

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

WRIT PETITION NO. 2683 OF 2018

Vandana W/o Ashok Wadikar,
Age : 50 years, Occu. Agriculture,
R/o. Hanuman Nagar, Aurad Shahajani,
Tq. Nilanga, Dist. Latur.

Petitioner...

Versus

1. Union of India,
Through Secretary,
Road Transport and Highways of India,
New Delhi.
2. The Project Director,
National Highway No. 9,
New No. 65, Kalakunj,
Behind Shivdare College,
Beside Dawat Hotel, Solapur,
District Solapur.
3. The Collector,
Collector Office, Osmanabad.
4. The Competent Authority of NH-9,
(New 65) and Deputy Collector/Land Acquisition Officer,
Manjara Project, Osmanabad,
Tq. & Dist. Osmanabad.
5. Madhav S/o Maruti Birajdar,
Age : 52 years, Occu. Agriculture,
R/o. Shinde Galli, Omerga,
Tq. Omerga, Dist. Osmanabad.
6. Ajit S/o Madhav Birajdar,
Age : 23 years, Occu. Agriculture,
R/o. Shinde Galli, Omerga,
Tq. Omerga, Dist. Osmanabad.
7. The Branch Manager,
ICICI Bank, Branch Omerga,

Vishwa Complex, House No. 89/2,
National Highway No. 9,
Opp. Omerga Police Station,
Omerga, Tq. Omerga, District Osmanabad.

8. The Branch Manager,
Bank of Maharashtra,
Br. Omerga, Saraswati Niwas,
House No. 25, Ward No. 12,
Shivaji Chowk, Omerga,
Tq. Omerga, District Osmanabad.

Respondents...

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Mr Santosh B. Gastgar, Advocate for the petitioner
Mr S. B. Deshpande, ASG for respondents No. 1 and 2
Mr P. K. Lakhotiya, AGP for respondents No. 3 to 4
Mr Naik, Advocate for respondents No. 5 and 6
Mr K. S. Bhale, Advocate for respondent No. 8
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**CORAM : R. M. BORDE &
A. M. DHAVAL, JJ.**

DATE : 27TH JUNE, 2018.

ORAL JUDGMENT [PER R. M. BORDE, J.] :-

1. Rule. Rule made returnable forthwith. By consent, heard finally.
2. Petitioners are objecting to the order passed by the competent authority on 29.01.2018 refusing to refer the dispute raised by petitioner in respect of disbursement of amount of compensation of suit properties.

3. Perused the order passed by the competent authority and heard learned counsel appearing for respective parties.

4. On perusal of the application tendered by petitioners as well as on consideration of the order, we are of the considered view that the dispute raised by petitioners in the matter cannot be dealt with by the competent authority, exercising jurisdiction under Section 3-H(3) of the National Highways Act, 1956 and the dispute raised falls within the purview of Section 3-H(4) of the Act.

5. Section 3-H(4) of the Act prescribes 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 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. In the instant matter, on perusal of the objection, it prima facie appears that the dispute raised by petitioners is in respect of 'any person to whom the same or any part thereof is payable'. Since the dispute raised in the matter is in respect of entitlement of the petitioners to claim the amount or part of the amount determined by the competent authority as compensation

payable for the acquired property, there is no option available to the competent authority to deal with the dispute but to refer the same for decision of the principal civil Court of the original jurisdiction.

6. It does appear that the competent authority has dealt with the objections and expressed opinion as regards merits of the claim raised by the petitioners. It prima facie appears that the dispute raised does not come within the ambit of Section 3-H(3) of the National Highways Act, 1956. In a case, where several 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. In the instant matter, the dispute is not as regards persons or several persons who claim to be interested in the amount deposited under sub-section (1) of Section 3-H of the Act. The dispute raised is in respect of entitlement of the petitioners to receive the amount or part of the amount. The petitioner claims her entitlement on the basis of title derived by her and since the question is raised as regards the title of the petitioner qua the acquired property, we are of the opinion that it is only the Principal Civil Court of the original jurisdiction which would be competent to deal with the issue and pronounce the judgment.

7. In the facts of the case, the order passed by the competent authority refusing to refer the objection to the Civil Court for determination, according to us, amounts to refusal to exercise jurisdiction vested in the competent authority and therefore deserves to be quashed and set aside and accordingly it is quashed and set aside. The competent authority is directed to refer the objection raised by the petitioner to the Principal Civil Court of original jurisdiction of District Osmanabad. The competent authority shall forward the objection raised by the petitioner to the Principal Civil Court of the original jurisdiction of District Osmanabad within a period of fifteen days from today, along with the amount of compensation, if not already disbursed.

8. It is informed that the suit between the parties in relation to the property which is subject matter of acquisition, being Regular Civil Suit No. 22 of 2017, is already pending in the court of Civil Judge (Senior Division), Omerga. Since the issue raised before the competent authority by the petitioner is already under consideration of the Civil Court in a pending Civil Suit, it is desirable that the instant reference shall be assigned to the same judge. The Principal District Judge may pass appropriate orders in the matter accordingly.

9. The application for disbursement of the amount deposited by the competent authority, that would be presented by the respondents or the petitioner, shall be dealt with and appropriate orders shall be passed by the Court dealing with the reference as expeditiously as possible and preferably within a period of three months from the date of tender of the application, if the amount has not already been disbursed by the Competent Authority.

10. Rule is accordingly made absolute. There shall be no order as to costs.

[A. M. DHAVALE]
JUDGE

[R. M. BORDE]
JUDGE

Punde