

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

WRIT PETITION NO. 3598 OF 2020

Muktabai Ghanshyam Ban
Through its Power of Attorney Holder
Vishwambhar Ghanshyam Ban .. Petitioner

Versus

The Union of India and others .. Respondents

Mr. Anil S. Bajaj, Advocate for the Petitioner.
Mr. Bhushan B. Kulkarni, Advocate for Respondent Nos. 1 and 3.
Mr. S. G. Karlekar, AGP for Respondent No. 2.
Mr. V. D. Hon, Senior Advocate i/by Mr. B. G. Deshmukh, Advocate for
Respondent No. 4.

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

DATED : 04th MARCH, 2020.

PER COURT:-

. Heard Mr. Bajaj, the learned counsel for the petitioner. The learned counsel for the petitioner submits that the dispute between the petitioner and respondent No. 4 is still subjudice before the Civil Court in second appeal. Whenever dispute regarding title arises the competent authority under Section 3H(4) of the National Highways Act is required to refer the dispute to the Principal Court of original civil jurisdiction. The competent authority exceeded it's jurisdiction in rejecting the objection of the petitioner.

2. We have also heard learned counsel for the respondent No. 4.

3. The respondent No. 4 has instituted a civil suit bearing R.C.S. No. 1049 of 1989 contending that the vendor of the petitioner did not get any right and interest to sale the property. The suit is decreed by the Trial Court. The respondent No. 4 is declared to be the owner and in possession of the suit land. The present petitioner filed an appeal before the District Court against the said judgment and decree. The District Court under judgment and order dated 14.01.2009 dismissed the appeal filed by the present petitioner. The Appellate Court also held that the original plaintiff (present respondent No. 4) is the owner and possessor of the property. It appears that the petitioner has filed second appeal bearing Second Appeal No. 210 of 2009. The second appeal is admitted and interim order is only to the extent of mutation entry.

4. Under Section 3H(4) of the National Highways Act if the bonafide dispute with regard to the title exists, then the competent authority is required to refer the same to the Principal Court of original civil jurisdiction. In the present case, the Trial Court as well as the Appellate Court have decided the issue of ownership. It is the second appeal i.e. pending. The competent authority in such a scenario would not have referred the dispute again to the Civil Court.

5. It is for the petitioner to seek relief as is admissible and permissible in the Second Appeal No. 210 of 2009 filed by the petitioner which is pending.

6. In the light of the above, writ petition is disposed of. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

P.S.B.