

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

WRIT PETITION NO. 12225 OF 2019

Tukaram Tikaram Hulkane .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Mr. Mrigesh D. Narwadkar, Advocate for the Petitioner.

Mr. V. M. Kagne, AGP for respondent No. 1.

Mr. A. B. Dhongade, Advocate for Respondent No. 2.

Mr. V. H. Dighe, Advocate for Respondent No. 3.

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

DATED : 31st JANUARY, 2020.

PER COURT:-

. Heard Mr. Narwadkar, learned counsel for the petitioner and Mr. Dighe, learned counsel for respondent No. 3.

2. It appears that the petitioner herein has raised objection under Section 3H (4) of the National Highways Act. The objection is rejected. The authority has observed that the objection would be considered at the time of additional award.

3. The question appears to be of disbursement of amount of compensation. It appears that in the joint measurement report the name of respondent No. 3 is shown as owner of 28R (95 Sq. Mtr.) of

land, whereas the possession of the present petitioner is shown to the extent of 8R (67 Sq. Mtr.).

4. The competent authority did not decide the objection while allowing payment of amount to the respondent No. 3 and has observed that the claim of the petitioner would be considered at the time of passing the additional award for the remaining land. The competent authority ought to have taken decision at this stage about the entitlement of the payment of compensation.

5. It is further submitted that the dispute is also raised by the petitioner under the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and the same is pending.

6. Considering these disputed questions of fact and the rival claims of the right over the acquired land, it would be appropriate to direct the dispute to be referred to the Civil Court. The respondent No. 3 has already withdrawn the amount.

7. The impugned order is set aside. The competent authority shall refer the dispute to the Principal Court of original civil jurisdiction. The withdrawal of the amount by the respondent No. 3 would be subject to the decision of the Principal Court of original civil jurisdiction to whom

the dispute would be referred by the competent authority. Mr. Dighe, learned counsel for respondent No. 3 submits that petitioner has raised the dispute under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 after the award is passed.

8. Writ petition accordingly is disposed of. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

P.S.B.