

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.151 of 2018

**(Welcome Cooperative Society Nagpur through President .vs. The
Competent Authority and Deputy Collector, Land Acquisition, Nagpur and
others.)**

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders or directions Court's or Judge's orders.
 and Registrar's orders

Mr. C.S. Kaptan, Senior Advocate with Mr. S. Zia Qazi, Advocate for
 Petitioner.

Mr. K.L. Dharmadhikari, AGP for Respondent No.1.

Mr. A.A. Kathane, Advocate for Respondent No.2.

Mr. N.A. Jachak, Advocate for Respondent Nos. 3 and 4.

Mr. P.S. Sadavarte, Advocate for Respondent No.5.

Mr. S.V. Purohit, Advocate for Respondent No.6.

Mr. N.A. Padhye, Advocate for Respondent No.7

CORAM : Manish Pitale, J.

DATED : March 05, 2019.

By this writ petition, the petitioner society has challenged order dated 15.12.2017 passed by the respondent no.1 -the Competent Authority and Deputy Collector-Land Acquisition (General), whereby the said authority has referred a dispute regarding grant of compensation and apportionment thereof between the competing claimants to the Civil Court by exercising power under Section 3-H(4) of the National Highways Act, 1956 (hereinafter referred to as "the Act").

2. It was contended on behalf of the petitioner society that the land that was subject matter of acquisition under the provisions of the said Act was located in Survey nos. 14,16/2 and 16/7 of Mouza Nara, tahsil and district Nagpur. According to the petitioner-

society, it was the owner of the said pieces of land as it had purchased the same by registered sale deeds from the original owners. It is undisputed that the original owners of the aforesaid land were Gendasingh Thakur, Sarfaraz Ahmad and one Abdul Aziz. It was the case of the petitioner society that the said lands were purchased from the said owners by sale deed dated 12.04.1988. It was the case of the petitioner society that another piece of land bearing Survey No.39 was also purchased by the petitioner society from the said three owners by sale deed dated 15.06.1990. It is further the case of the petitioner society that there had been civil suits bearing Special Civil Suit No.956 of 2003 and 957 of 2003 filed in respect of the aforesaid lands bearing Survey No.39, wherein it was alleged by the original owners or their legal heirs that the sale deeds had been executed on the basis of fraud. The said suits were later on compromised and according to the petitioner society, the dispute in those suits pertaining only to Survey No.39 stood settled in its favour. It was also the case of the petitioner society that there was never any dispute as regards sale deed dated 12.04.1988 under which the petitioner society had become owner of the lands of Survey Nos. 14, 16/2 and 16/7, which was subject matter of acquisition by the respondent no.1- Competent Authority under the provisions of the aforesaid Act.

3. Initially, the said lands were acquired under the provisions of the Land Acquisition Act, 1894 and award was passed but the same stood set aside by an

order of this Court. Consequent thereto, respondent nos. 1 and 2 undertook the exercise of acquisition of the said land under the provisions of the Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "Act of 2013). In pursuance of the said proceedings undertaken by respondent no.1 -Competent Authority under the provisions of the Act of 2013, read with the aforesaid National Highways Act, 1956, award was passed in respect of acquisition of the said lands at Survey Nos. 14,16/2 and 16/7 and the quantum of compensation was determined.

4. At this stage, the petitioner society, filed an application under Section 3-H(3) of the aforesaid Act, on 05.10.2017 and claimed that it was the only entity entitled to the amount of compensation determined under the award dated 31.08.2017. The petitioner society relied upon the sale deed dated 12.04.1988 executed in its favour. Respondent Nos. 3 to 7 also approached the respondent no.1 Competent Authority in respect of entitlement to the quantum of compensation determined under the aforesaid award. It is in this backdrop that the respondent no.1 Competent Authority passed the impugned order dated 15.12.2017. In the said order, the respondent no.1 Competent Authority has referred to the three original owners of the lands in question and then it has referred to the legal heirs of the said owners as objectors and thereafter, the respondent no.1 Competent Authority has held that since there is a dispute as regards the entitlement and

apportionment of compensation, the same is being referred to the competent Civil Court under Section 3-H(4) of the said Act.

5. Mr. C.S. Kaptan, learned senior counsel appearing on behalf of the petitioner society submitted that in the face of documents on record and the fact that there was never any dispute raised in respect of sale deed dated 12.04.1988, whereby the petitioner society had become owner of the said lands at Survey Nos. 14, 16/2 and 16/7, there was no basis for the respondent no.1 Competent Authority to have referred the matter to the competent Civil Court under Section 3-H(4) of the said Act. The learned senior counsel referred to the earlier suits bearing Special Civil Suit Nos. 956 of 2003, 957 of 2003 and 596 of 2006 filed by the respondents to demonstrate that the dispute, if any, was raised in respect of sale deed dated 15.6.1990 pertaining to Survey No.39. It was submitted that the suits having culminated into compromise decrees, the ownership and title of the petitioner society had been recognized before the competent Courts. Although it was pointed out that the suit filed by the predecessor of respondent no.6 bearing Special Civil Suit No.303 of 2007, challenging one of the compromise decrees was pending, it was submitted that as the said proceedings did not pertain to the aforesaid land in survey nos. 14,16/2 and 16/7, there was no question of any dispute in the present matter and that, therefore, the impugned order was unsustainable.

