

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

WRIT PETITION NO. 9794 OF 2018

Pratima Bipin Parekh and another .. Petitioners

Versus

The Union of India and others .. Respondents

Shri Sachin S. Randive, Advocate for Petitioners.

Shri Bhushan B. Kulkarni, Advocate for Respondent Nos. 1 & 3.

Shri S. B. Pulkundwar, A.G.P. for the Respondent No. 2.

Shri Anand Chawre, Advocate for the Respondent No. 4.

**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

DATE : 30TH JULY, 2019.

FINAL ORDER :

. The objection filed by the petitioners U/Sec. 3H(4) of the National Highways Act is rejected.

2. The learned counsel for the petitioners submits that, the petitioners have right, title and interest in respect of property acquired. The petitioners filed objection U/Sec. 3H(4) of the National Highways Act. Same has been rejected. The authority ought to have referred the matter to the principal court of original civil jurisdiction.

3. Mr. Chawre, the learned counsel for the respondent No. 4

submits that, the respondent No. 4 is owner of the property. The said property is in the name of the respondent No. 4. The petitioners have no right, title or interest. The petitioners could claim only through the respondent No. 4, as the respondent No. 4 is owner of the property. The petitioners did not have any right. The petitioners did not raise any objection to the initial notification and it is only after award is passed, objection has been raised. The 7/12 extract also consistently shows the respondent No. 4 as owner of the property.

4. Mr. Kulkarni, the learned counsel supports the order.

5. Affidavit has been filed by the respondent No. 4 through its constituted attorney the respondent No. 7. The respondent No. 4 has filed affidavit that, the petitioners, though raised objection earlier proper procedure ought to have been followed for redresal of grievance. In the impugned order passed by the competent authority the statement of the respondent No. 4 appears to be that property acquired is ancestral property of the respondent No. 4. If that is the case, then certainly petitioners can claim a right.

6. In such a dispute involving title and more particularly when the case of the respondent No. 4 was that, said property was ancestral property received by him, then claim of the petitioners vis-a-vis ancestral property was required to be

considered and same could have been considered by the Civil Court.

7. It is submitted that, respondent No. 4 has already withdrawn amount of compensation also.

8. In the light of the above, we pass following order.

9. The impugned order is quashed and set aside. The Competent Authority shall refer the dispute to the concerned principal court of original civil jurisdiction. The same shall be referred within a period of four (04) weeks from today. Upon the matter being referred to the principal court of original civil jurisdiction, the principal court shall decide the said proceedings expeditiously. The amount withdrawn is subject to the decision of the proceedings before the principal court of original civil jurisdiction. The petitioners may file application before the principal court of original civil jurisdiction for necessary security or such other orders.

10. In the light of the above, the writ petition is disposed of. No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]