

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6919 OF 2018

1. Shri. Rajaram Waman Rane

Age : 81 years, Occ : Agriculturist

2. Shri. Tukaram Ganpat Rane

Age: 66 years, Occ : Agriculturist

3. Shri. Ajit Raghunath Rane

Age : 44 years, Occ : Agriculturist.

4. Shri. Vasant Laxman Rane

Age : 87 years, Occ : Agriculturist

5. Shri. Madhukar Raghoba Rane

Age : 81 years, Occ : Retired

All residing at Ranewadi, Kasal,

Taluka-Kudal, Dist : Sindhudurg

....Petitioners

V/s.

1. Shri. Ramkrishna Mahadev Rane

Age : 66 years, Occ : Retired,

R/o. Sadguru CHS Ltd., 2/12,

Sai Vihar, Bhandup (West),
Mumbai-400 078.

2. Shri. Vyankatesh Mahadev Rane
Age : 46 years, Occ : Service
R/o. Shivdarshan CHS Ltd.,
Site Office Shivdarshan, Nardasnagar,
Bhandup (West), Mumbai-400 078.

3. Shri. Suresh Mahadev Rane
Age : 44 years, Occ : Retired,
R/o. Hariom Puja Society, Room No.301,
3rd Floor, Garibacha Wada,
Dombivali (West), Mumbai-421 202.

4. Shri. Satish Madhusudan Rane
Age : 53 years, Occ : Service
R/o. Yashwant Arcade, 1st Floor,
Room No.103, Umesh Nagar,
Dombivali (West), Mumbai.

5. Shri. Vishnu Baburao Rane
Age : 76 years, Occ : Retired
R/o. Jamnuabai Niwas, Room No.3,
Jangalmangal Road, Shivajinagar,
Bhandup (W), Mumbai-400 078.

6. Sau. Archana Anand Sawant,
Age : 43 years, Occ : Household
R/o. Shankarniwas CHS Ltd.
Behind Shivdarshan, Nardasnagar,
Bhandup (West), Mumbai-78.

7. Sau. Samidha Subhash Chindarkar,
Age : 39 years, Occ : Household
R/o. C/o. Satish Madhusudan Rane,
Yashwant Arcade, 1st Floor,
Room No.103, Umesh Nagar,
Dombivali (West), Mumbai.

8. State of Maharashtra, through
Government Pleader, High Court,
Mumbai.

9. Sub-Divisional Officer & Competent
Authority (Revenue), Kudal,
District : Sindhudurg.

....Respondents

* * * *

Mr. A.S. Khandeparkar i/by. Khandeparkar and
Associates, *Advocate for the petitioners.*

Mr. N.V. Walawalkar, *Senior Counsel for the respondents.*

CORAM : A.A. SAYED, &

SANDEEP K. SHINDE, J.

JUDGMENT RESERVED ON : 24TH OCTOBER, 2018.

JUDGMENT PRONOUNCED ON : 14TH DECEMBER, 2018.

JUDGMENT (PER : SANDEEP K. SHINDE, J) :

1. The land bearing Survey No.23A, Hissa No.2 admeasuring 39 Ares, Pot-Kharaba 0.2A situated at Village-Kasal, Taluka-Kudal, District-Sindhudurg (hereinafter referred to as “the said land”) was acquired for NH-66 under the provisions of National Highways Act, 1956 (hereinafter called as “the said Act”) vide Award dated 30th June, 2017.

2. The Competent Authority upon verifying the revenue records of the said land, held respondents no.1 to 6 entitled to receive compensation determined under Section 3G of the said Act and as such notices were issued to them on 20th September, 2017.

3. The petitioners vide application dated 12th

December, 2017 claimed to be the co-owners of subject land and thus requested the Competent Authority ;

(i) not to disburse the compensation to respondents no.1 to 6;

(ii) pay the compensation to the petitioners and the respondents, and

(iii) refer the claim to the Civil Court in terms of Section 3H(4) of the said Act.

. Respondents no.1 to 6 filed their reply and denied the right of the petitioners in the said land and disputed their claim in the compensation.

4. The Competent Authority vide order dated 20th April, 2018 rejected the claim of the petitioners in exercise of power under Section 3H(4) of the said Act. Aggrieved by the said order, this petition is filed under Articles 226 and 227 of the Constitution of India.

5. Heard Learned Counsel for the petitioner and Learned Senior Counsel for respondents no.1 to 6 and

Learned AGP for the State.

6. We have perused the reply filed by the contesting respondents no.1 to 6 and the reply of Competent Authority.

7. The Competent Authority in its reply contended that the impugned order has been passed in exercise of powers under Section 3H(3) after following due procedure and as such refuted petitioner's claim.

