

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

905 WRIT PETITION NO.9399 OF 2017

VITTHAL RAMKISAN WAGH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. V.D.Sapkal, Advocate for the petitioner
Mr. S.S.Dande, AGP for the respondent/State
Mr. Sanjeev B. Deshpande, Advocate for respondent No. 3
Mr. S.S.Thombre, Advocate for respondent No. 4

WITH
WRIT PETITION NO. 9791 OF 2017

KUSUMBAI DASHRAT WAGH
VS
THE STATE OF MAHARASHTRA AND ORS

Mr. Srimant Mundhe, Advocate for the petitioner
Mr. S.S.Dande, AGP for the respondent/State
Mr. S.B.Deshpande, Advocate for respondent No. 2
Mr. M.K.Deshpande, Advocate for respondent No. 3
Mr. S.S.Thombre, Advocate for respondent No. 4

WITH
WRIT PETITION NO. 9783 OF 2017

ASHOK VITTAL UKIRDE
VS
THE STATE OF MAHARASHTRA AND ORS

Mr. Srimant Mundhe, Advocate for the petitioner
Mr. S.S.Dande, AGP for the respondent/State
Mr. S.B.Deshpande, Advocate for respondent No. 2
Mr. M.K.Deshpande, Advocate for respondent No. 3

Mr. S.S.Thombre, Advocate for respondent No. 4

**CORAM : SUNIL P. DESHMUKH &
S.M. GAVHANE, JJ.**

DATE : 11-10-2019

P. C. :-

1. By these writ petitions filed under Articles 226 and 227 of the Constitution of India the petitioners question propriety and validity of order dated 02-06-2017 whereunder respondent No. 3 has remitted amount of land acquisition compensation in respect of land bearing Gut No. 189, situated at Adul (Bu), Tq. Paithan, dist. Aurangabad of an area admeasuring about 1-hectare, 42-Are to the court of civil judge, senior division, where regular civil suits No. 186 of 2016, 293 of 2013 as well as 519 of 2013 are pending.

2. Mr. Sapkal, learned counsel for petitioner submits that land in Gut No. 189 has been acquired and award amount has been deposited. While it came to releasing payment, upon a so called objection by respondent No. 4 the order has been passed. It is being contended that the petitioners have nothing to do with pending civil suits and yet their interest has got hampered and obfuscated by the order. Various aspects contended to be involved in the matter are sought to be raised and tried to be addressed to on behalf of the petitioners. It is submitted that upon frivolous objection such an order, in excess of powers of the authority, has been passed which is untenable and is liable to be set aside. Mr. Mundhe, learned counsel for the petitioner endorse the

submissions.

3. Learned counsel for petitioners has refer to a Supreme Court decision in the case of *V. Chandrasekaran and Anr Vs The Administrative Officer and Ors* reported in *MANU/SC/0751/2012* in order to emphasise that respondent No. 4 being a purchaser subsequent to section 11 notification, he would not have *locus standi* to object to the payment of compensation under award.

4. On the other hand, learned counsel appearing for the competent authority Mr. Sanjeev Deshpande submits that since an objection has been lodged in respect of acquisition of land from Gut No. 189, having regard to various decisions, respondent No. 3 had to refer the matter to the civil court pursuant to section 3-H (4) of the National Highways Act, 1956.

5. Learned counsel Mr. Sanjeev Deshpande refers to and relies on a decision in the case of *Arun Vs The State of Maharashtra* reported in *MANU/MH/1308/2017* wherein the claim of the petitioners therein had been rejected by the authority despite dispute having arisen in given facts and circumstances. Learned counsel has also referred to a decision in the case of *Rizwana Begum and Ors Vs The Union of India and Ors* reported in *MANU/MH/3043/2017*. Perusal of said orders shows that having regard to nature of dispute raised by the petitioners thereunder, the matter had been viewed and order came to be passed.

6. Learned counsel Mr. Thombre appearing for respondent No. 4 vehemently submits that while in fact the land possessed and owned by predecessors of concerned respondents has been affected under acquisition, the claim by petitioners would not be proper and may be fraudulent one.

7. Mr. S.S. Thombre presses into service yet another decision in the case of *Rajaram Waman Rane and Ors Vs Ramkrishna Mahadev Rane and Ors* reported in *MANU/MH/3336/2018* which case appears to be on different factual scenario.

8. Mr. Deshpande and Mr. Thombre submit that it is the civil court which may be able to deal with such a situation.

9. Provisions under Section 3-H of the National Highways Act, 1956 read, thus:

“3-H] Deposit and payment of amount (1) The amount determined under Section 3-G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(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.

(5) Where the amount determined under section 3-G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent per annum on such excess amount from the date of taking possession under section 3-D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.”

10. While arguments are advanced as aforesaid and authorities are relied on, on either side referred to above, perusal of order would show that remittance of amount has been to the court where the suits are pending. Section 3-H speaks of reference of a

dispute of apportionment to principal civil court of original jurisdiction. The authority has fallen oblivious of said stipulation under the provision. Apart from aforesaid, it appears that there is no proper application of mind by the authority, as to whether the petitioner's land is concerned with the suits pending before civil court or can be concerned with the objection as sought to be raised by respondent No. 4. Relevant aspects may have to be considered by the authority by proper application of mind and to decide as to whether the objection by respondent No. 4 would give rise to dispute against petitioners.

11. In view of above, we deem it appropriate that concerned authority should apply its mind, if necessary may seek explanation from the parties and pass an appropriate order. All points are kept open for the parties. Authorities shall not be prejudiced and / or influenced by this order.

12. Under the circumstances impugned order dated 02-06-2017 passed by respondent No. 3 is set aside. The matter is remitted for re-consideration by the authority. The amount remitted to the civil court under the impugned order may be turned by the civil court to the authority concerned. It is expected that authority would decide the matter as expeditiously as possible, preferably within a period of ten weeks. The petitions stand disposed of.

[S.M. GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]