

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10504 OF 2017

SHYAMLAL SHRINIVAS AGRAWAL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. Shailesh P. Brahme
AGP for Respondent-State : Mr. S. N. Kendre
Advocate for Respondent No. 2 : Mr. Bhushan B. Kulkarni
Advocate for Respondent No. 4 : Mr. C. R. Deshpande
.....

CORAM : V. K. JADHAV, J.
DATED : 13th FEBRUARY, 2018

PER COURT:-

1. Heard finally with consent of the parties at admission stage.
2. The petitioners are challenging the order dated 19.5.2017 passed by respondent No.3-competent authority/Sub Divisional Officer, Amalner referring the matter to the civil Court for disbursement of the amount of compensation.
3. Learned counsel for the petitioners submits that the petitioners are the owners of land Gat No. 304, part of which came to be acquired by respondent No.3 for the purpose of extension of National Highway. Respondent No.4 is the objector who claims that part of the land acquired was belonging to him and he is entitled for

compensation. Learned counsel submits that the petitioners' land came to be acquired in two stages and accordingly notifications under Sections 3-A and 3-D of the National Highways Act, 1956 (hereinafter for short referred to as the "Act of 1956") were issued. The awards were passed in consequence thereof. The petitioners are thus entitled for compensation of Rs.70 lacs and some odd amount. Learned counsel submits that in terms of the provisions of Section 3-C of the Act of 1956, opportunity of hearing was given to the respondent No.4 objector. The objection raised by respondent No.4 herein has been overruled by the competent authority. Learned counsel submits that the provision of sub-section (3) of Section 3-H of the Act of 1956 squarely applies to the present case. However, respondent no.3-competent authority has applied the provision of Section 3-H(4) of the Act of 1956 erroneously and as such there is an error of jurisdiction.

4. Learned counsel for respondent No.4 submits that the Land Surveyor of Land Records Office has submitted a report pointing out therein to the competent authority-respondent No.3 herein that there are defective Falni maps of land Gat Nos. 303 and 304 and as such there is a difference in the area of land Gat Nos. 303 and 304 respectively. The Land Surveyor has further pointed out in his reply that the process of correction of record is going on and till the said

process is completed, amount of compensation should not be paid to the claimants. Learned counsel submits that even the District Superintendent of Land Records, Jalgaon, by order dated 7.2.2017, cancelled the Falni map prior to the implementation of consolidation scheme in respect of land survey nos. 196/2B and 196/1+2A which is admittedly converted in Gat Nos. 303 and 304. Being aggrieved by the same, the present petitioners have preferred appeal which is pending before the Deputy Director of Land Records. Learned counsel submits that in view of the same, the respondent No.3-competent authority has rightly exercised jurisdiction as contemplated under Section 3-H sub-section (4) of the Act of 1956. There is no substance in the writ petition.

5. On careful perusal of the order passed by the District Superintendent of Land Records, Jalgaon, it appears that the present petitioners had purchased the land admeasuring 96 R under registered sale deed on 29.1.2010 from Gat No. 304, whereas the respondent No.4-objector had purchased the land on 13.11.2013 admeasuring 3 Hectar 77 R under registered sale deed from land Gat No. 303. It has been specifically observed by the District Superintendent of Land records that compared to the area as mentioned in the aforesaid sale deed executed in favour of the objector-respondent No.4, in Falni map the area appear to be less

whereas, the area appears to be excess in Falni map so far as the sale deed executed in favour of the petitioners is concerned. Consequently, the District Superintendent of Land Records, Jalgaon has cancelled the Falni map prior to the implementation of consolidation scheme. Though the present petitioners have challenged the said order in appeal before the Deputy Director of Land Records, the said appeal is still pending.

6. So far as the provisions of Section 3-H of the Act of 1956 are concerned, I do not think that sub-section (3) of Section 3-H is attracted in this case. In terms of sub-section (3) of Section 3-H of the Act of 1956, where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who are entitled to receive the amount payable to each of them. It thus appears from the provisions of sub-section (3) of section 3-H of the Act of 1956 that in absence of any dispute about the compensation to be paid, when several persons are interested in the amount, the competent authority shall determine the persons who are entitled to receive the amount payable to each of them. However, in terms of provisions of section 3-H (4) of the Act of 1956, if any dispute arises as to the (i) apportionment of amount or (ii) any part thereof or (iii) 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.

7. In the instant case, there is dispute about the area and secondly, also about the ownership, and the matter is under consideration before the Deputy Director of Land Records.

8. In the case of **B. L. Sridhar and others vs B. R. Pathi and others**, reported in **AIR 2013 Karnataka 163**, relied upon by the learned counsel for the respondent, in para 8 of the judgment the High Court of Karnataka has made the following observations:-

"8. We could have appreciated the arguments of the learned counsel for the appellants that Special Land Acquisition Officer was justified in invoking sub-section (3) of Section 3-H of the Act, provided there was no dispute between the appellants and the respondent in regard to the extent of land held by each of them. If there is no dispute in regard to the extent of land held by each of them, based on their claim, amount could have disbursed by invoking sub-section (3) of Section 3-H. On the contrary, the actual dispute in question is whether the appellants are the owners of the entire extent of 5 guntas and whether the Writ Petitioner is also having a share out of 5 guntas. It is nothing but a title dispute. Such disputes cannot be adjudicated under sub-section (3) of Section 3-H and it falls within the provision of sub-section (4)."

9. In the instant case, there is a dispute in respect of the area prior to the implementation of consolidation scheme and after implementation of consolidation scheme, in respect of the old survey

numbers which were converted into Gat Nos. 303 and 304 respectively. Even the Land Surveyor has given his opinion in unequivocal words that unless and until the process of correction of record of consolidation scheme is completed, the amount should not be paid to either of the parties. It is thus beyond jurisdiction of the competent authority to resolve the said dispute in terms of sub-section (3) of Section 3-H of the Act of 1956. Respondent No.3-competent authority has thus, rightly referred the matter to the opinion of the civil Court. I find no fault in the impugned order. There is no substance in the Writ Petition. The same is hereby dismissed. No costs.

(V. K. JADHAV, J.)

rlj/