

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13822 OF 2018

SHAIKH MUJIB AHMAD SHAIKH ABDUL RAHIM,
THROUGH POWER ATTORNEY HOLDER
SHMMIKHAN SATTARKHAN PATHAN
VERSUS
UNION OF INDIA AND OTHERS

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Advocate for Petitioner :

Mr. A. S. Bajaj

Advocate for Respondents No. 1 & 3 :

Mrs. S. S. Kulthe

A.G.P. for Respondent No. 2 : Mr. P. S. Patil

Advocate for Respondent No. 4 :

Mr. R. O. Awasarmol

Respondent No. 5 - served

Advocate for Respondents No. 6 & 7 :

Mr. S. D. Kulkarni

Advocate for Respondent No. 8 : Mr. D. M. Shinde

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CORAM: S. V. GANGAPURWALA &
MANGESH S. PATIL, J.

DATE: 05th AUGUST, 2019

PER COURT:

1. The petitioner seeks directions to refer the dispute to the Civil Court in respect of entitlement of compensation of the part land acquired from Survey No. 28 now Gut Nos. 162, 252, 253 and 254 of village Kalgaon, Taluka and District - Hingoli.

2. Mr. Bajaj, learned counsel for the petitioner submits that the predecessor of the petitioner is declared owner U/Sec. 38(e) of the Hyderabad Tenancy and Agricultural Lands Act, 1950. The learned counsel submits that the original land owner had challenged the declaration in favour of the predecessor of the petitioner declaring him to be owner. The proceeding under Explanation to Section 38(e)(1) of the Hyderabad Tenancy and Agricultural Lands Act, 1950 for possession by the original land owner is dismissed. The learned counsel submits that the petitioner has raised objection to the notification issued under Section 3D of the National Highways Act, 1956. The objection was not decided. In the award it is stated that the objection of the petitioner is referred to the Deputy Superintendent, Land Records for re-enquiry and as per report of the re-enquiry further decision would be taken. The award has been passed. The learned counsel submits that the Sale Deed in favour of all the

respondents has been cancelled. The writ petition is filed and is pending before this Court as against the cancellation of the Sale Deed. The respondents are not entitled for the compensation amount.

3. Mr. Kulkarni, learned counsel for respondents no. 6 and 7 submits that the petitioner did not array the present respondents as party. Behind the back of the respondents the petitioner got the order. In fact, the certificate declaring the petitioner as owner is vague. The panchanama is also false and fabricated. According to the learned counsel, the petitioner does not have any right in the property.

4. Mr. Awasarmol, learned counsel for respondent no. 4, Mr. Shinde, learned counsel for respondent no. 8 also adopt the arguments of Mr. Kulkarni, learned counsel for respondents no. 6 and 7.

5. The dispute as evolves in the present matter certainly cannot be decided by the Deputy Superintendent of Land Records. If the matter was

referred to the Deputy Superintendent of Land Records for deciding the objection raised by the petitioner, then in fact the award ought not to have been passed till the objection is decided. However, the award has also been passed. Whether the declaration in favour of the petitioner has been made or not, whether the documents produced by the petitioner are genuine or not cannot be considered in the present writ petition.

6. Even otherwise, if any dispute arises regarding the apportionment of the amount, then either the competent authority has to decide the said dispute as required U/Sec. 3H(4) of the National Highways Act, 1956 or to refer the dispute to the concerned Principal Court of original civil jurisdiction.

7. The dispute in the present matter is with regard to the title over the property. In such circumstances, it is appropriate for the competent authority to refer the dispute to the concerned Principal Court of original civil jurisdiction.

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

9. The competent authority shall refer the objection raised by the petitioner and the dispute amongst the parties to the concerned Principal Court of original civil jurisdiction. The reference shall be made within four (04) weeks from today. The amount payable to the parties shall also be sent to the concerned Principal Court of original civil jurisdiction. The said amount shall be kept in Fixed Deposit and the amount would be disbursed in tune with the order that would be passed by the concerned Principal Court of original civil jurisdiction. The concerned Principal Court of original civil jurisdiction shall endeavour to decide the proceeding expeditiously.

10. Writ Petition is accordingly disposed of. No costs.

[MANGESH S. PATIL, J.]
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[S. V. GANGAPURWALA, J.]