

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14123 OF 2017
(Keshrabai w/o Namdev Kalewar and others Vs. The State of
Maharashtra and others)

Mr.R..J.Nirmal, Advocate for the petitioners.
Mr.B.A.Shinde, AGP for respondent Nos. 1, 2 and 4.
Mr.V.B.Dhage, Advocate for respondent Nos. 7 to 9.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 03/08/2018

PER COURT :

1. The petitioners are aggrieved by the refusal of the competent authority to entertain an application filed by the petitioners under Section 3-H(4) of the National Highways Act.

2. This Court (Coram : V.K.Jadhav, J.), by order dated 06/12/2017, has passed a following order :-

“1. Learned counsel for the petitioners submits that the petitioners' land came to be acquired for the purpose of construction of road under the provisions of National Highways Act, 1956. The petitioners have filed an objection petition before the competent authority pointing out therein that the amount of compensation has been shown wrongly in the names of respondent Nos.5 to 10 and thus, the order in terms of provisions of Sections 3(h) (3) and 3(h) (4) of National Highways

Act 1956 required to be passed. Learned counsel submits that the competent authority has simply observed that the dispute pertains to Gat No.67/2 and further directed to call fresh 7x12 extract from the Talathi concerned. The competent authority by passing the aforesaid endorsement refused to entertain the objection petition filed by the petitioners. In view of provisions of Sections 3(h) (3) and 3(h) (4) of National Highways Act 1956, the competent authority is bound to pass appropriate orders. However, in the instant case, the competent authority has refused to entertain the objection petition filed by the petitioners, without assigning any reason.

2. In view of above, issue notice to the respondents, returnable on 10.01.2018.

3. Learned A.G.P. waives notice for respondent Nos.1, 2 and 4.

4. Till the next date of hearing, ad-interim relief in terms of prayer clause "C".

3. I have considered the submissions of the learned Advocates for the respective sides and the judgment cited by the petitioners in the matter of Arun Trimbakrao Lokare Vs State of Maharashtra 2017(6) Mh.L.J. 613].

4. Prima facie, it appears from the submissions of the learned

Advocate for the petitioners that these petitioners have not responded to any of the steps taken by the competent authorities under Section 3-B to 3-H(3). In short, when the survey of the land was conducted, when hearing on objections was held and when the determination of the compensation amount was undertaken, these petitioners have not participated in the said hearing. The competent authorities decided the entitlement of the persons under Section 3-H (3).

5. Learned Advocate for the original claimants is unaware as to whether these petitioners put forth their claims when the steps u/s 3-H(3) were initiated or after the determination of entitlement was completed under Section 3-H(3). Learned Advocate for the petitioners reiterates that these petitioners have first made an application on 18/10/2016 and again on 10/02/2017 which were not considered while passing the award on 20/03/2017. Finally, the application at page No.43 was lodged on 17/10/2017.

6. The learned AGP has resisted this petition on the basis that the names of these petitioners are not visible from the 7/12 extracts pertaining to the land that has been acquired for the widening of the national highway. He further submits that no objections were raised at the stages undertaken u/s 3-B to 3-H and it was only at the time

of the apportionment of the compensation that these petitioners have suddenly put forth a claim for the share in the compensation amount.

7. The learned Advocate for the petitioners was called upon to make a statement as to which portion of the land of the petitioners, precisely has been acquired in the said acquisition. He submits that he does not have proper instructions to identify with precision the exact land belonging to the petitioners that has been acquired in the said project. He submits that the very sale deeds allegedly executed by the deceased Namdeo in favour of the respondents/claimants, have been disputed.

8. Considering the observations of this Court in paragraph No.13, paragraph Nos.16 and 17 in Arun (supra), I do not find that the claim of the petitioners seeking apportionment on the basis of disputing the registered sale deed executed by Namdeo (their predecessor in title) dated either 08/01/1990 or 08/01/1996, could be a subject matter of adjudication of the authority under Section 3-H(4) of the National Highways Act.

9. Considering the above and as the impugned order is purely a

noting on the proceeding/order sheet available in the office of the S.D.O. and Land Acquisition Officer, Kalamnuri, this petition is allowed and the said noting is set aside. The application filed by these petitioners dated 17/10/2017 at page 43 to 48 is restored to the office of respondent No.2 for consideration after hearing the litigating sides. The concerned litigating sides before the Court shall appear before respondent No.2 on 20/08/2018 at 11.00 a.m. If any parties are unaware about the date of hearing, respondent No.2 may issue notices.

9. Since the petitioners contend on the basis of the revenue records that 20R land stands in their names and they are unaware as to whether any portion of their land has been acquired or not, the interim protection granted by this Court would continue only to the extent of staying the disbursement of the compensation amount to the extent of 20R land, till the decision on the application filed by the petitioners. Taking into account the affidavit filed by these petitioners on 31/07/2018 in this writ petition, they would be liable to pay interest @ 8% over the amount that has been blocked owing to the order of this Court dated 06/12/2017 to which they do not have any right or claim.

**Kranti
Hansraj
Shekatkar**

Digitally signed
by Kranti Hansraj
Shekatkar

Date: 2018.08.04
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(Ravindra V.Ghuge, J.)