 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.”

5. At the time of this writ petition, an interim order in terms of prayer (f) of the writ petition came to be made directing the 2nd respondent not to disburse the amount to the 5th respondent (private respondent).

6. Be that as it may, both the petitioner and the 5th respondent, claiming right, title and interest over this property, have claimed that in an oral partition, the property in question has fallen

to their share. Each of them raised the same plea. In between, there seems to be one more brother by name Suresh, who is no more and whose legal representatives are not before us. Whether oral partition by way of family settlement came to be reduced to writing and further proceeded by way of mutation entries on the joint petition or the petition by the father, will have to be ascertained. Such exercise cannot be taken up in this Court under Article 226 of the Constitution of India. In order to declare any one of the parties before us as absolute owner having right, title and interest over the property in question so as to determine or opine that they are entitled for the entire compensation payable, one has to first get the right declared that the property in question has fallen to the share of one of the sharers in the oral partition. How it has to be established is left to the parties how they establish their right before the Civil Court. This Court cannot undertake such exercise. So far as apportionment of the amount or any part thereof or to any person, as stated above, even the Competent Authority cannot decide the said issue in terms of sub-section (4) of section 20H of the 2008 Act.

7. In that view of the matter, this Court was justified in making the interim order at the initial stage directing the 2nd respondent not to disburse the amount to the 5th respondent. In terms of sub-section (4) of section 20H of the 2008 Act, the Competent Authority has to refer the matter to the Principal Civil Court of Original Jurisdiction within whose limits the property is

situated. Totally ignoring such procedure, the Competent Authority has passed the impugned order directing the petitioner to get an order of stay which was not at all required. Therefore, in terms of prayer (a) in the writ petition, the impugned order dated 28th June 2016 is declared as null and void. The Competent Authority is directed to refer the matter for apportionment as indicated in the 2008 Act, as stated above. Thereafter it is left to the parties either to proceed with the matter independently or to get this reference before the Principal Civil Court of Original Jurisdiction to club R.C.S. No.105 of 2016 which was filed prior to the present writ petition before the Civil Judge, Junior Division, Dahanu. It is made clear that the 2nd respondent shall not disburse the money to either of the brothers who are before this Court, i.e. neither the petitioner nor the 5th respondent or any other person claiming to be member of the same family since the parties themselves are not sure which property has fallen to whose share since the joint application is alleged to be pending before the concerned revenue authority for effecting change in the revenue records.

8. With these observations, the writ petition is disposed of and the following order is passed:

- (i) The amount of compensation, which is already determined, has to be deposited with the Principal Civil Court of Original Jurisdiction, who in turn shall deposit

the same in an interest earning fixed deposit, and disburse the same subject to the result of the suit.

(ii) The Competent Authority is directed to refer the matter along with the deposit of money with the Principal Civil Court of Original Jurisdiction within 8 weeks from the date of receipt of copy of this order.

(iii) Once such reference being received by the Principal Civil Court of Original Jurisdiction, as indicated above, the said Court shall dispose of the suit as expeditiously as possible but not later than 6 months from the date of reference.

9. In view of disposal of the writ petition, the civil application does not survive and stands disposed of.

(G.S. KULKARNI, J.)

CHIEF JUSTICE