

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

**WRIT PETITION NO.7014 OF 2018**

1. Namdeo s/o Hariba Devgude,  
Age 67 Years, Occu: Agriculture,
2. Hanumant s/o Shamrao Jagdale,  
Age 48 Years, Occu: Agriculture,
3. Prakash s/o Shamrao Jagdale,  
Age 47 Years, Occu: Agriculture,
4. Haribhau s/o Shamrao Jagdale,  
Age 46 Years, Occu: Agriculture,  
All R/o Sakhre Borgaon,  
Tq. Dist Beed.

... Petitioners

Versus

1. Union of India,  
Through Ministry of National Highways  
and Road Transport, Union of India,  
New Delhi
2. District Collector,  
Beed Dist. Beed
3. Deputy Collector and  
Special Land Acquisition Officer,  
Jayakwadi Project, Beed,  
Dist. Beed i.e. Competent Authority  
Under National Highways Act
4. Rahibai w/o Ashruba Naikwade,  
Age 69 Years, Occu: Household & Agri.,  
R/o Sakhre Borgaon, Tq. Dist. Beed
5. Haridas s/o Ashruba Naikwade,  
Age 46 Years, Occu: Agriculture,  
R/o as Above
6. Sunil s/o Ashruba Naikwade,  
Age 44 Years, Occu: Agriculture,  
R/o as Above
7. Nitin s/o Ashruba Naikwade,

Age 41 Years, Occu: Agriculture,  
R/o as Above

8. Kaushalya w/o Trimbak Bhad,  
Age 49 Years, Occu: Household & Agri.,  
R/o as Above

... Respondents

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Advocate for Petitioners : Mr. G. K. Thigale (Naik)

AGP for Respondent No.1 : Mrs. V. S. Choudhari

Advocate for Respondent Nos. 1 to 3 : Mr. R. B. Bhosle

Advocate for Respondent Nos. 4 to 8 : Mr. Y. S. Chaudhari

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**CORAM : NITIN B. SURYAWANSHI, J.**

**RESERVED ON : 29<sup>th</sup> NOVEMBER, 2021**

**PRONOUNCED ON : 21<sup>st</sup> DECEMBER, 2021**

**JUDGMENT :**

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. This petition is directed against the order dated 04-03-2018, passed by respondent No.3 – Deputy Collector and Special Land Acquisition Officer, Jayakwadi Project, Beed, Dist. Beed. By the impugned order, respondent No.3 has referred the matter to the District Court under Section 3(H)(4) of the National Highways Act, 1956 (for short ‘the Act, 1956’).

3. The facts in brief, leading to this petition, are as follows:

Petitioner No.1 – Namdeo s/o Hariba Devgude and one Vishwambhar Jadhav purchased land bearing Gat No.317, Survey No.36, admeasuring 1 Acre 12 Gunthe, at village Sakhare Borgaon, Tq.

& Dist Beed, from Jaibai Bhanudas Gharat on 14-06-1973, by registered Sale deed No.827/1973. Accordingly, Mutation Entry No.160 was certified in their name on 27-10-1974. Subsequently, Vishwambhar Jadhav sold his 8 Ane share to Shamrao Jagdale – predecessor of petitioner Nos. 2 to 4. Mutation Entry No.4 was accordingly sanctioned in favour of petitioner Nos. 2 to 4.

4. Notification was issued under Section 3(G)(3) of the Act, 1956, thereby proposing acquisition of the suit land for proposed project. Name of petitioner Nos. 2 to 4 were mentioned in the said notification, as owners of land Survey No.36, Gat No.317 Kha, proposed to be acquired.

Respondent Nos. 4 to 8 – original plaintiffs filed Regular Civil Suit No.98/2016 against the petitioners – original defendant Nos. 1 to 4 and respondent No.3 – Collector and Land Acquisition Officer, seeking permanent injunction against the petitioners – original defendant Nos. 1 to 4, to restrain them from obstructing the possession of respondent Nos. 4 to 8 – original plaintiffs over the suit property and also to restrain them from withdrawing compensation amount of the acquired land bearing Gat No.317, Survey No.36. Along with the said suit, temporary injunction application was also filed. The trial Court granted the temporary injunction in favour of respondent Nos. 4 to 8 –

original plaintiffs. The petitioners – original defendant Nos. 1 to 4 challenged the order of the trial Court by filing Misc. Civil Appeal No.55/2016 in the District Court at Beed, which was allowed and the order below Exhibit-5 in R.C.S. No.98/2016, passed by the trial Court, was set aside and the application Exhibit-5, filed by respondent Nos. 4 to 8 – original plaintiffs, was rejected. Against the said order respondent Nos. 4 to 8 – original plaintiffs filed Writ Petition No.14508/2017 in this Court. The said writ petition was disposed off as infructuous by order dated 10-04-2018, as by the impugned order the dispute was referred to the Civil Court. The petitioners have challenged the order passed by respondent No.3, referring the dispute to the Civil Court.

