

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

WRIT PETITION NO. 10896 OF 2018

Sanjivani @ Gangabai Udhav Renge .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri V. D. Salunke, Advocate for the Petitioner.

Shri S. B. Pulkundwar, A.G.P. for Respondent Nos. 1 and 2.

Shri S. V. Adwant, Advocate for Respondent Nos. 3 and 4.

Shri P. F. Patni, Advocate for the Respondent No. 5.

Shri P. P. Uttarwar, Advocate for Respondent Nos. 6 and 7.

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVAL, JJ.**

DATE : 22ND APRIL, 2019.

FINAL ORDER :

. Mr. Salunke, the learned advocate for the petitioner submits that, the respondent No. 2 should have referred the objection for the decision of the Civil Court as per Section 3(H)(4) of the National Highways Act. The writ land is subject matter of partition suit bearing R. C. S. No. 33 of 2011. In the said suit petitioner is defendant No. 6 and present respondent Nos. 5 to 7 are the proposed defendants in that suit and, therefore, the objection dated 15.09.2018 is required to be referred to the Civil Court. The authority ought to have considered said aspect.

2. We have also heard the learned counsel for respective respondents.

3. In fact, one of the party had also raised similar objection and against the decision of the Sub Divisional Officer had filed Writ Petition No. 3903 of 2018. We have disposed of said writ petition under order dated 20.07.2018. It is not disputed by any of the parties that the respondent authorities have purchased the property by private negotiations. The acquisition was not statutory acquisition under the provisions of the National Highways Act, but it was by way of sale and purchase of the property. In that regard, we have observed that, the Sub Divisional Officer would not have right to entertain the objection under Section 3(H)(4) of the National Highways Act.

4. We have held that, the Sub Divisional Officer has no jurisdiction to pass any order and that order impugned therein is without any efficacy.

5. The petitioner may agitate his rights in the pending suit for partition and separate possession by taking further steps as are permissible. The writ petition is disposed of. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]