

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5198 OF 2018**

Shri. Nandkumar Dwarkanath Rajpurkar And Anr. .. Petitioners

V/s.

Shri. Anant Raghunath Chande And Ors. .. Respondents

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Mr. Yatin R. Shah, for the Petitioners.

Mrs. Jui Kanade, i/b. Akshay Petkar, for Respondent No.1.

Mr. R.S. Pawar, AGP, for Respondent Nos. 2, 3 and 4.

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**CORAM: A.A. SAYED &
S.C. GUPTE, JJ.**

DATE : 7 SEPTEMBER, 2018.

P.C.:

. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. This petition challenges an order dated 9 February 2018 passed by Respondent No.2 – Competent Authority and Sub-Divisional Officer, Mangaon, District Raigad, rejecting the Petitioners' objections to distribution of the amount of compensation for land acquired for extension of National Highway No.66.

3. The acquisition proceedings for National Highway No.66 were commenced and completed by May 2017. There appear to be disputes between the Petitioners herein and Respondent No.1 concerning the title to the subject land acquired by the State for the Highway. By an

award dated 15 May 2017, passed under the National Highway Act, the Competent Authority and Sub-Divisional Officer determined the valuation of the land as well as the entitlement of the owner to receive compensation. Respondent No.1 was held to be entitled to receive compensation. The Petitioners objected to this award and applied to the Competent Authority for referring the matter of disbursement of compensation to the reference court. That application was rejected by the Competent Authority in its impugned order.

4. Section 3G of National Highways Act requires the competent authority to determine compensation payable for any land acquired under the Act as well as the recipient of the compensation. If there is any dispute as to the amount determined by the competent authority, the same is required to be determined by the arbitrator to be appointed by the Central Government for the purpose. If, on the other hand, where there are several persons, who claim to be interested in the amount of compensation, the competent authority is required to determine the persons, who, in its opinion, are entitled to receive the amount payable to each of them. If any dispute arises as to the apportionment of the amount or any part thereof or as to any person to whom such amount or part is payable, under Section 3H of National Highways Act, such dispute is required to be referred to the decision of the principal civil court of original jurisdiction within the local limits of whose jurisdiction the subject land is situated. Obviously, there is a dispute between the parties, namely, the Petitioners on the one hand and Respondent No.1 on the other, concerning the entitlement to receive the compensation determined by the competent authority and, in the premises, the competent authority

was duty-bound to refer that dispute to the principal civil court of original jurisdiction under Section 3H of the Act.

5. The scheme of the Act has been explained by a Division Bench of this Court in **Arun s/o Trimbakrao Lokare vs. State of Maharashtra**¹ in the following words:

“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,

1 2017(6) Mh.L.J. 612

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. ”

In the premises, the matter really does not admit of any controversy.

6. Learned Counsel for Respondent No.1, however, submits that in the present case, there is no pending dispute as between the parties as to the entitlement to receive compensation. Learned Counsel submits that in a civil suit between the parties this question has already been decided by the Court. Learned Counsel relies upon the decree passed by the Joint Civil Judge, Junior Division at Mangaon on 6 February 2012 in a title suit between the parties in this behalf. This decree has admittedly been challenged by the Petitioners herein and is the subject matter of a pending appeal before the Court of District Judge, Raigad. Though the interim application for stay of the impugned order of the Joint Civil Judge, Junior Division, Mangaon is rejected by the District Court, the matter of entitlement of the parties to the property in question can be described as *res integra*. It has not reached any finality as of date. When the present petition was argued, we asked learned Counsel for Respondent No.1 whether her client would be willing to make a statement to abide by the order of the District Court in appeal not only for title but also for the purposes of compensation payable for the land. Learned Counsel expressed her inability to do so.

7. In sum, what emerges is that there is a pending dispute between the parties on entitlement to receive compensation and that dispute is necessarily to be referred to the civil court for adjudication. It

may well be that the civil court may hold its hands for the time being so as to allow the parties to seek a final adjudication of their rights in the pending appeal but that does not mean that the civil court cannot be approached for a reference. As the law has been explained by the Division Bench of this Court, as noted above, the matter must be referred under the provisions of Sub-section (4) of Section 3H of National Highways Act.

8. Since the amount of compensation has already been paid by the competent authority to Respondent No.1, we cannot at this stage make any order as to the amount or its deposit. The amount shall abide by such order as may be passed by the Principal Court of original jurisdiction contemplated under Section 3H(4) of National Highways Act.

9. We, accordingly, allow the petition and make the Rule absolute by directing Respondent No.2 – Competent Authority and Sub-Divisional Officer to refer the dispute of entitlement to receive compensation as between the Petitioners and Respondent No.1 to the principal civil court of original jurisdiction as contemplated under Section 3H(4) of the Act within two weeks of receiving a copy of this order.

10. Learned Counsel for the Petitioners states that the Petitioners shall apply for enhancement of compensation by seeking a reference, if they succeed in establishing their entitlement before the civil court. Any such application shall be considered on its own merits. All rights and contentions of the parties in that behalf are kept open.