

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

92 WRIT PETITION NO.7638 OF 2019

DASTGIR LALABHAI SHAIKH AND ANOTHER Petitioners

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS .. Respondents

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Advocate for Petitioners : Shri Suhas P. Urgunde

Advocate for Respondent No.2 : Ms S. S. Kulthe

Advocate for Respondent No.4 : Shri V.D. Salunke

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**CORAM: S. V. GANGAPURWALA &
AVINASH G. GHAROTE, JJ.**

DATE : NOVEMBER 13, 2019

PER COURT : -

1. Mr. Urgunde, the learned counsel submits that, the objection u/s 3H (4) of the National Highways Act filed by the petitioners is rejected. The ld. counsel submits that, the petitioners are not party to the sale-deed executed and relied by the respondent no. 4. According to the learned counsel, the petitioners' suit for partition and separate possession is pending before the court. In the 7/12 extract the name of the present petitioners also appear in the ownership column of property bearing Gut No. 75. The ld. Counsel further submits that, when the substantive suit for partition and separate possession is pending, the dispute is required to be referred to the Civil Court as per Section 3H (4) of the National Highways Act.

Gajanan

2. Mr. Salunke, the learned counsel for respondent No. 4 submits that, the petitioner suppressed the various civil suits filed. The suit filed by the present respondent No. 4 bearing RCS No. 362/2012 against the present petitioners and other defendants therein is decreed. The court has held the present respondent no. 4 to be the owner and possessor of Gut No.75. The learned counsel further submits that, even suit for re-conveyance of the sale deed was filed by the brother of the petitioner. The said suit is also dismissed. The petitioners have also sought injunction against the respondent No. 4 from withdrawing the compensation amount. That application is also rejected. It is further submitted that the petitioners have suppressed all these relevant facts. The petitioners had also filed writ petition earlier before this Court seeking directions to decide his objection u/s 3H (4) of the National Highways Act. This Court under its order dt. 22.02.2019 observed about the civil proceedings pending and on the basis of the same, the order has been passed by the competent authority. The petitioners have suppressed all these facts.

3. We have considered the submissions.

4. It appears that the present respondent No. 4 had filed RCS No. 362/2012, for injunction. The court in the said suit held the present respondent No. 4 to be the owner and possessor of the suit property. The present petitioners were also defending the said suit. That decree is also binding upon them. The petitioners had also filed suit bearing RCS No. 481/2017 in which injunction was sought from withdrawing the amount. The said application is rejected, the appeal is dismissed. The suit filed by the brother of the petitioners for re-conveyance of the sale deed is also dismissed. The sale deed is executed in favour of the present respondent no.4 in the year 1996. All these aspects are considered by the authority while passing the order.

5. No doubt, if there is a dispute of title, the same is normally required to be referred to the Principal Civil Court of original jurisdiction u/s. 3H (4) of the National Highways Act. However, considering the decree passed by the Civil Court and the registered instrument, we do not feel that any error has been committed by the competent authority while passing the impugned order.

6. The petitioners have already filed a suit for partition and

separate possession. They can prosecute the same and further consequences would depend upon the decree passed by the civil court.

7. Writ Petition is accordingly disposed of. No costs.

[AVINASH G. GHAROTE]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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