6. On the other hand, learned counsel appearing for the contesting respondent nos. 3 to 7 pointed out that the appendix to the award dated 31.08.2017 clearly stated that the said respondents were owners of lands in the three survey numbers referred to above and that even today the revenue record reflected that the said respondents were the owners. On this basis, it was submitted that there was a serious dispute as regards the entitlement of the petitioner society in the present matter. Mr. S.V. Purohit, learned counsel for the respondent no.6 referred to a civil suit bearing Regular Civil Suit No. 382 of 2018 filed by the said respondent during the pendency of the present writ petition, challenging the aforesaid sale deed dated 12.04.1988 executed in favour of the petitioner society pertaining to the aforesaid lands at Survey Nos. 14,16/2 and 16/7. It was submitted that in this backdrop, there was sufficient material on record to show that there was a dispute in the present case, which the respondent no.1 Competent Authority had correctly referred to the competent Civil Court exercising power under Section 3-H(4) of the aforesaid Act. Mr. P.S. Sadavarte, learned counsel for respondent no.5 relied upon judgment of Division Bench of this Court in the case of **Arun s/o Trimbakrao Lokare .vs. State of Maharashtra** reported in **2018(2) ALL MR 124**, to contend that the respondent no.1 Competent Authority had correctly exercised jurisdiction under the scheme envisaged under Section 3-H(3) and 3-H(4) of the aforesaid Act. On this basis, it was contended that the writ petition deserved to be dismissed.

7. In order to examine as to whether the respondent no.1 competent authority was justified in passing the impugned order, it would be relevant to refer to the aforesaid judgment in the case of **Arun s/o Trimbakrao Lokare .vs. State of Maharashtra** (supra) passed by the Division Bench of this Court. While considering the scheme envisaged under Section 3-H(4) and (4) of the aforesaid Act, the Division Bench of this Court in the aforesaid judgment has held as follows:-

"13. Taking into consideration the scheme of the Act and the provision of Section 3-H (supra), the Central Government is expected to deposit the amount of compensation determined under Section 3-G in respect of the land acquired for building, maintenance, management or operation of a National Highway or part thereof. As per Sub-section (2) of Section 3-H the competent Authority has to disburse that amount to the person/persons entitled there to. Sub-section (3) then provides that where there are several persons staking claim to be interested in the amount of such compensation, the competent authority is under obligation to determine and record its opinion as to the entitlement of such person/persons to receive the amount. Sub-section (4) then provides that wherever there is any dispute as to the apportionment of the amount or any part thereof the competent authority has to refer the dispute to the decision of the Principal Civil Court of original jurisdiction within limitation of whose jurisdiction the land situates.

14. According to the learned AGP,

no sooner the petitioner raised the objection for disbursement of amount to the respondent No.4 alone, the respondent No.3 being the competent authority conducted an enquiry and decided the objection holding latter to be entitled to the amount of compensation and thus he has duly exercised the jurisdiction vested in him under Sub-Section (3) of Section 3-H of the Act.

15. Per contra, the learned Advocate for the petitioner adverted our attention to Sub-Section (4) of Section 3-H and submitted that the petitioner in fact had raised dispute about apportionment of compensation amount between him and respondent No.4 and the respondent No.3 was duty bound to refer the matter to the Principal Civil Court of original jurisdiction.

16. It is 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 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.

17. In view of such legal position, when Sub-Section (4) of Section 3-H specifically requires the dispute as to entitlement to receive compensation determined under Section 3-G of the Act to be referred to and decided by the Principal Civil Court of original jurisdiction, it by implication necessarily excludes jurisdiction of the competent Authority which is entitled to merely decide the point of apportionment of the compensation amongst several persons under Sub-Section (3) of Section 3-H. Such interpretation, in our view, strikes a balance between Subsection (3) and Sub-section (4) of Section 3-H of the Act and make them operative in separate spheres. The submission of the learned Advocate for the petitioner, on these lines therefore deserves to be accepted."

8. As per the said position of law, the respondent no.1 Competent Authority could have formed an opinion as regards determination of amounts payable to each of the interested persons, if entitlement of each such person was undisputed. The moment there is more than

one interested person and there is a dispute that arises, the matter or the dispute has to be necessarily referred to the competent Civil Court under Section 3-H(4) of the said Act.

