

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

WRIT PETITION NO. 2237 OF 2018

**SHRI SAKHARAM ADINATH DOKE PATIL
VERSUS
SHRI ASHOK VISHWANATH MOTE AND OTHERS**

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Mr. Mukul S. Kulkarni, Advocate for the Petitioner.

Mr. N. R. Thorat, Advocate h/f Mr. S. G. Kawade, Advocate for
Respondent Nos. 1 and 2.

Mr. S. G. Deshpande, ASG for Respondent No.3.

Mr. M. V. Kini and Mr. D. S. Manorkar, Advocates for Respondent
No.4.

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**CORAM : V. K. JADHAV, J.
DATED : 07th November, 2019**

ORDER :-

1. This Writ Petition is heard finally by consent at admission stage.
2. Being aggrieved and dissatisfied with the order dated 03.11.2017 passed by respondent no. 3-competent authority under the National Highways Act, 1956 (hereinafter referred to as “Act of 1956”), the petitioner has preferred this Writ Petition.

3. Brief facts giving rise to this Writ Petition are as follows:

a. The petitioner is the owner in possession of land Gat No. 33 admeasuring 2 Hectors and 1 Ares to the extent of 1 Hector and Gat No. 33/2 admeasuring 4 Hectors and 3 Ares to the extent of 2 Hectors and 2 Ares. The petitioner had purchased the aforesaid land under registered sale deed dated 10.10.2009 for a valuable consideration from Vishwanath Manikrao Mote and one other. The aforesaid land of the petitioner has been acquired by respondent no.4 for the purpose of construction of the National Highway No. 211 and the amount of compensation has been determined. Respondent nos. 1 and 2 herein have raised an objection for disbursement of the amount to the petitioner and on the basis of the said objection, respondent no.3 - competent authority has referred the matter for adjudication to the civil court under the provisions of Section 3-H (4) of the Act of 1956. The petitioner assails the said order dated 03.11.2017 passed by respondent no.3-competent authority by filing the present Writ Petition.

4. Learned counsel for the petitioner submits that the Notification under Section 3-A of the Act of 1956 was published on

14.01.2013 and the Notification under Section 3-D was issued on 23.08.2013 and the final order came to be passed on 14.08.2014. As per the schedule annexed to the award, name of the petitioner appeared at serial number 29 which demonstrates that 500 sq. meters of the land was acquired and compensation of Rs.3,30,000/- was determined. The petitioner had received the said amount of compensation as determined by respondent no.4. Learned counsel submits that in the meanwhile the Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, "Act of 2013") came into effect. Respondent no.4 therefore passed the award under Section 24(2) of the said Act of 2013 on 27.10.2016 and granted additional compensation to the persons whose lands were acquired. The same was in continuation of the first award as mentioned above. Even in the schedule of this award, name of the petitioner was appearing at serial no. 29 and the compensation for which the petitioner was entitled is shown at Rs.9,27,000/-.

5. After passing of the aforesaid award, respondent no.4 has decided to acquire more land for extension of the existing highway and accordingly, the subsequent Notifications in the year 2016 and

onwards came to be published. In the schedule annexed to the three acquisitions, name of the petitioner is shown at serial number 12 and the amount of compensation is also shown at Rs.6,62,400/-. The petitioner had also received the notice on 12.06.2017 for disbursement of the said amount. The petitioner had received the amount of compensation of the first acquisition. Respondent nos. 1 and 2 herein, who are the sons of the said Vishwanath Manikrao Mote who had sold the property to the petitioner, had approached the civil court by instituting the suit bearing Regular Civil Suit No. 31 of 2016 for partition and separate possession and cancellation of the sale deed executed in favour of the present petitioner. Respondent No.3- competent authority, in terms of the provisions of Section 3-H(4) of the Act of 1956, has made a reference and transferred the said amount to the civil court in the pending Regular Civil Suit.

6. Learned counsel submits that there is no injunction granted by the civil court in favour of respondent no.1 and 2 herein. Furthermore, till date, the title of the petitioner over the property is clear and marketable. It is also a matter of record that respondent nos. 1 and 2 never raised any objection in the proceedings of all the

three acquisitions. However, they approached respondent no.3 herein and raised objection to the effect that the amount of compensation should not be paid to the petitioner. It is also pertinent that in the said objection application dated 21.07.2016, respondent nos. 1 and 2 did not claim that they are entitled for the amount of compensation or that they have share in the amount of compensation. They have only prayed that the amount of compensation should not be paid to the petitioner. The petitioner has appeared before respondent no.3- competent authority on being noticed and submitted his written say in detail to the application of respondent nos. 1 and 2. The petitioner has pointed out to the authority that there is no prohibitory order from the civil court. The petitioner has also demonstrated that he has raised loan, has also taken benefit of crop insurance scheme etc. and respondent nos. 1 and 2 herein had never raised any objection for the same. Respondent nos. 1 and 2 have filed the said objection with some *malafide* intention. However, despite the aforesaid facts, respondent no.3 passed the impugned order and thereby referred the alleged dispute to the civil court by invoking the powers under Section 3-H(4) of the Act of 1956.