5. Heard the learned advocate Mr. G. K. Thigale (Naik) for petitioners, the learned advocate Mr. R. B. Bhosle for respondent Nos. 1 to 3, the learned advocate Mr. Y. S. Chaudhari for respondent Nos. 4 to 8, and the learned Assistant Government Pleader Mrs. V. S. Choudhari for respondent No.1 – State.

6. The learned advocate for petitioners assailed the impugned order submitting that the said order is passed taking into consideration the pendency of the writ petition, which was disposed off as infructuous. Therefore, the findings recorded by the appellate Court have become final. In view of the findings recorded by the appellate Court, the

impugned order cannot sustain and the same is liable to be quashed and set aside. In support of his submissions, he relied on the decision of this Court in **Writ Petition No.1652/2016, Balbhim s/o Vishwanath Tawaskar and Another Vs. The Competent Authority and Deputy Collector, Land Acquisition, Medium Project No.2, Osmanabad, Tq. & Dist. Osmanabad and Another.**

7. Per contra, the learned advocate for respondent Nos. 4 to 8 supported the impugned order contending that respondent Nos. 4 to 8 – original plaintiffs are the persons interested in the compensation, hence, there is a dispute in respect of apportionment of compensation amount. Therefore, respondent No.3 was justified in passing the impugned order. According to him, there is no merit in the writ petition and the same is liable to be dismissed. In support of his submissions, he relied in **Arun s/o Trimbakrao Lokare Vs. The State of Maharashtra and Others**, reported in **2018(2) ALL MR 124** and the decision of this Court in **Writ Petition No.1473/2016, Ashok Ramling More Vs. Union of India and Others.**

8. Perusal of the pleadings of respondent Nos. 4 to 8 – original plaintiffs in the suit shows that one Bali Mahar was protected tenant of the suit property. He was ousted and Raju s/o Nagu Naikwade was declared as a protected tenant, after his death, Ashruba s/o Raju

Naikwade and after the death of Ashruba respondent Nos. 4 to 8 – original plaintiffs are the owners and possessors of the suit land. Petitioners – original defendant Nos. 1 to 4 illegally purchased the suit land from Jaibai, without obtaining permission from the competent authority. As the suit land was a protected land, in absence of such permission the sale deed executed in favour of petitioners – original defendant Nos. 1 to 4 is illegal and not binding upon respondent Nos. 4 to 8 – original plaintiffs.

9. The suit land is acquired by the Government and the petitioners – original defendant Nos. 1 to 4 are taking undue advantage of the fact that their names are recorded to the suit land and on that basis are trying to withdraw the compensation amount. The subject matter of the suit land is land bearing Gat No.317, Survey No.36 admeasuring 52R situated at village Sakhare Borgaon, Tal and Dist. Beed.

10. Respondent Nos. 4 to 8 – original plaintiffs, however, have failed to prove on record the tenancy of Raju Nagu Naikwade. The Khasara Patrak and Gat Scheme extract produced by the respondent Nos. 4 to 8 – original plaintiffs show that Raju Naikwade was a tenant and not protected tenant. As per the tenancy inquiry register produced by respondent Nos. 4 to 8 – original plaintiffs, in Column No.9, Raju's name was recorded as protected tenant in Survey No.83 and not in

survey No.36. Survey No.83 is not a subject matter of the suit filed by the respondent Nos. 4 to 8 – original plaintiffs. There is nothing on record to show that Raju Naikwade paid the purchase price to the landlord of land Gat No.317, Survey No.36 and he was declared as a protected tenant under Section 38(E) of the Hyderabad Tenancy and Agricultural Lands Act, 1950. Mere entry of Raju's name as a tenant is not sufficient and it needs to be shown that he was a protected tenant.

