

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.715 OF 2018

RUPEE CO-OPERATIVE BANK,
BRANCH KHADKESHWAR,
AURANGABAD

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND
OTHERS

..RESPONDENTS

...

Advocate for the petitioner : Mr. A. A. Nimbalkar

A.G.P for respondent No.1 and 2 : Mr.M.M. Nerkar

Advocate for respondent No.3 : Mr. P.K. Nikam

Advocate for respondent No.4 : Mr. D.N. Patil Bankar

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**CORAM :T.V. NALAWADE AND
SUNIL K. KOTWAL,JJ.**

DATE : 3rd JANUARY, 2019

ORAL ORDER :-

This Writ Petition is filed for challenging the order made by the competent authority (Land Acquisition) under the provision of Section 3 of the National Highway Authority Act,1956. By the order dated 07.12.2017, the competent authority has directed to deposit the compensation amount with the Principal Civil Court, Aurangabad in execution proceeding.

2. Both the sides are heard.

3. The petitioner claims to be mortgagee of the property of respondent No.3, Co-operative Sugar Factory. Liquidator is already appointed. It is contention of the petitioner that for the loan of Rupees

Three crores the amount which is now increased upto Rupees Five crores, the property of sugar factory was mortgaged. It is contention that the property of sugar factory is acquired under aforesaid special legislation and the amount mentioned by the competent authority in aforesaid order is available as compensation under the provision of aforesaid special enactment. It is contention of the petitioner that as it has right to recover the amount given by way of loan, its claim needs ought to have been considered by the competent authority as per provisions of Section 3 (H) and 3(4) of the aforesaid enactment, but that is not considered by the competent authority.

4. This Court has carefully gone through the provision of Section 3(H) 3(4) of aforesaid enactment and relevant portion are as under :-

Section 3H in the National Highways Act, 1956

[3H. Deposit and payment of amount.

(1) The amount determined under Section 3 G 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 9% 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, with the competent authority and the provisions of sub Section (2) to (4) shall apply to such deposit."

"(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. The aforesaid provision shows that the competent authority is expected to decide the entitlement of the persons to receive the amount of compensation under the provision of sub section 3. Entitlement naturally means the ownership.

6. Similarly the provision of sub section 4 shows that when there is dispute about the apportionment, the dispute needs to be referred by the competent authority to Principal Civil Court of original jurisdiction and there the apportionment point will have to be decided. The apportionment has also relation to the entitlement. Only after deciding the entitlement on the basis of ownership, the point mentioned in sub section 4 can be referred. Present petitioner is not the owner and it is claiming to be mortgagee but it is claiming that it is entitle to get the amount of compensation.

7. When there is claim of aforesaid nature, that kind of claim cannot be considered under aforesaid special enactment by the competent authority or by the Principal Civil Court of original jurisdiction of the district. It is clear that the claim raised before the competent authority by the present petitioner was misconceived and instead of approaching proper forum the petitioner went to the competent authority. Competent authority is not proper forum for deciding the claim of the present petitioner and detail inquiry of that claim needs to be made by other forum like Civil Court. The Mortgagor, sugar factory has made claim on the petitioner, by contending that entire amount is paid. In view of this circumstances, this Court holds that no relief can be granted in present petition, so the present petition is dismissed.

8. The learned counsel for the petitioner placed reliance on some

observations made in the following two cases.

- I] 1980 C.T. J. 371 The Fertilizer Corporation of India Vs. Kolaba Zilla Sahakar Kharedi Vikri Sangh Ltd and others
- II] 2004(2) ALL MR 115 Mr. Sadashiv K. Sutar Vs. Kolhapur Zilla Janata Sahakari Bank Ltd and Another.

Those cases are not applicable to the present facts and circumstances of the matter.

09. No order as to costs. Civil Application if any is disposed of.

10. The learned counsel for the petitioner requested for continuation of the interim relief granted earlier. In view of the aforesaid circumstances, request for continuation of interim relief is rejected. Interim relief is vacated.

11. Authenticated copy is allowed to both the sides.

[SUNIL K. KOTWAL]
JUDGE

[T.V. NALAWADE]
JUDGE

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