

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

WRIT PETITION NO.10931 OF 2016

1. Sahebrao S/o. Ganpati Pandharkhade, ...**PETITIONERS**
Age-90 Years, Occu-Agri,
2. Parvati W/o. Sahebrao Pandharkhade,
Age-80 years, Occu-Agri,
Both R/o. Nagzari,
Tq. Georai, Dist. Beed

VERSUS

1. The Competent Authority/
Sub Divisional Officer
(Land Acquisition) Beed ...**RESPONDENTS**
2. Shrirang S/o. Baburao Bhangare,
Age-65 years, Occu-Agri,
R/o. Viidya Nagar,
Tq. & Dist. Beed
3. Alaknanda W/o. Ramprasad Rathi,
Age-50 years, Occu-Agri,
R/o. Mahesh Colony, Georai,
Dist. Beed
4. Subhash S/o. Pralhadrao Tak,
Age-30 years, Occu-Agri,
R/o. Saraswati Colony-2,
Georai, Dist. Beed
5. Bhaskar S/o. Sahebrao Pandharkhade,
Age-45 years, Occu-Agri,

6. Dinkar S/o. Sahebrao Pandharkhade,
Age-48 years, Occu-Agri,
7. Chandrakant S/o. Eknath Kulthe (Died)
8. Shivaji S/o. Pralhadrao Tak,
Age-25 years, Occu-Agri,

All R/o. Nagzari,
Tq.Georai, Dist. Beed

Mr.V.P.Savant, Advocate for the petitioner
Ms.C.S.Kulkarni, AGP for the respondent/State
Mr.S.V.Natu, Advocate for respondent No.2
Mr.B.K.Patil, Advocate for respondent No.3
Mr.Y.S.Chaudhary, Advocate for respondent Nos. 4 and 8
Mr.K.S.Kalapkar, Advocate for respondent No.6

**CORAM : S.S. SHINDE &
S.M. GAVHANE, JJ.**

RESERVED ON : 08.02.2018

PRONOUNCED ON : 27.04.2018

J U D G M E N T [PER: S.M. GAVHANE, J.]

. By this petition under Article 226 of the Constitution of India the petitioners have claimed following substantive reliefs:

B] Issue writ of mandamus or any other writ, order or direction in the nature of writ of mandamus, direct the respondent NO.1 authority to correct the award and to pay the compensation

towards the acquired land of the petitioners, by quashing the order dated 26.09.2016 passed by respondent No.1 in proceeding bearing No.2016/LA/NH211 and for that purpose issue necessary orders.

C] Issue writ of mandamus or any other writ, order or direction in the nature of writ of mandamus, direct the respondent NO.1 authority to refer the proceeding/dispute to Ld. Civil Court under Section 3H(4) of the National Highways Act, 1956 and for that purpose issue necessary orders.

2. Case of the petitioners is that they are residents of village Nagzari. They were absolute owners of land admeasuring 6-H 47-R out of 8-H 49-R from survey No.33, situated at village Nagzari (hereinafter referred to as the disputed land). Petitioner No.1 has purchased land adm. 2-H 22-R out of 6-H 47-R by registered sale deed bearing No.1056/1990 and 1057/1990 on 30.04.1990. Petitioner No.2 has got land from ancestral property. The mutation entry Nos. 264 and 265 were sanctioned in the name of petitioner No.1 by revenue authority. The petitioners are in possession of the disputed land and they are cultivating the same.

3. According to the petitioners, respondent No.1 who is the competent authority/Sub-Divisional Officer

(Land Acquisition), Beed has initiated land acquisition proceedings for widening the National Highway No.211 which is passing from the disputed land. However, even if the said land is acquired, no notices were received by the petitioners. Therefore, the petitioners approached to respondent No.1 and submitted their objections to the said respondents Office. In the objection, it has been specifically stated that the petitioners are owners of the disputed land, however, respondents with revenue Officers have made some mutation entry. The above said objection has been erroneously turned down by respondent No.1 by impugned order dated 26.09.2016 without considering the merits of the case and said respondent did not refer the matter to the Civil Court for adjudication as provided under Section 3H(5) of the National Highways Act, 1956 (hereinafter referred to as 'the National Highways Act'). In fact, when there is a dispute, said objection/matter was required to be referred to the Civil Court by respondent No.1.