7. Learned counsel submits that in the instant case, the civil suit has already been preferred by respondent nos. 1 and 2. It was not mandatory to make a reference to the civil court. Learned counsel submits that the civil court would decide the lis between the parties at the conclusion of the trial of the suit and in terms of the said order, the party in whose favour decree is passed may initiate appropriate proceedings with regard to the compensation determined for the acquired portion of the land which is the subject matter of the suit. It was not necessary for respondent no.3-competent authority to transfer the said amount to the civil court in the pending suit. Learned counsel submits that the petitioner had received the amount at the time of first acquisition and thereafter, the suit came to be instituted. Learned counsel submits that even assuming that the suit is decreed as per the claim made by respondent nos. 1 and 2, however to the extent of the share of the vendors of the petitioner, the petitioner is entitled to retain the compensation.

8. Learned counsel for the petitioner, in order to substantiate his contention, placed reliance on the following three cases:

1. *Ramesh Chand and Others vs. Tanmay Developers Private Limited and Others* with connected Appeals, reported in *(2017) 13 SCC 715*.
2. *Arun S/o Trimbakrao Lokare vs. State of Maharashtra and Others*, reported in *(2017) 6 Mah.L.J. 612*.
3. *Balbhim s/o Vishwanath Tawaskar and Another vs. Competent Authority and Deputy Collector, Land Acquisition, Medium Project No.2, Osmanabad and another*, reported in *(2017) 1 Mah L.J. 279*.

9. Learned counsel for respondent nos. 1 and 2 submits that there are various stages about acquisition of land under the provisions of the Act of 1956 detailed in Sections 3-A to 3-J. So far as the provisions of Section 3-H pertaining to the deposit and payment of amount is concerned, in terms of the provisions of Section 3-H Subsection (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. Learned counsel submits that the power lies with the competent authority to disburse the amount amongst the persons interested in the amount deposited under Subsection (1). Learned counsel

submits that, however, in terms of the provisions of Section 3-H Subsection (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, it is incumbent upon the competent authority to refer the dispute to the decision of the Principal Civil Court of the original jurisdiction within the limits of whose jurisdiction the land is situated. Learned counsel submits that respondent no.3, in terms of the provisions of Section 3-H(4) has rightly passed the order since there is a dispute between the petitioner and respondent nos. 1 and 2 as to whom the compensation as determined by respondent no.4 is payable.

10. Learned counsel for respondent nos. 1 and 2 submits that even in a case of *Arun S/o Trimbakrao Lokare vs. State of Maharashtra and Others* (supra), the Division Bench of this Court (Coram : S. C. Dharmadhikari and Mangesh S. Patil, JJ.) has taken the same view. Learned counsel also placed his reliance on the following two cases:

1. *Sakhubai @ Shakuntala V. Chopde vs. National Thermal Power Corporation and others*, reported in (2012) 4 Mah. L.J. 147.

2. *Vishnupant Narhar Git (Kulkarni) (since Decd) Through Lrs. vs. The Sub-Divisional Officer, Niphad Sub-Division, Niphad and Others*, reported in *2017 SCC Online Bom 586*.

11. Learned counsel for respondent no.4 submits that the project road is an important link within the State of Maharashtra keeping in mind the potential for growth of passengers and frieght movement in Marathwada region. In terms of the provisions of Section 3(a) of the Act of 1956, the competent authority means any person and authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority. In the present case, respondent no.3 was appointed as the competent authority in accordance with the aforesaid provisions. Learned counsel submits that vide application dated 21.07.2016, the present respondent nos. 1 and 2 have approached respondent no.3- competent authority raising objection in respect of the disbursement of compensation under Section 3-H (4) of the Act of 1956. Respondent no. 3 has performed the functions of the competent authority as provided in the Act of 1956. The object behind Section 3-H (4) is that to accord respective parties to adduce evidence in support of their rival claims before

the Principal Court of civil jurisdiction and the civil courts are competent to adjudicate the disputes in speedy manner as the Principal Civil Courts are the courts of fact finding. On the other hand, the office of respondent no.3 less equipped to deal with such disputes. There is no substance in this Writ Petition and the Writ Petition is thus liable to be dismissed.

