

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

1005 WRIT PETITION NO.9733 OF 2019
WITH
1005.1 WRIT PETITION NO.9725 OF 2019
WITH
1005.2 WRIT PETITION NO.9736 OF 2019
WITH
1005.3 WRIT PETITION NO.9749 OF 2019
WITH
1005.4 WRIT PETITION NO.10154 OF 2019
WITH
1005.5 WRIT PETITION NO.10155 OF 2019
WITH
1005.6 WRIT PETITION NO.10157 OF 2019

SARSWATIBAI DIGAMBER JOGDAND

..PETITIONER

VERSUS

THE UNION OF INDIA AND OTHERS

..RESPONDENTS

...

Mr. Vikram S. Kadam, Advocate for the Petitioner.
Mr. S. B. Narwade, AGP for Respondents-State.
Mr. P. V. Mandlik, Senior Advocate alongwith Mr. Pratap P. Mandlik, Advocate for Respondent No.4.
Mr. S. S. Deve, Advocate for Respondent Nos.1 and 2 in WP/9725/2019 and WP/9749/2019.
Mr. Gajanan S. Shembole, Advocate for Respondent No.5 in WP/9725/2019.
Mr. Anilkumar B. Dhongade, Advocate for Respondent Nos.1 and 2 in WP/9736/2019 and in WP/10154/2019.
Mr. Rakesh Nemichandji Jain, Advocate for Respondent No.4 in WP/9749/2019.
Mr. Shailendra S. Gangakhedkar, Advocate Respondent No.5 in WP/10154/2019 and WP/10157/2019.
Mr. Amol N. Patale, Advocate for Respondent No.4 in WP/10154/2019, WP/10155/2019 and WP/10157/2019.
Mr. Sudha S. Kulthe, Advocate for Respondent Nos.1 and 2 in WP/10155/2019.
Mr. Ashish B. Shinde, Advocate for Respondent No.5 in WP/10155/2019.
Mr. S. S. Deve, Advocate for Respondent No.2 in WP/10157/2019.

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**CORAM : S. V. GANGAPURWALA &
AVINASH G. GHAROTE, JJ.**
DATED : 22nd NOVEMBER, 2019.

PER COURT:-

1. The objection filed by the petitioner under Section 3H (4) of the National Highways Act is rejected.

2. We have heard Mr. Kadam, learned counsel for the petitioner and Mr. Mandlik, learned senior counsel, Mr. Gangakhedkar, learned counsel, Mr. Patale, learned counsel, Mr. Shinde, learned counsel for respondents.

3. In fact, the shares of the parties are decided by the Civil Court by the decree of the Civil Court in RCS No.789/1994 (Old) 586/2012(New) and modified by the Appellate Court in Regular Civil Appeal No.208/2012, 223/2012 and 209/2012.

4. It is submitted that Second Appeal bearing Nos.16/2018, 17/2018 and 18/2018 are pending before this Court.

5. Parties would be governed by the decree of the Civil Court. The purpose of referring the dispute to the Principal Court of Original Civil Jurisdiction under Section 3H (4) of the National Highways Act is to get the dispute decided by the Civil Court.

6. In the present case, dispute is already decided by the Civil Court in the shape of decree and modified by first Appellate Court. The Second

Appeals are preferred by some of the parties and the same are pending.

7. It is submitted that final decree proceedings are also pending. When the rights and liabilities have been decided by the Civil Court, the parties are bound by the dictum of the Civil Court.

8. It is submitted that some of the parties have withdrawn the amount and some amount is yet to be withdrawn.

9. In normal circumstance, we would have asked the parties to file application before the Court in the final decree proceedings with regard to the disbursement of the amount. However, some of the parties have already withdrawn the amount. Only recourse available now would be to proceed under Section 3H (4) of the National Highways Act that is refer to the Principal Court of Original Civil Jurisdiction.

10. In the light of above, we pass the following order:

ORDER

- i. The impugned order is set aside.
- ii. The competent authority shall refer the matter to the concerned Principal Court of Original Civil Jurisdiction. Naturally, the Principal Court of Original Civil

Jurisdiction shall consider the decree passed by the Civil Court, as modified by the Appellate Court and further orders if any passed in the Second Appeal. The amount that has already been withdrawn by the parties would be subject to the decision of the Principal Court of Original Civil Jurisdiction. The remaining amount that has not been withdrawn and lying with the competent authority shall be transmitted to the Principal Court of Original Civil Jurisdiction who shall disburse the said amount in tune with the decision that would be taken by him.

iii. The withdrawal of the amount by the respective parties would be subject to the decision of the Principal Court of Original Civil Jurisdiction and further orders may be passed by the Principal Court of Original Civil Jurisdiction regarding the amount already withdrawn in tune with the decision that would be taken by him.

11. With the aforesaid observations and directions, writ petitions are disposed of. No costs.

(AVINASH G. GHAROTE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE