

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

962 WRIT PETITION NO.7181 OF 2019

SATYANARAYAN CHANGANLAL LOHIYA

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Chandak Raviraj R.

AGP for Respondents/State: Mr. S. B. Pulkundwar

Advocate for Respondent Nos.4 to 8: Mr. V. P. Sawant & Mr.S. B. Khadel

Advocate for Respondent No.9: Mr. S. S. Deve

...

**CORAM : S. V. GANGAPURWALA &
R. N. LADDHA, JJ.**

DATE : 21st October, 2021

P.C. :

. The dispute is about the area. According to the petitioner, respondent Nos.4 to 8 do not possess any land, so that, acquisition of their lands can take place. The land of the petitioner was acquired. The competent authority instead of referring the matter to the Civil Court as contemplated under Section 3H(4) of the National Highways Act, 1956 decided on its own. The measurement report is incorrect.

2. According to Mr. Sawant, the learned counsel for respondent Nos.4 to 8, after sell of the land, 400 sq. mts. of the land of the respondents still remains on the side. The same was a subject matter of acquisition. The measurement report clearly proves that.

3. Mr. Deve, the learned counsel for the competent authority submits that, twice the measurement has been done and as per the measurement report, the objection is rightly decided.

4. The dispute is about the existence of the land of the respondent Nos.4 to 8. According to the petitioner, he had purchased the entire land in the said gut number. No land of respondent Nos.4 to 8 remains after they sold out the land.

5. Such a dispute which would pertain to the title and the boundaries, so also the identity of the property will have to be referred to the Civil Court. In fact, the competent authority ought to have referred the matter to the Court of Ordinary Original Civil Jurisdiction.

5. In light of the above, we pass the following order:

ORDER

(i) The competent authority shall refer the dispute to the concerned Court of Ordinary Original Civil Jurisdiction within a period of (2) two months.

(ii) The Civil Court may decide the said dispute amongst the parties expeditiously.

6. The amount of Rs.17,55,360/- is already withdrawn by respondent Nos.4 to 8. The respondent Nos.4 to 8, within a period of

two months, shall submit a solvent surety of the like amount with the competent authority.

7. Further decision with regard to the disbursement of amount Rs.17,55,360/-, disbursed to respondent Nos.4 to 8 would be subject to the further decision of the Civil Court. The undisputed amount of which the petitioner is entitled to may be paid to the petitioner.

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

(R. N. LADDHA, J.)

(S. V. GANGAPURWALA, J.)