4. Further, it is the case of the petitioners that some persons have recorded their names in the record of rights of the disputed land by deleting their names and by making false compromise deed. Therefore, the petitioners have filed suit bearing RCS NO.980/2015

before the Civil Judge, Junior Division, Georai seeking declaration of their ownership to the disputed land and perpetual injunction against the present respondents and same is pending for final adjudication. So also, respondent No.2 filed suit bearing RCS No.280/2011 against the petitioners for decree of perpetual injunction in the Court and same is also pending. According to the petitioners, in the above circumstances, the impugned order dated 26.09.2016 is liable to be quashed and set aside, and as they have no alternate remedy, they have approached this Court by the present writ petition.

5. Respondent No.2 has filed affidavit-in-reply dated 05.01.2017 stating that the writ petition is not maintainable since both the petitioners have no title to the land in respect of which acquisition proceedings are taken up by respondent No.1 and compensation is already paid to him. Sudam Pandharkhade son of the petitioners had filed RCS No.261/2001 in the Court of Civil Judge (J.D.), Georai against the petitioners, respondent Nos. 5 and 6 herein, other family members and purchasers seeking partition and separate possession of his 1/5th share in the joint family property land Gut No.33, adm. 8-H 49-R, situate at village Nagzari, Tq. Georai, Dist. Beed. The

petitioners and other family members filed compromise pursis in said suit admitting 1/5th share of plaintiff therein namely Sudam Pandharkhade to the extent of 1-H 41-R. It is specifically stated in the compromise terms that petitioner No.1 herein Sahebrao Pandharkhade will not get any share in the suit property, though the petitioner No.2 has received some portion of the land. The said compromise terms (Exh.26) dated 02.07.2003 were read and recorded in presence of parties by the trial Court on 02.07.2003 and accordingly, suit was decreed as per compromise terms. Since the date of passing of compromise decree as above each member of the family of the petitioners came in separate possession of their respective shares in land, including the vendor of this deponent, namely Sudam son of the petitioners. Further it is stated in the affidavit that he (respondent NO.2) vide registered sale deed dated 13.06.2008 purchased 1-H 41-R land in Gut No.33 from Sudam for valuable consideration and since then he is in possession of the said land. Respondent No.6 herein namely Dinkar sold portion of 60-R land to Vishwanath Harare and others vide registered sale deed dated 24.11.2008. Subsequently, he (respondent NO.2) purchased the said 60-R land by sale deed dated 14.12.2009 which is adjacent to the land already purchased by him from said Vishwanath and others. So

also, petitioner No.2 sold 40-R land to respondent No.4 herein by sale deed 22.04.2010. Petitioner No.2 also sold 40-R land to respondent No.8 herein by sale deed dated 22.04.2010. The name of respondent No.4 and 8 were recorded to the above said lands purchased by them by mutation entry Nos.778 and 779. Respondent No.2 has further stated that thus, he is in possession of area of land Gut no.33 purchased by him from family members of petitioner Nos. 1 and 2. Therefore, there is no question of petitioners being owners and possessors of entire land acquired as contended in para Nos. 2 to 7 of the writ petition by them.

6. Moreover, respondent No.2 further stated that above all the facts were placed before respondent No.1, who after considering all the relevant documents rightly concluded that there is no substance in the objection raised by the petitioners. There is no question of referring the alleged dispute to the Civil Court as prayed by the petitioners under the provision of the National Highways Act, since there is no dispute and petitioners are trying to create one which does not exist. It is stated that, he has already received the compensation as directed by respondent No.1 vide impugned order. Contending that petition is devoid of merits he

prayed to dismiss the same with costs.

7. Affidavit-in-reply of Shivaji Pralhad Tak on behalf of respondent Nos.4 and 8 is filed on 21.02.2017. He has also stated more or less as stated above by respondent No.2 in his above referred affidavit regarding purchase of land portion from survey No.33 from the petitioners and their son by different sale deeds and about compromise in RCS NO.261/2001. It is stated that the petitioners in order to deprive the rights of answering respondents have erroneously filed an application dated 11.03.2016 before respondent No.1 claiming to be the owners and also claiming the compensation thereof, in order to harass respondents. Further it is stated that answering respondents have purchased land Gut No.33, adm. 40-R out of 8-H 49-R on 22.04.2010 for consideration of Rs.3,75,000/-. The another answering respondents had purchased from petitioners land Gut No.33, adm. 40-R out of 8-H 49-R for consideration of Rs.3,75,000/-. Thus answering respondents have purchased 80-R land from the above mentioned land from the petitioners on 22.04.2010 for total consideration of Rs.7,50,000/- by registered sale deeds. It is stated that according to the petitioners no opportunity of hearing was given to them, but the same is

not true and correct. Opportunity of hearing was given to the petitioners and it is reflected from the impugned order dated 26.09.2016 passed by respondent No.1. Even otherwise writ petition has become infructuous for the reasons that the prayers made by the petitioners cannot be granted as already respondent No.1 has granted compensation to the respective owners of the land acquired by respondent No.1. It is stated that petition be dismissed with compensatory cost.

