

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

15 WRIT PETITION NO.2813 OF 2019

**GAUTAM RANGNATH KUMBHAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Petitioners : Mr V D Sapkal h/for Mr Bhumkar R. P.

AGP for Respondents State: Mr V S Badakh

Advocate for Respondent No.3 : Mr Avinash S Deshmukh

Advocate for Respondents 4 to 6: Mr Ajay C Talhar

CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.

DATE : 5th February, 2020

ORDER:

1. The petitioners challenge the order passed by the authority under Section 3-H (3) and (4) of the National Highways Act.

2. Mr. Sapkal, the learned Advocate for the petitioners strenuously contends that the competent authority, while deciding the objection filed by the petitioners, has exceeded his jurisdiction. The objection was not under section 3-H(3) but was a dispute pertaining to title within the purview of section 3-H (4). The competent authority misguided himself. Once the dispute of title is raised, the Competent Authority does not have jurisdiction to dilate on the said aspects. He has to refer the dispute to the principal civil court of original jurisdiction. The learned counsel, to buttress the submissions, relies upon the judgment of Division Bench of this Court in Writ Petition NO. 1949/2017 dated 29.06.2017 and another judgment of Division Bench of this Court in Writ Petition No. 1473/2016 dated 13.07.2016. The learned counsel also relies on the order passed

by the Additional Collector, Aurangabad, dated 26.04.1951 to contend that the application of the petitioners was allowed and the mutation entry in favour of the present respondent was set aside. The learned counsel further submits that though the civil suit filed by the petitioners is dismissed, the appeal is pending, the Civil suit filed by the respondent bearing No. 525/2000 was restricted to Gat No. 1225. The land in question is from Gat No. 1225 and 1226. There is no declaration in favour of respondent with regard to land Gat No. 1226. The learned Counsel submits that as the appeal is still pending, the dispute is not finally adjudicated by the Civil Court.

3. Mr. Talhar, the learned counsel relies on the judgment in the suit filed by the present respondent bearing RCS No.90/2009 so also the judgment in the suit filed by the present respondent bearing RCS No.525/2008.

4. With the assistance of learned counsel for the parties, we have gone through the orders so also Section 3-H of the National Highways Act. Section 3-H (3) and (4) of the National Highways Act are relevant. The same read thus:

3H:Deposit and payment of amount-(1)....

(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.

(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, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

5. In the present case, the petitioners as well as respondents claimed to be entitled to the amount. The award, at present stands in favour of respondents. The petitioners have raised objections claiming to be interested in the amount and entitled to receive the same.

6. Section 3H (4) provides that 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, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated. The said provision cannot be read in a manner that even if a stranger without any prima facie right, files an objection, the competent authority should blindly refer the same to the principal civil court of original jurisdiction. If bonafide dispute exists, in that case only, the competent authority may, referring to section 3H(4), refer the dispute to the principal civil court of original jurisdiction.

7. In the present case, the petitioners had filed civil suit bearing R.C.S. No.90/2009. The present petitioners are plaintiff Nos. 6 and 7 in the said civil suit. The present respondents are defendants. The suit was filed claiming declaration of ownership in respect of following properties:

“२. मौजा तारखेडा येथील जमीन सर्वे नं३६९ (नवा गट नं.१२२३) क्षेत्र ११ एकर १४ आर, सर्वे नं३७० (याचा नवा गट नं.१२२४) क्षेत्र ८ एकर २५ आर व सर्वे नं३७१ (नवा गट नं.१२२५ व १२२६) क्षेत्र २५ एकर १२ आर”

8. After full fledged trial, the competent civil court dismissed the suit filed by the present petitioners/plaintiffs with compensatory costs, holding that the plaintiffs are not the owners and possessors of the suit properties. Present respondent No.4 also filed suit bearing RCS NO. 525/2008. The same was to the extent of land Gat No.1225. In the said suit, the present petitioners were defendant nos. 2 and 4. The suit filed by the present respondent was decreed holding that the present respondent is owner of the suit property.

9. It is contended that the present petitioners have filed appeal before the appellate Court. However, it does not transpire that any prohibitory order was passed by the appellate Court. It is for the petitioners to seek such order before the appellate court as would be permissible. However, today the judgment of the competent civil court declaring that the petitioners are not the owners and possessors of the suit properties is in force. The acquired land are part of the suit properties.

10. The authoritative pronouncement of the competent civil court is binding upon the competent authority. The competent authority could not have taken a different view than the one taken by the competent civil court after full-fledged trial.

11. In view of the aforesaid, the competent authority has not committed any error in not referring the dispute again to the principal civil court of original jurisdiction.

12. In light of above, the writ petition is dismissed. No costs

(SHRIKANT D. KULKARNI, J.)

(S.V.GANGAPURWALA, J.)

JPC