9. In the present case, it has been contended on behalf of the petitioner society that since there is no dispute in respect of sale deed dated 12.04.1988 whereby the petitioner society had purchased lands at Survey Nos. 14, 16/2 and 16/7, the very exercise of power by the respondent no.1 Competent Authority under Section 3-H(4) of the said Act was unsustainable. It was further submitted that the respondent no.1 Competent Authority ought to have first formed an opinion under Section 3-H(3) of the said Act, as regards the determination of amount payable to persons interested. On this basis, it was submitted, firstly that the impugned order deserved to be set aside as there was no question of referring any dispute to the Civil Court and secondly, as an alternative, it was submitted that the impugned order could be set aside and the matter could be remanded to the respondent no.1 Competent Authority to first exercise power under Section 3-H(3) of the said Act and then, if required, to further examine if power was required to be exercised under Section 3-H(4) of the said Act.

10. The material on record and the submissions raised on behalf of the rival parties clearly show that there is certainly a dispute that arises between the parties as regards their competing claims in respect of

compensation determined by the competent authority under the award dated 31.08.2017. While the petitioner society is claiming exclusive right to the amount of compensation on the basis of its claim to ownership of the said lands by way of sale deed dated 12.04.1988, the contesting respondent nos. 3 to 7 have claimed that they have been shown as owners of the lands in question in the award itself as per Appendix annexed to the award. It is also found that the claim of the petitioner society is referred in the award and yet the contesting respondent nos. 3 to 7 have been shown as owners in the Appendix attached to the award. There is a registered sale deed dated 12.04.1988 executed in favour of the petitioner society in respect of the said lands and there is, as of today, a challenge raised to the same by way of Regular Civil Suit No. 382 of 2018 filed by the respondent no.6, wherein the petitioner society is also made a defendant.

11. The aforesaid material leads to at least this conclusion that there is a dispute between the rival parties as regards their entitlement to the quantum of compensation determined under the aforesaid award dated 31.08.2017. While the petitioner society is claiming right to the said amount in exclusion of the contesting respondent nos. 3 to 7, the said respondents have disputed the entitlement of the petitioner society. In fact, such written objections were indeed before the respondent no.1 Competent Authority when the impugned order was passed. Therefore, in the facts of the present case, it cannot be said that the respondent

no.1 Competent Authority, committed any error in exercising power under Section 3-H(4) of the said Act. For the same reason, it cannot be said that the matter now needs to be remanded to respondent no.1 Competent Authority for first carrying out an exercise under Section 3-H(3) of the said Act. This is because, a dispute certainly arises in the facts of the present case and, therefore, the same needs to be determined by the competent Civil Court.

12. But, a perusal of the impugned order shows that while the petitioner society has been referred to as the non-applicant and contesting respondent nos. 3 to 7 have been referred to as the applicants, in the order itself while referring the matter to the competent Civil Court, the competing claims of only the alleged owners and the objectors have been taken into consideration. The tenor of the order is such that it appears that the respondent no.1 Competent Authority has referred the dispute inter se only between respondent nos. 3 to 7 to the competent Civil Court and the impression gathered by this Court is that the petitioner society has been completely left out of the dispute that has been referred to the competent Civil Court. To that extent, the impugned order appears to be erroneous. In any case, the learned counsel appearing for the contesting respondent nos. 3 to 7, on instructions, stated that they would have no objection to the petitioner society also raising its claim before the competent Civil Court, to whom the entire matter has been referred by the respondent no.1 -Competent Authority by the impugned

order.

13. Therefore, this writ petition deserves to be partly allowed. The impugned order is upheld but modified to the extent that the competent Civil Court, to whom the dispute between the parties has been referred under Section 3-H(4) of the aforesaid Act by the respondent no.1 Competent Authority, shall consider the claim of the petitioner society also as one of the interested persons and claimants to the amount of compensation and that the dispute as regards entitlement and apportionment of compensation shall be decided by the competent Civil Court by giving sufficient opportunity to all the rival parties including the petitioner society herein. Needless to state that the competent Civil Court will have to determine the question of title of the rival parties to the lands in question in order to determine the controversy that arises between the parties.

14. It is pointed out by the learned counsel for the parties that in pursuance of the order dated 10.01.2018 passed by this Court giving liberty to the authority to deposit the amount as per the award, an amount of Rs.10,24,88,841/- (Rs. Ten Crore Twenty Four Lakhs, Eighty Eight Thousand Eight Hundred and Forty One only) was deposited by the respondent no.1 Competent Authority in this Court. In pursuance of the directions given hereinabove, the said amount with interest accrued, if any, shall be transferred to the competent Civil Court in the present case i.e. the Court of Principal

District Judge, Nagpur, within a period of three weeks from today. The competent Civil Court shall deposit the said amount in a Nationalised Bank in fixed deposit.

15. The competent Civil Court shall decide the matter referred to it, as expeditiously as possible.

JUDGE

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