8. Affidavit-in-reply is filed by respondent No.6 Dinkar Pandharkhade. He has also stated in accordance with the contentions in the affidavit submitted on behalf of respondent Nos. 4 and 8. So also, he has stated about filing of suit RCS NO.261/2001 by son of the petitioners and compromise in the said suit as per the affidavit filed by the respondent No.2. It is contended that there is no question of referring the alleged dispute to the Civil Court as prayed by the petitioners under the provision of the National Highways Act, since there is no dispute and the petitioners are trying to create one which does not exist. He also claimed to dismiss the petition with heavy cost being devoid of merits.

9. Rejoinder affidavit dated 13.07.2017 of the

petitioner No.1 is filed. In the said affidavit, it is stated that the impugned order is dated 26.09.2016. However, roznama shows that even thereafter the date is given in the proceedings and matter is reserved for orders on 07.10.2016. These facts show, how the respondent authorities have acted in favour of the respondents. The State Bank of Hyderabad has filed Regular Darkhast against the present petitioners for recovery of the loan amount, which supports the contention of the petitioners regarding their ownership of the disputed land. It is stated that it is not possible to this Court to go in details of the evidence and record, in the controversy of the matter and in this view of the matter, it is necessary to refer the proceedings to the learned Civil Court for apportion as provided under Section 3H(5) of the National Highways Act.

10. We have heard learned Advocates appearing for the petitioners, respondent Nos.2 to 4, 6 and 8 and learned AGP appearing for the respondent No.1/State. With their assistance we have perused the pleadings in the petitions and the contentions of the contesting respondents in the affidavit referred to above we have perused the copies of the documents produced on record by

the petitioners and the contesting respondents in support of their respective contentions.

11. There is no dispute that the petitioners had filed application before respondent No.1 claiming share in the compensation of Survey No.33 acquired for the National Highway No.211, on 11.03.2016 (Exh.C) and respondent Nos. 2 to 8 had also claimed compensation of the said land. By impugned order dated 26.09.2016 respondent No.1 has rejected objection application of the petitioners and the compensation was order to be apportioned amongst respondent Nos. 2 to 8. There is no dispute that the petitioners had filed suit bearing RCS No.980/2015 before the Civil Judge Junior Division, Georai for declaration of their ownership to the disputed land and perpetual injunction against respondents and said suit is still pending. So also, respondent No.2 has filed suit bearing RCS No.280/2011 in the said Court against the petitioners for perpetual injunction in respect of disputed land and said suit is pending.

12. Respondent Nos.2,4,6 and 8 have claimed that they have purchased different portions in the disputed land survey No.33 from the petitioners and their son Sudam as referred earlier in detail by registered sale

deeds. The copies of some sale deeds on record also show that out of the disputed land portion of land has been purchased by the respondent Nos.4,6 and 8 as contended by them. In such circumstances, disputed question of fact whether the petitioners are owners and possessors of the disputed land or respondents Nos. 4,6 and 8 are owners of the disputed land cannot be considered by this Court in the writ jurisdiction. As the suit for declaration of petitioners ownership to the disputed land is pending in the Civil Court, as observed above, prima facie, it cannot be said that the petitioners are entitled to compensation on account of acquisition of said land for the National Highway No.211. In such circumstances, it is only after the decision of the said suit for declaration of ownership is decided in favour of the petitioners, the petitioners will have say that they are entitled to compensation of disputed land acquired for the National Highway. Similarly, for the aforesaid reasons no directions can be given to respondent No.1 authority to correct the award and to pay the compensation to the petitioners as per relief-B claimed in the petition. Another aspect to be noted is that, when suit regarding declaration of ownership of the petitioners to the disputed land is subjudice in the Civil Court, which is proper court to decide the said issue and when it appears

that, respondent No.1 authority has rejected the objection of the petitioners on material available before it, there is no point in issuing directions to respondent authority to refer their dispute to the Civil Court as per Section 3H(5) of the National Highway Act, as per relief "C" in the petition, as the same is already pending before the Civil Court.

13. For the forgoing reasons we hold that the petitioners are not entitled to any of the reliefs claimed. As such, the writ petition is devoid of merits. Accordingly, we dismiss the same. No costs.

[S.M.GAVHANE, J.]

[S.S.SHINDE, J.]