

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2333 OF 2020

Anil Laxmanrao Shirphule ..PETITIONER

VERSUS

The State of Maharashtra & ors. ..RESPONDENTS

Mr V.H. Dighe, Advocate for the petitioner;
Mr S.G. Sangle, AGP for respondent Nos.1 & 3;
Mr A.G. Talhar, ASGI for respondent No.2

**CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, JJ.**

DATE : 5th August, 2021

PER COURT :

1. We have heard the learned Counsel for the respective sides for quite some time. We have perused page 31 which is the joint re-measurement description sheet/statement. Issue is with regard to Gat No.52, admeasuring 7 R 87 Sq. Mts.. Going by the 7/12 extract, the possessors of the land appear to be respondent nos.4 to 7, whereas the actual possession appears to be of the petitioner.

2. In the same acquisition proceedings, land Gat No.53, ad measuring 28 R 95 Square Mtrs. has been acquired. A dispute as regards 8 R 67 Square Mtrs. was before this Court in Writ Petition No.12225 of 2019 (Tukaram Tikaram Hulkane vs. State & ors.). The name of the petitioner herein was shown as the possessor in the 7/12 extract, whereas the name of one Shri Tukaram Tikaram Hulkane appeared as the actual possessor on the site when the joint measurement took place. This Court, vide order dated 31.1.2020, set aside the impugned order of the competent authority delivered under Section 3H (4) of the National Highways Act, 1956 and referred the dispute to the principal court of original civil jurisdiction. The amount withdrawn was to be subject to the decision in the said proceedings. In the instant case, no amount has been withdrawn since this Court interjected vide order dated 5.2.2020 and directed respondent no.2 not to disburse the amount of compensation.

3. Section 3H (4) of the National Highways Act, 1956 reads as under:-

“(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.”

4. As like in the case of *Tukaram Hulkane (supra)*, we find that the competent authority has not decided the objections vide the impugned order. So also, if there are serious objections as regards who is the actual owner of the property, whether there is any person who is put in possession as a cultivator of the property and keeping in view that the 7/12 extract does not decide the right, title and interest of any party (**Shrikant R. Sankanwar & ors. vs. Krishna Balu Naukudkar, (2003 (3) BCR 45)**), the competent authority should have resorted to the remedy as is prescribed under Section 3H (4) of the Act.

5. In view of the above, we find it appropriate to adopt the same view as was taken by this Court in *Tukaram Tikaram Hulkane (supra)*.

6. This petition is partly allowed. The impugned order is set aside. The competent authority shall refer the dispute to the principal court of original civil jurisdiction at Nanded. As the amount has not been withdrawn, the said amount shall be transmitted to the said court at Nanded to be invested in a fixed deposit receipt in a nationalized bank so as to generate interest, as per the Civil Manual.

7. The learned court of original civil jurisdiction shall consider the contentions of the litigating parties and subject to the whole-hearted co-operation of the parties, shall endeavour to decide the said dispute on or before the 30th day of June, 2022. Frivolous adjournments can be refused. We direct the competent authority – respondent no.2 to transmit the proceedings to the said court at Nanded along with the amount, as expeditiously as possible and in any case on or before 25th August, 2021. All contentions of the litigating parties are kept open.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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