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

WRIT PETITION NO.2272 OF 2018

Aniket s/o Radhesham Attal,
Age 29 years, Occ. Agriculture & Business
R/o Near Laxminarayan Mandir, Georai
Tal. Georai, District Beed ... PETITIONER

VERSUS

1. The Sub-Divisional Officer,
(Land Acquisition), Jaikwadi Project,
Tahsil Office, Opp. District Court, Beed,
Taluka and District Beed.
2. Vijaya Pandurang Pataskar w/o
Sandesh Potdar, Age 52 years,
Occ. Agriculturist, R/o Bag Pimpalgaon,
Tal. Georai, District Beed.
3. Eklavya Sandesh Potdar,
Age 27 years, Occu. Student,
R/o Bag Pimpalgaon,
Tal. Georai, District Beed. ... RESPONDENTS

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Shri L.D. Vakil, Advocate for petitioner
Shri P.M. Kulkarni, A.G.P. for respondent No.1
Shri N.B. Khandare, Advocate holding for
Shri Ajay S. Deshpande, Advocate for respondent No.2
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CORAM: R.G. AVACHAT, J.

Date of reserving judgment : 29th August, 2019

Date of pronouncing judgment : 9th September, 2019

J U D G M E N T :

Heard learned counsel for the parties. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel of the parties.

2. This writ petition has been filed for setting aside the order dated 30/10/2017, passed by the respondent No.1, whereby, the respondent No.1 has exercised its powers under Section 3-H(4) of the National Highways Act (for short the Act). The petitioner claims to be the owner, in possession of the land admeasuring 37 R, forming part of Gut No.167 and 42 R, in Gut No.168, situated at village Bag-Pimpalgaon, Taluka Georai, District Beed. The petitioner claims to have purchased these lands by way of sale deeds dated 2/12/2011 and 14/12/2011, executed by respondents No.2 and 3.

3. The respondent No.1 initiated the acquisition proceedings under National Highways Act, 1956 for widening of the National Highway No.211. The land forming part of Gut No.168

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has, therefore, been acquired. The amount of compensation has been determined for being paid to the owner of the land.

4. Respondents No.2 and 3 have filed the suit, being Special Civil Suit No.61/2014 before the Court of Civil Judge, Senior Division, Beed, seeking relief of cancellation of the sale deeds executed in favour of the petitioner. The petitioner has filed his written statement in the said suit. The respondents No.2 and 3 have also moved an application for impleading the respondent No.1 as a party to the said suit. The petitioner herein is sought to be restrained from receiving the amount of compensation from the respondent No.1. According to the petitioner, in the aforesaid backdrop, the respondent No.1 should not have referred the dispute to the decision of the principal Civil Court of original jurisdiction.

5. Learned counsel for the petitioner would submit that, the petitioner was the owner, in possession of the land acquired for National Highway purpose. The petitioner, thus, became entitled to receive the amount of compensation. Learned counsel took me through the registered sale deeds, executed by the respondents No.2 and 3 and also adverted my attention to the revenue record of the land to indicate the effect of the sale deed to have been

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reflected in the revenue record. The learned counsel would submit that, the respondents No.2 and 3 have filed the suit before the Court of Civil Judge, Senior Division. Since the dispute has been referred by the respondent No.1 to the Principal District Judge, Beed, there is every possibility of two conflicting decisions being given in these two proceedings namely, the Civil Suit before the Civil Court and the Reference made to the principal Civil Court of original jurisdiction.

6. In support of his contentions, the learned counsel has relied on the judgment of this Court in case of **Balbhim Vishwanath Tawaskar & anr. Vs. Competent Authority and Deputy Collector, Land Acquisition, Medium Project No.2, Osmanabad & anr.** reported in **2017(1) Mh.L.J. 279**, and the another decision in Writ Petition No.6381/2013, dated 4/10/2013.

7. According to learned counsel, the respondent No.1 is under legal obligation to part with the amount of compensation in favour of the owner and possessor of the land. The award has been passed in favour of the petitioner. The petitioner, thus, became entitled to receive the compensation. The order passed by the respondent No.1 referring the dispute to the Principal District Judge, therefore, requires to be set aside.

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8. There are on record three sale deeds executed by the respondents No.2 and 3 in favour of the petitioner way back in December 2011. Name of the petitioner has been recorded in the revenue record of the lands purchased under the said sale deeds. Portion of the land in Gut No.168, owned by the petitioner has been acquired for widening of a National Highway. Amount of compensation has been determined, and the award has been passed in favour of the petitioner.

9. The record, however, further indicates that, the respondents No.2 and 3 have filed the Civil Suit, being Special Civil Suit No.61/2014 against the petitioner and others for cancellation/ setting aside the sale deeds executed in favour of the petitioner and for declaration of title of the respondents No.2 and 3 to the lands, including the land acquired for widening of a National Highway. The suit dates back to 2014. The respondents No.2 and 3 moved the respondent No.1 and raised objection for making payment of compensation to the petitioner. After having heard the claim of the respondents No.2 and 3, the respondent No.1 has exercised powers under Section 3-H(4) of the Act. It has referred the dispute to the decision of the principal Civil Court of original jurisdiction by its decision dated 30/10/2017. The amount of

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compensation has also been deposited with the said Court.

10. I have perused the sale deed relied upon by the petitioner herein. Recitals of the sale deed indicates that the amount of sale consideration has neither been paid by cheque or demand draft nor the consideration amount has been paid before the Sub-Registrar. The sale deeds record that the amount of consideration has been paid in cash some days before execution of the sale deeds. The respondents No.2 and 3 contended in their suit that the sale deeds were executed without consideration. Those were nominal and not to be acted upon. A detailed pleading has been made in the suit.

11. After having heard the petitioner and the respondents No.2 and 3, the respondent No.1 referred the dispute to the decision of the principal Civil Court of original jurisdiction. In my view, the respondent No.1 has, in the aforesaid factual backdrop, been justified in exercising his powers under Section 3-H(4) of the Act. A substantive suit is pending before the Civil Court. Now issue as to apportionment of compensation has been referred to the principal Civil Court of original jurisdiction. The petitioner may take appropriate steps to get both the matters clubbed or decided the issue involved in this case by only one of the forums, namely

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the Civil Judge, Senior Division or the District Judge, as may be advised.

12. I have perused the judgments relied upon. In case of Balbhim Tawaskar (supra), a compromise decree was passed in Regular Civil Suit No.110/1989. The rights were crystalised by passing a compromise decree. Revenue record came to be changed in accordance with the terms of the compromise. Whereas in the case of **Sharafat Khan Vs. Union of India & ors (2018 SCC Online All 4073)**., the original compensation that was determined by the competent authority had been paid to the respondent Nos.7, 8 and 9 therein, and the dispute was sought to be raised only after the Arbitrator enhanced the compensation in the award by him.

13. The facts of the case in hand are altogether different. The respondent No.1, after hearing the petitioner and the respondents No.2 and 3, has referred the dispute of apportionment to the decision of the principal Civil Court of original jurisdiction. The amount of compensation has also been deposited with the said Court. The record indicates that, the petitioner herein has appeared in the said proceedings.

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14. In the aforesaid backdrop, the order passed by the competent authority need not be set aside. The petitioner may request the principal Civil Court of original jurisdiction to decide the dispute at the earliest or seek directions from the same Court to the Court of the Civil Judge, Senior Division, seized of the suit, to decide the suit or at least the issue pertaining to the compensation involved therein, on priority.

15. In view of the above, the petition fails. Writ Petition, therefore, stands dismissed. Rule discharged.

(R.G. AVACHAT)
JUDGE

fmp/-