

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

WRIT PETITION NO.5941 OF 2018

1. Pramod s/o. Vasantrao Sonar
(Pingale), Age : 57 years,
Occ. Agri. and Business,
r/o. Vedvyas Nagar,
Malegaon Road,
Dhule
 2. Rajendra s/o. Vamanrao Sonar
(Pingale), Age : 48 years,
Occ. Agri. and Business,
r/o. Nagai Colony,
Deopur, Dhule
- ..Petitioners

Vs.

1. State of Maharashtra,
Through Secretary,
Public Works Department,
Mantralaya, Mumbai – 32
2. Competent Authority and Deputy
Collector, Land Acquisition (Ordinary),
National Highway No.6, Dhule,
Tq. and Dist. Dhule,
3. Satish s/o. Digambar Mahale,
Age : 44 years,
Occ. Business and Agri.,
r/o. Mahale Nagar,
Malegaon Road, Behind Society,
Petrol Pump, Dhule
4. Pravin s/o. Mahavir Agrawal,
Age : 43 years,

Occ. Business and Agri.,
r/o. Bhaijee Nagar,
Malegaon Road, Dhule

5. Devendra s/o. Sahebrao Patil,
Age : 41 years,
Occ. Busidness and Agri.,
r/o. Shahunagar,
Deopur, Dhule

..Respondents

Mrs. C.S.Deshmukh, Advocate for petitioners
Mr. A.S.Shinde, AGP for respondent nos.1 and 2
Mr. D.S.Bagul, Advocate for respondent no.5

CORAM : R.G. AVACHAT, J.

DATE : OCTOBER 15, 2019

JUDGMENT :-

Rule. Rule made returnable forthwith. With the consent of learned Counsel for the parties, the petition is heard finally.

2. This petition has been filed for following two main reliefs :-

“(B) The order/letter dated 28.08.2017 issued by competent authority/Deputy Collector, Land Acquisition (Ordinary), National Highway No.6, Dhule (respondent no.2) bearing No.Bhusam/Samanya/Kavi/836/2017 be quashed and set aside.

(C) Respondent no.1 and 2 be directed to pay petitioners the compensation amount of Rs.1,24,74,000/- (Rupees One Crore twenty four lakhs seventy four thousand only) declared under Final Award dated 26.09.2014 in respect of Land Acquisition Proposal No.12/2011 for National Highway No.6 along with interest."

3. The land comprised in Survey No.510/A/1, ad-measuring 3 H. 52 R, situated within the limits of Dhule Municipal Corporation, is owned by the petitioners. The father of the petitioners is said to have executed a *Sauda Pavti*/agreement for sale in respect of 1 H 62 R land in the said survey number to respondent nos.3 to 5. Those respondents filed a suit for specific performance of agreement of sale dated 19.04.2014, allegedly executed by the father of the petitioners. Admittedly, the land ad-measuring 1 H 84 R forming part of the very survey number, has been acquired for widening of a national highway. A final award in respect of acquisition of the said land has been passed. A sum of Rs.1,24,74,000/- is payable as compensation.

4. Respondent no.2 – Land Acquisition Officer has, instead of paying amount of compensation to the petitioners, referred the dispute to the Court of Civil Judge, Senior Division, Dhule, in view of Section 3-H(4) of the National Highways Act, 1956 ("the Act", for short), since respondent nos.3 to 5 have raised objection to pay the amount of compensation to the petitioners herein.

5. Mr.Bagul, learned counsel appearing for respondent nos.3 to 5, submits that respondent no.2 has exercised his authority under Section 3-H(4) of the Act. The order impugned in this petition has already been complied with. The amount of compensation has been deposited in the Court of Civil Judge, Senior Division, Dhule. Learned Counsel would submit that the petitioners cannot be allowed to approbate or reprobate. Before the Civil Court, the petitioners denied execution of *Sauda Pavti*/agreement for sale. When a civil suit is pending before the competent Court, the amount of compensation would

become payable in terms of a decree that may be passed in the said suit. In support of his contentions, learned Counsel relied on the judgment in the case of **Ganpat Tukaram Patil (Mali), deceased, through L.Rs. Mankarnabai Ganpat Patil (Mali) and ors., Vs. State of Maharashtra (Writ Petition No.1692 of 2019).**

6. Learned Counsel for the petitioners would, on the other hand, submit that the subject-matter of the suit is not the land which has been acquired for widening of national highway. Respondent nos.3 to 5 have, therefore, no right to receive any farthing of the amount of compensation awarded by respondent no.2.