8. Mr. Khandeparkar, the Learned Counsel for the petitioners, has taken us through the application dated 12th December, 2017 whereby petitioners had claimed interest in the compensation and requested the Authority to refer the issue of apportionment to the Civil Court. Upon reading the entire application, we are of the view that it was a composite application filed under sub-section (3) and sub-section (4) of Section 3H of the said Act. Section 3H of the said Act, reads as under :

[3H. Deposit and payment of amount. —

(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

*(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) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent. per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in

excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.]

9. Sub-section 3 of Section 3H empowers the Competent Authority where several persons claim to be interested in the amount of compensation to determine the persons, who in its opinion, are entitled to receive the compensation; whereas sub-section 4 enjoins Competent Authority to refer the dispute as to apportionment of the amount or any part thereof or to any person to whom the same or part thereof is payable, to the Civil Court of ordinary jurisdiction.

10. It is contended by Mr. Khandeparkar,
(a) that, the Competent Authority has failed to exercise its jurisdiction and committed an error by refusing to refer the dispute to the Civil Court, though sufficient material was

placed before it which substantiates that the petitioners being co-sharers, are entitled to claim and receive the compensation.

. Mr. Khandeparkar would thus submit, the impugned order may be quashed and set aside and the Competent Authority be directed to refer the dispute to the Civil Court.

11. Mr. Walawalkar, Learned Senior Counsel appearing for respondents no.1 to 6 would contend that, unless the petitioners first lay their claim of entitlement under sub-section (3) of Section 3H, they could not have filed an application under Section 3H(4) of the said Act. He would contend that, unless it is determined that the petitioners are entitled to claim interest in the compensation as required under sub-section (3) of Section 3H, the application filed by the petitioners claiming share and/or apportionment in the compensation was not maintainable. He would also contend that, the petitioners

herein had not filed their objections either after issuing the Notification under Section 3A(2) or at any stage thereafter and it was only after the amount of compensation has been deposited, the claim is sought to be raised. Mr. Walawalkar, would contend that, the names of the petitioners were not reflecting in the revenue records of the said land since 1958 and as such they do not have a right to claim interest in the compensation.

12. The provisions of sub-section (3) of Section 3H of the National Highways Act, empowers the Competent Authority to determine the entitlement of a person to receive the amount of compensation. Sub-section (3) employs the expression 'shall determine' and therefore it mandates the Competent Authority to determine entitlement of the person/s who claim interest in the compensation. The Competent Authority is thus duty bound to render its opinion as to entitlement to claim interest in terms of provisions of sub-section 3 and it cannot refuse to exercise the jurisdiction. Whereas, under sub-section (4) of Section 3H, the Competent Authority has no discretion but to refer the dispute as to the apportionment of the amount or to any person to whom the same or any part thereof is payable to the decision of the principal Civil Court of original jurisdiction. Thus, under sub-section (3), Competent Authority has to determine entitlement; whereas under sub-section (4) of Section 3H, in case of disputes as to apportionment, the authority is required to refer the dispute to Civil Court.

Thus, the provisions of sub-sections 3 and 4 are to be read together and construed harmoniously keeping in mind the object and the purpose for which these provisions are enacted.

13. In the case in hand, the petitioners had filed an application in December, 2017 and claimed interest/share in the amount of compensation being co-owners of the said land. They had relied on a letter dated 16th May, 1975 addressed by Mahadev Vishnu Rane, father of the respondents no.1, 2 and 3 to the Talathi whereby Mahadev Vishnu Rane had admitted co-ownership of the petitioner's predecessor-in-title in the subject land. Petitioners also relied on another letter dated 11th May, 1953 addressed by Baburao Vishnu Rane, predecessor-in-title of the respondents and sale-deed of February, 1951 whereby Survey No.23A/2 was transferred to Waman Gopal Rane, predecessor-in-title of the petitioner no.1 by one of the members of the family branch.

14. We have gone through the application dated 12th December, 2017 preferred by the petitioners before the Competent Authority wherein composite prayers were made, viz. to decide their entitlement and refer the dispute as to entitlement to the Civil Court. In view of the averments made in the said application and the reasons stated hereinafter, the contention of Mr. Walawalkar, learned Senior Counsel that the petitioner could not have made an application directly under sub-section (4) of Section 3H without first making an application under sub-section (3), cannot be accepted. We therefore hold that vide application dated 12th December, 2017 the petitioners herein had requested the Competent Authority to decide their entitlement to claim interest in the compensation being co-owners of the subject land and refer the dispute to the Civil Court, if their entitlement is negated.

15. The question is whether, one can read the provisions of sub-section (3) and (4) disjunctively ? Our answer is in negative. In our view, the provisions of sub-section (3) and (4) are to be read together and construed

harmoniously keeping in mind the object and purpose for which these provisions are enacted. Under sub-section (3), Competent Authority has to determine the entitlement of the person, who claims interest in the compensation. Once entitlement is decided, the next step is; apportionment of compensation. If dispute arises as to apportionment, the Competent Authority has no option but to refer the dispute to the Principal Civil Court.

. Thus, the scheme of Section 3H of the said Act consists of two steps divided into two sub-sections, i.e. sub-section (3) and sub-section (4) which cannot be read disjunctively. One cannot argue that, only dispute as to apportionment of the amount is referable to Civil Court and not the dispute as to entitlement. If such a argument is accepted, then a person whose entitlement is negated by the Competent Authority may have to approach the Civil Court and only thereafter lay the claim in the compensation. It may be stated, such a interpretation would defeat the rights of legitimate claimants whose names were not recorded in the Revenue records, may be for any reason. If such a claimant asserts his rights in the land which is under acquisition, on the basis of some evidence which prima-facie discloses his interest, his claim cannot be brushed aside. Therefore, even if competent authority rejects his “entitlement”, such a finding recorded by the authority is not conclusive and would not attain finality. It is to be noted that, under sub-section (4) nature of disputes referable to Civil Court also includes a dispute as “to any person to whom the same or any part thereof is payable” (emphasis supplied). In other words, if entitlement of claimant is rejected, still it would be an issue referable to a Civil Court as it would be covered by

the expression “issue as to any person to whom the same is payable” within the meaning of sub-section (4) of Section 3H. In our opinion, documents placed on record by the petitioners in support of their claim, prima-facie disclose their right. In view of this, we are of the view that, the order passed by the Competent Authority, *inter-alia*, refusing to refer the dispute as to entitlement to claim interest in the compensation runs contrary to the scheme of provisions of sub-section (3) and (4) of Section 3H of the National Highways Act.

16. Mr. Khandeparkar, has relied on the judgment of this Court in the case of **Arun S/o. Trimbakrao Lokare Versus. The State of Maharashtra and Others reported in (2017) 6 Mh.L.J. page 612**. In that case, the petitioners therein were claiming to be the co-owners had applied to the Competent Authority for a share in the compensation and ultimately the petitioners claim was rejected in view order dated 5th January, 2017 which was carried before this Court. The Division Bench in paras-16 and 17 held thus :

“16] It is a settled principle of interpretation of statute that the provisions of any statute are to be

so interpreted as to give effect to each of them to the extent possible without giving rise to any conflict or overlapping. This principle of harmonious construction needs to be applied in the matter before hand vis a vis Sub-Section (3) of Section 3-H, while interpreting Sub- Section (3). Such application would lead us to interpret these provisions in harmonious manner putting neither of them otiose. A careful reading of these provisions would reveal that when several persons are entitled to claim compensation, the competent authority has power and jurisdiction to record an opinion and determine the persons who are entitled to receive share/s and only enables him to apportion the amount of compensation amongst them according to the share they are entitled to. As against this, Sub-Section (4) contemplates a situation where the dispute is raised as to the entitlement of the compensation by several persons and the jurisdiction to decide such dispute is conferred upon the Principal Civil Court of original jurisdiction. In other words, whenever there is dispute raised by any person as to the right to receive either the whole or portion of the compensation, the competent authority is obliged to refer the matter to the Principal Civil Court of original jurisdiction.

17] In view of such legal position, when Sub-Section (4) of Section 3-H specifically requires the dispute as to entitlement to receive compensation determined under Section 3-G of the Act to be referred to and decided by the Principal Civil Court of original jurisdiction, it by implication necessarily excludes jurisdiction of the competent Authority which is entitled to merely decide the point of apportionment of the compensation amongst several persons under Sub-Section (3) of Section 3-H. Such interpretation, in our view, strikes a balance between Sub-section (3) and Sub-section (4) of Section 3-H of the Act and make them operative in separate spheres. The submission of the learned Advocate for the petitioner, on these lines therefore deserves to be accepted.

17. We have gone through the said judgment wherein the Division Bench by applying the principles of harmonious construction interpreted the provisions of sub-section 3 of Section 3H and sub-section 4 and held whenever there is a dispute raised by any person as to right to receive either the whole or portion of compensation, the Competent Authority is obliged to refer the matter or original jurisdiction.

18. Thus, in view of the facts of the case and for the reasons stated hereinabove, we quash and set aside the order impugned dated 20th April, 2018 passed by the competent authority and direct the competent authority to refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction, the land is situate within the meaning of Section 3H(4) of the National Highways Act, 1956.

19. The petition is allowed and disposed off accordingly.

(SANDEEP K. SHINDE, J)

(A.A. SAYED, J)