

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

(81) WRIT PETITION NO.1692 OF 2019

Ganpat Tukaram Patil (Mali),
deceased, through L.Rs.
Mankarnabai Ganpat Patil
(Mali) and ors.

..Petitioners

Versus

The State of Maharashtra
through its Secretary,
Urban Development Department,
Mantralaya, Mumbai and ors.

..Respondents

Mr Girish Nagori, Advocate for petitioners
Mr S.B. Narwade, A.G.P. for respondents no.1, 3 and 5
Mr A.N. Patale, Advocate for respondent no.2 and 4
Mr M.V. Kini & Co.& Mr D.S. Manorkar, Advocate for respondent no.2
Mr D.S. Bagul, Advocate for respondents no.6 to 10

**CORAM : S.V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

DATE : 30.09.2019

ORAL ORDER:

1. The objection filed by the petitioners under Section 3 (H) (4) of the National Highways Act is rejected.

2. We have heard learned Counsel for petitioners and Mr Bagul, for contesting respondents. The facts that appear on record are that the Civil Suit bearing Regular Civil Suit No.519 of 1992 was filed for partition and separate possession and the same was decreed. Again, subsequently, one suit bearing Regular Civil Suit no.117 of 2018 was filed by the same plaintiffs for declaration that they have half share in the suit property. The property acquired is Gut No.397/2.

3. According to the respondents, in the year 1999, there was a partition deed and pursuant to the partition deed, the names were mutated in the revenue record. In subsequent suit bearing Regular Civil Suit No.117 of 2018, the application for temporary injunction restraining the defendants therein from disbursing the amount as per the award passed under the National Highways Act is rejected. The plaintiffs had preferred appear before the District Court.
4. The litigation has its own history. The dispute exists amongst the parties. Civil Suit is also pending.
5. Considering the aforesaid litigations, it would be appropriate to refer the dispute to the Principal Court of original civil jurisdiction.
6. In light of the above, we pass the following order.
7. The impugned order is set aside. The competent authority shall refer the dispute amongst the parties to the concerned Principal Court of original civil jurisdiction. The amount is already withdrawn by the present respondents. The same shall be subject to the decision that would be taken by the Principal Court of original civil jurisdiction in a reference made to it by the competent authority. The parties, if they so desire, may take further steps.
8. Writ Petition stands disposed of. No costs.

(ANIL S. KILOR, J.)

(S.V. GANGAPURWALA, J.)