11. The documents placed on record by the petitioners – original defendant Nos. 1 to 4 i.e. 8-A extract, tax receipts show that the petitioners – original defendant Nos. 1 to 4 are paying revenue of the suit land. The registered sale deed of the suit property is also placed on record by the petitioners – original defendant Nos. 1 to 4, on the basis of which the petitioners' – original defendants' No. 1 to 4 names are recorded in the record of right, vide M.E. No.160. The respondent Nos. 4 to 8 – original plaintiffs have failed to produce certificate issued under Section 38(E) of the Hyderabad Tenancy and Agricultural Lands Act, 1950.

12. It is a matter of record that name of defendant is recorded in the suit property since the year 1974 and from 1981 the name of the defendant appears in the cultivation column of 7/12 extract. The respondent Nos. 4 to 8 – original plaintiffs have not given any

explanation for keeping silence from 1974 till 2006 and as to why they have not challenged the mutation entry in the name of petitioners – original defendant Nos. 1 to 4.

13. It, therefore, appears that only because the suit land is acquired, respondent Nos. 4 to 8 – original plaintiffs have filed suit to obstruct payment of compensation to petitioners – original defendant Nos. 1 to 4. In this view of this matter, the District Judge-4, Beed was right in upsetting the order passed by the trial Court thereby allowing application Exhibit-5, filed by respondent Nos. 4 to 8 – original plaintiffs.

14. The order passed by the appellate Court was questioned before this Court by respondent Nos. 4 to 8 – original plaintiffs, by filing Writ Petition No.14508/2017, which was pending when the impugned order was passed on 04-03-2018. In the impugned order, respondent No.3 has recorded the findings that this Court in Writ Petition No.14508/2017 passed injunction on 31-01-2018. Therefore, the proceeding is required to be sent to the Court. So also, since in R.C.S. No.98/2016 the temporary injunction is refused and the matter is subjudice, hence, the matter is required to be referred under Section 3(H)(4) of the Act, 1956, to the District Court.

15. While passing the impugned order respondent No.3 has

ignored the fact of pendency of Regular Civil Suit No.98/2016, filed by the present respondent Nos. 4 to 8. When the substantive suit claiming relief in respect of the compensation was pending before the competent Civil Court, respondent No.3. was not justified in invoking provision of Section 3(H)(4) of the Act, 1956. It appears that since respondent Nos. 4 to 8 failed to get relief of injunction, the impugned order was passed by respondent No.3, referring the matter to the competent Civil Court. The impugned order is, therefore, unsustainable.

16. The decision of The Learned Single Judge of This Court in **Writ Petition No.1652/2016** (supra) supports the case of the petitioners. In **Arun s/o Trimbakrao Lokare** (supra), The Division Bench of This Court interpreted the provisions of Section 3(H)(3) and 3(H)(4) of the Act, 1956. In the facts of that case, this Court held that once a dispute is raised about the apportionment of the compensation amount between co-owners the competent authority was duty bound to refer the matter to the Principle Civil Court of original jurisdiction under Section 3(H)(4). This decision is rendered in different facts, hence, is not applicable to the facts of the present case.

17. In **Ashok Ramling More** (supra), The Division Bench of This Court, in the facts of that case came to the conclusion that the dispute raised by the petitioners therein could not have been dealt with by the

competent authority while exercising jurisdiction under Section 3-H(3) of the Act, 1956 and the dispute fell within the purview of Section 3-H(4) of the Act, 1956 and hence, the order of the competent authority passed under Section 3-H(4) was set aside and the dispute was referred to the competent Civil Court. Such are not the facts of the present case.

18. For the aforesaid reasons, since R.C.S. No.98/2016 is filed by respondent Nos. 4 to 8 claiming compensation of the suit land, respondent No.3 was not justified in passing the impugned order. In the result, following order:

#### **ORDER**

- (I) Writ petition No. 7014 of 2018 is allowed.
- (II) The impugned order (Exhibit-F) dated 04-03-2018 passed by respondent No.3 – Deputy Collector and Special Land Acquisition Officer, Jayakwadi Project, Beed, Dist. Beed, is hereby quashed and set aside.
- (III) Needless to mention that the parties are at liberty to contest their respective claims in R.C.S. No.98/2016.
- (IV) Rule is made absolute in the above terms with no order as to costs.

**(NITIN B. SURYAWANSHI, J.)**