7. Section 3-H of the Act speaks of deposit and payment of amount.

3-H. Deposit and payment of amount.—

(1) ..

(2) ..

(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.

8. Section 3-H(4) speaks of a dispute relating to apportionment of amount of compensation. A copy of the *Sauda Pavti*/agreement for sale has been placed on record. Perusal thereof, indicates that the subject-matter of agreement is land ad-measuring 1 H 62 R comprised in Survey No.510/1/1. The description of the land given in the *Sauda Pavti*/agreement for sale indicates that the land that has been acquired for widening of national highway has specifically been excluded. The suit instituted by respondent nos.3 to 5 necessarily relates to the land comprised in *Sauda Pavti*/agreement for sale. As such, the land which has been acquired for national highway, is not

the subject-matter of the suit. These respondents, therefore, cannot raise any objection for payment of amount of compensation to the petitioners herein. The submissions advanced by learned Counsel for these respondents indicate that by raising objection before the competent authority/respondent no.2, they want to see the petitioners to come around and perform their part of *Sauda Pavti*/agreement for sale.

9. The Civil Court is seized of the said matter. On reading *Sauda Pavti*/agreement for sale, one comes across a term acknowledging that the land ad-measuring 1 H 84 R has been acquired for widening of a national highway. The amount of compensation payable towards acquisition of the said land, shall be received by the executant (father of the petitioners) of *Sauda Pavti*/agreement for sale. For better appreciation. Clause in the *Sauda Pavti*/agreement for sale, is reproduced below:-

" सदर शेतजमिनीचे वर दिल्याप्रमाणे एकूण क्षेत्र १ हेक्टर ८४ आर इतके राष्ट्रीय महामार्गाचे रुंदीकरणासाठी

भूसंपादित झाले असून सदर क्षेत्राचा मिळालेला व भविष्यात मिळणारा मोबदला हा लिहून देणार हे घेतील त्यास लिहून घेणार यांची कुठल्याही प्रकारची हरकत राहणार नाही. परंतु सौदापावती केलेले क्षेत्रापैकी भविष्यात जर काही क्षेत्र भूसंपादनात गेल्यास त्याचा मिळणारा शासकीय मोबदला हा लिहून घेणार हेच घेतील. त्यावेळेस लिहून देणार हे कुठल्याही प्रकारची हरकत वा तक्रार करणार नाही.”

10. The aforesaid clause in the *Sauda Pavti*/agreement for sale suggests respondent nos.3 to 5 to have no claim over the land acquired and the amount of compensation payable therefor. The objection raised by these respondents for payment of compensation to the petitioners can, in no way, be termed to be a dispute relating to apportionment of amount of compensation. Respondent no.2, therefore, ought not to have entertained the dispute and referred the matter to the Court of learned Civil Judge, Senior Division, Dhule. Here also, respondent no.2 appears to have made a mistake. In terms of Section 3-H(4), the dispute is to be referred to the decision of the Principal Civil Court of original jurisdiction. As per Section 7 of the Maharashtra

Civil Court's Act, it is the District Court, which is Principal Civil Court of original jurisdiction. Be that as it may.

11. I have perused the judgment in the case of **Ganpat Tukaram Patil (Mali)**, to find that it was a dispute relating to the partition of the land. Meaning thereby, the parties, while raising an objection for apportionment of the compensation, had claimed right, title and interest in the land that was acquired under the Act. So is not the case here.

12. It is reiterated that the land which has been acquired and for which the amount of compensation is payable, is not the subject-matter of the civil suit (33 of 2015) instituted by respondent nos.3 to 5. In the given circumstances, the Writ Petition deserves to be allowed.

13. In the result, the Writ Petition is allowed in terms of prayer clauses (B) and (C). Rule made absolute accordingly.

14. At the request of learned Counsel for respondent nos.3 to 5, operation of this order is stayed for a period of four weeks.

[R.G. AVACHAT, J.]

kbp