

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1004 WRIT PETITION NO.12612 OF 2018

LOCHANABAI NIVRUTTI SURWASE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. N.B. Khandare
AGP for Respondent Nos. 1 and 2: Mr. S.K. Tambe
Advocate for Respondent No.3: Mr. Arun V. Rakh
Advocate for Respondent No.4: Mr. Mahesh S. Bhosale
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CORAM : V. K. JADHAV, J.
DATED : 29th NOVEMBER, 2019

PER COURT:-

1. The petitioners are original plaintiffs in RCS No.84 of 2007. They have instituted the suit for partition and separate possession of ancestral lands Gut No.59 (Old survey No.49) admeasuring 10 H 47 R and land Gut No.70 (old survey No.63) admeasuring 1 H 12 R. During pendency of the suit, the land Gut Nos.59 and 70 came to be acquired and the competent authority declared the award on 30.05.2014. Furthermore, the entire compensation amount of Rs.1,78,21,620/- has been paid to respondent no.4 – Vandana. At the time of filing the writ petition, the proceedings for enhancement in compensation were pending before the Arbitrator and it was at final stage. Respondent No.4 herein has claimed the enhanced compensation. During pendency of this writ petition, as per the amendment carried out in writ petition, the Arbitrator / Collector, Osmanabad has decided the application filed by respondent no.4

herein for enhancement of compensation vide order dated 09.05.2019. The application came to be partly allowed and the compensation has been enhanced to some extent.

2. The petitioners have pleaded in R.C.S. No.84 of 2007 asserting their right in land Gut No.59 and Gut No.70 respectively, acquired for the National Highway. It is thus prayed in the present writ petition that the amount which is directed by the Arbitrator in clause 6 of the order to be deposited with the competent authority and competent authority is required to send the said amount to the Civil Court in the pending R.C.S. No.84 of 2007. The petitioners have prayed that directions be issued to that effect.

3. Learned counsel for the petitioners submits that so far as the provisions of section 3-H of the National Highways Act, 1956 (hereinafter referred to as "Act of 1956") pertaining to the deposit and payment of amount are concerned, in terms of the provisions of Section 3-H Sub-section (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. Thus the power lies with the competent authority to disburse the amount amongst the persons interested in the amount deposited under Sub-section (1), however, in terms of provisions of Section 3-H Sub-section (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, it is incumbent upon the competent authority to refer the dispute to the decision of the Principal Civil Court of the original jurisdiction within the limits of whose jurisdiction the land is situated.

4. In the backdrop of this submission, learned counsel appearing for respondent no.4, on instructions in writing received from respondent No.4, submits that considering the relief claimed in the pending suit by the petitioners, respondent No.4 may be permitted to withdraw half of the compensation amount to the extent of her share and the remaining amount to the extent of share of the petitioners may be transferred to the Civil Court.

5. Learned counsel for the petitioners however raised objection for the same for the reason that respondent no.4 has already withdrawn the entire compensation amount to the tune of Rs.1,78,21,620/- and as such, no such arrangement can be made as requested by respondent no.4.

6. In the case of **Arun S/o Trimbakrao Lokare Vs. State of Maharashtra and Others**, reported in **(2017) 6 Mah.L.J. 612**, in para 16 of the Judgment, the Division Bench of this Court (Coram: S.C. Dharmadhikari and Mangesh S. Patil, JJ.) has made the following observations:

“16] It is a settled principle of interpretation of statute that the provisions of any statute are to be so interpreted as to give effect

to each of them to the extent possible without giving rise to any conflict or overlapping. This principle of harmonious construction needs to be applied in the matter before hand vis a vis sub-section (3) of section 3-H, while interpreting sub-section (3). Such application would lead us to interpret these provisions in harmonious manner putting neither of them otiose. A careful reading of these provisions would reveal that when several persons are entitled to claim compensation, the competent authority has power and jurisdiction to record an opinion and determine the persons who are entitled to receive share/s and only enables him to apportion the amount of compensation amongst them according to the share they are entitled to. As against this, sub-section (4) contemplates a situation where the dispute is raised as to the entitlement of the compensation by several persons and the jurisdiction to decide such dispute is conferred upon the Principal Civil Court of original jurisdiction. In other words, whenever there is dispute raised by any person as to the right to receive either the whole or portion of the compensation, the competent authority is obliged to refer the matter to the Principal Civil Court of original jurisdiction.”

7. In view of the ratio laid down in the aforesaid case by the Division Bench of this Court, in my considered opinion, it is for the Civil Court, before whom the said suit is pending, to pass an order as to whom the compensation is payable and as to what extent as per conclusion drawn in the suit. The said suit is pending since 2007. During pendency of this writ petition, the compensation amount has been enhanced. If the amount of compensation has been enhanced, in terms of ratio laid down in the aforesaid case, the competent authority is bound to send the amount to the Civil Court i.e. Civil Judge, Senior Division, Omerga and deposit the same in pending

R.C.S. No.84 of 2007. Hence, I proceed to pass the following order:

ORDER

- I) The writ petition is hereby partly allowed in terms of prayer clause (d-1).
- II) Since Regular Civil Suit No. 84 of 2007 is pending since 2007, learned Judge of the trial Court is hereby directed to dispose of the said suit as expeditiously as possible, preferably within a period of eight months from the date of this order.
- III) The writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

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