

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

Writ Petition No.5622 of 2018
(Smt. Shantadevi w/o Rajkishor Tiwari .vs. Sub Divisional Officer and Land
Acquisition Officer, Yavatmal and others.)

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

Court's or Judge's orders.

Mr. M.P. Kariya, Advocate for Petitioner.
 Mr. S.B. Bissa, AGP for Respondent No.1.
 Mr. A.V. Bhide, Advocate for Respondent Nos. 2 & 4 to 7.
 Mr. A.B. Nakshane, Advocate for Respondent Nos. 8 to 11.

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CORAM : Manish Pitale, J.
DATED : March 22, 2019.

By this writ petition, the petitioner has challenged the order dated 27.08.2018 passed by the respondent no.1 i.e. Land Acquisition Officer and Sub Divisional Officer, Yavatmal, whereby an application raising objection in respect of disbursal of compensation amount pertaining to Gat Nos. 6/1 and 9/1 mouza Godhani, tahsil and district Yavatmal, has been rejected.

2. The case of the petitioner in brief is that the land acquired from the aforesaid Gat Nos. 6/1 and 9/1 pertained to land in which Munnabai Tiwari i.e. the mother-in-law of the petitioner had a share. It was contended that other members of the family i.e. the brothers, nephews and others of her deceased husband were seeking to usurp the entire amount of compensation and that she was being illegally denied her rightful share in the amount of compensation that

was relatable to the share of the said Munnabai in the land in question. It was contended on behalf of the petitioner that her deceased husband had indeed received his share in the aforesaid Gat Nos. 6/1 and 9/1 and that the said share had been sold out, but the portion that had come to the share of her mother-in-law Munnabai was available for members of the family, including the petitioner.

3. The said contentions raised on behalf of the petitioner were resisted by respondent nos. 2 to 11 on the basis that once the husband of the petitioner had received his share and he had sold out the said share for valuable consideration, the petitioner was not entitled to claim that she could have a share in the compensation payable for portion of Gat Nos. 6/1 and 9/1, excluding the share of her deceased husband.

4. The aforesaid proceedings initiated in the form of objection raised by the petitioner were under the provisions of the National Highways Act, 1956 as the land which was subject matter of acquisition, was acquired for the purpose of extension of an already existing National Highway. In fact, the petitioner has relied upon certain affidavits and earlier proceedings pertaining to acquisition of land when the National Highway itself was constructed, to contend that in the earlier round of acquisition and payment of compensation, the right of the petitioner to compensation in respect of the share of Munnabai had been recognized.

5. By the impugned order dated 27.08.2018, the respondent no.1 has referred to the share that was acquired by the husband of the petitioner in the aforesaid Gat Nos. 6/1 and 9/1 and also the fact that he had disposed of the said share. It was then recorded that when part of the land was acquired in 2001 for constructing the National Highway, the portion that had come to the share of Munnabai was taken into consideration and compensation in respect of the same was disbursed to all her heirs, including the deceased husband of the petitioner. On this basis, the respondent no.1 found that the petitioner had failed to make out any case for raising objection regarding disbursement of the compensation amount for land acquired for extension of Highway and compensation payable to respondent Nos. 2 to 11 in exclusion to the petitioner.

6. After filing of the present writ petition, further documents have been placed on record on behalf of the petitioner, including a partition deed dated 17.06.1970 as also a will deed dated 28.02.1995, said to have been executed by the said Munnabai. By placing reliance on the said documents, it is contended on behalf of the petitioner that she clearly was entitled to share in the amount of compensation payable for acquisition of land from Gat Nos. 6/1 and 9/1 for the purpose of extension of National Highways. These documents were not before the respondent no.1 when the impugned order was passed.

7. Apart from this, learned counsel appearing for the contesting respondents have contended that a proper interpretation of the said documents would show that the petitioner could never claim any share in the land that came to the share of Munnabai in Gat Nos. 6/1 and 9/1. It was contended that even if the said documents now placed before this Court were interpreted in the correct perspective, the petitioner had failed to make out a case in her favour and that no interference was required in the impugned order passed by the respondent no.1.

8. It is clear that the documents which are now placed on record, were not placed before the respondent no.1 when the impugned order was passed. The respondent no.1 proceeded only on the basis that the husband of the petitioner had received his share in Gat Nos. 6/1 and 9/1 and that she could now not claim any further share in the said lands. On this basis, it was found that there was no question of the petitioner having a share in the compensation amount payable for the subsequent round of acquisition undertaken for extension of the National Highway. Although a reference was made to the earlier round, but it was held that even the said documents could be of no avail to the petitioner. The respondent no.1 had no occasion to take into consideration the aforesaid partition deed dated 17.06.1997 and the will deed dated 28.02.1995.

9. Although it is vehemently contended on behalf of the contesting respondents that even if the

said material is permitted to be brought on record before the respondent no.1, no case is made out by the petitioner, this Court is of the opinion that it would be in the interest of justice that the rival parties be given an opportunity afresh to stake their claims before the respondent no.1. The aforesaid documents in the form of partition deed and the will deed can be taken into consideration by the respondent no.1 to assess the competing claims raised on behalf of the rival parties, so that it can be decided as to whether the petitioner has any right to claim part of the compensation payable for the acquisition and if so, to what extent and further to answer the question as to whether the rival parties can be said to be interested persons in the amount of compensation payable.

10. Whether the respondent no.1 can exercise power under Section 3-H(3) or 3-H(4) of the aforesaid Act, is an aspect which the respondent no.1 will have to ascertain on the basis of the scheme envisaged under the said provisions of the Act, as also the law laid down in that context by the Division Bench of this Court in the case of **Arun Trimbakrao Lokare .vs. State of Maharashtra** reported in **2018(2) ALL MR 124**.

11. In view of the above, the writ petition is disposed of as follows:-

- (i) The impugned order dated 27.08.2018 passed by the respondent no.1 is quashed and set aside.
- (ii) The respondent no.1 is directed to permit the rival parties to place on record further material in

support of their respective contentions, including the material that was placed before this Court.

(iii) The respondent no.1 shall take into consideration such material placed on record by the rival parties and then decide the application/objection raised by the petitioner in respect of claim towards part of the compensation amount. In this regard, the respondent no.1 shall permit the petitioner to suitably amend her application/objection.

(iv) On the basis of the material that becomes available before the respondent no.1, the said authority shall take a decision as to whether an order under Section 3-H(3) of the said Act can be passed or power under Section 3-H(4) of the said Act is required to be exercised in the facts and circumstances of the present case.

(v) The respondent no.1 is directed to carry out the aforesaid exercise as expeditiously as possible and in any case on or before 31.08.2019.

(vi) The parties shall appear before the respondent no.1 on 15.04.2019 and the parties shall cooperate with respondent no.1 for disposal of the application/objection within the above stated time period.

JUDGE