12. Learned ASG appearing for respondent no.3- competent authority submits that in terms of the provisions of Section 3-H(4), the competent authority cannot deal with the dispute but to refer the same for decision to the Principal Civil Court of original jurisdiction. The Writ Petition is thus liable to be dismissed. There is no substance in it. In order to substantiate his contention, learned ASG has placed his reliance on the following two cases:

1. ***Ashok Ramling More and Others vs. Union of India and Others***, reported in ***2017 (2) ALL MR 792***.
2. ***Rajaram Waman Rane and Others vs. Ramkrishna Mahadev Rane and Others***, reported in ***2019 (3) ABR 93***.

13. Respondent no. 3- competent authority, by invoking the powers under Section 3-H(4) of the Act of 1956, referred the

dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated and transferred the amount to the Civil Court in the pending suit instituted by respondent nos. 1 and 2 in respect of the suit land including the acquired land. On perusal of copy of the plaint, it appears that respondent nos. 1 and 2 have sought relief of decree of partition and separate possession along with cancellation of the sale deed executed by their father in favour of the petitioner herein. According to them, the suit land including the acquired land is their ancestral property and some portion of the ancestral land has been sold by their father without there being any partition by metes and bounds.

14. Section 3-H(4) of the Act of 1956 prescribes that 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. Respondent nos. 1 and 2 have raised objection as to whom the said compensation determined by respondent no. 4 or any any part

thereof is payable. Section 3-H(4) of the Act of 1956 is reproduced herein below:

“3-H. Deposit and payment of amount.-

(1)

(2)

(3)

(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)

(6)”

15. Learned counsel for the petitioner placed his reliance in the case of ***Ramesh Chand and Others vs. Tanmay Developers Private Limited and Others*** (supra) and vehemently submitted that the provisions of Section 13 of the Land Acquisition Act, 1894 are *pari materia* and in para 7 of the Judgment, the Supreme Court has made the following observations:

“7. It was not rightly disputed that several civil suits with respect to refund of the earnest money and for

specific performance of the agreement to sell were filed by Respondent 1 before reference was sought under Section 30 of the Act. Once remedy in the form of civil suits had been resorted to, in our considered opinion, it was not at all proper exercise of power to invoke provisions under Section 30 of the Act with regard to apportionment of the compensation by directing refund of earnest money. It is not mandatory to make a reference to the civil court under Section 30 and adjudication of dispute in an appropriate case can be ordered by way of the civil suit. In the instant case, civil suits had already been preferred by respondent 1. It was not appropriate to decide the same dispute under Section 30,”

16. However, in the light of the specific provisions of Section 3-H(4) of the Act of 1956, it is incumbent upon the competent authority to refer the dispute to the Civil Court. Furthermore, the competent authority has referred the dispute to the court before whom the civil suit is pending for adjudication in respect of the land including the acquired land. Learned counsel for the petitioner, though placed reliance in the case of ***Balbhim s/o Vishwanath Tawaskar and Another vs. Competent Authority and Deputy Collector, Land Acquisition, Medium Project No.2, Osmanabad and another*** (supra), in view of the subsequent decision rendered by the Division Bench of this Court in the case of

Arun S/o Trimbakrao Lokare vs. State of Maharashtra and Others (Supra), the observations made by the Single Judge of this Court in the aforesaid case of ***Balbhim s/o Vishwanath Tawaskar and Another*** loses its significance.

17. In the case of ***Arun S/o Trimbakrao Lokare vs. State of Maharashtra and Others*** (Supra), in para 16 of the Judgment, the Division Bench of this Court has made the following observations:

“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.

18. In the case of ***Ashok Ramling More and Others vs. Union of India and Others*** (supra), relied upon by learned ASG for respondent no.3, the Division Bench of this Court (Coram : R. M. Borde and K. L. Wadane, JJ.), in para 12 of the judgment, has made the following observations:

“12. The application for disbursement of the amount deposited by the competent authority, that would be presented by the respondents or the petitioners, shall be dealt with and appropriate orders shall be passed by the Court dealing with the reference as expeditiously as possible and preferably within a period of three months from the date of tender of the application.”

19. Learned counsel for the petitioner vehemently submitted that even assuming that respondent nos. 1 and 2 would get the decree

to the extent as claimed by them, considering the same, the respondent competent authority should not have transferred the entire amount to the civil court. In terms of the provisions of Section 3-H(4) of the Act of 1956 discussed in detail above and considering the view expressed by the Division Bench of this Court in the case of *Arun S/o Trimbakrao Lokare vs. State of Maharashtra and Others* (Supra), the competent authority is left with no other option but to refer the dispute to the civil court. In my considered view, if the competent authority has been given the discretion of assuming the decree to the extent of the claim put forth by the party before the civil court, it would be not only against the provisions of Section 3-H(4) of the Act of 1956 but it may pave the way for various complications. I am not inclined to consider these submissions made on behalf of the petitioner. Hence, I proceed to pass the following order:

ORDER

The Writ Petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)