

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

WRIT PETITION No.7347 OF 2018

1. Jayant Vitthal Dawkhare,
Age : 54 years, Occu. Agriculture and service,
R/o 1958, J. P. Road, Sangamner,
District Ahmednagar.
2. Vaibhav Vitthal Dawkhare,
Age : 44 years, Occu. Agriculture and service,
R/o 1958, J. P. Road, Sangamner,
District Ahmednagar.
3. Swati Nitin Nilgar,
Age : 52 years, Occu. Household,
R/o Bhoom, District Osmanabad.
4. Jyoti Subash Nirhali,
Age : 50 years, Occu. Household,
R/o 9, Narayan Niwas, Shanti Nagar,
Wagale Estate, Thane West.
5. Shailaja Ramkant Pulkundwar,
Age : 48 years, Occu. Household,
R/o Mehar Nagar, Garkheda,
Aurangabad, District Aurangabad.
6. Vaishali Ashok Wavdhane,
Age : 46 years, Occu. Household,
R/o 1958, J. P. Road, Sangamner,
District Ahmednagar.
7. Kusum w/o Vitthalrao Dawkhare,
Age : 75 years, Occu. Agriculture and household,
R/o 1958, J. P. Road, Sangamner,
District Ahmednagar. ... **Petitioners**

Versus

1. The State of Maharashtra,
Through Secretary, Public Works Department,
Mantralaya, Mumbai-32.
2. The Union of India,
Through its Secretary,
National Highway Authority of India
New Delhi.
3. The Executive Engineer,
National High Way Division No.9,
Bombay - Agra Road, Nashik,
District Nashik.
4. The Competent Authority and
Sub Divisional Officer,
Sangamner Division,
Sangamner, District Ahmednagar.
5. Janardhan S/o Digambar Dawkhare,
Age : 58 years, Occu. Agriculture,
R/o Sultanpur, Tq. Achalpur,
District Amravati. ... Respondents

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Advocate for Petitioners : Mr. A. S. Bajaj.
AGP for Respondent No.1-State : Mr. P. S. Patil.
Advocate for Respondent Nos.2 to 4 : Mr. A. N. Patale
(Standing Counsel).
Advocate for Respondent No.5 : Mr. K. N. Shermale.

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

**RESERVED ON : 23.09.2021
PRONOUNCED ON : 08.10.2021**

JUDGMENT : (Per S. G. Mehare, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners approached this Court seeking writ of mandamus or any other writ, order, or direction in the nature of a writ of mandamus. Respondent Nos.3 and 4 be directed to release the enhanced compensation towards the lands acquired to the extent of 1 H. 2 Are from village Kasara Dumala, Taluka Sangamner, District Ahmednagar in favour of the petitioners as per the award dated 31.10.2013 passed by the Arbitrator-Cum-Collector, National Highways Authority.

3. The brief facts relevant to determine the controversy are narrated as follows:

a) The petitioners are the grand children of the cousin uncle of respondent No.5. The petitioners are the owners of Survey Nos.44/9, (old survey No.44/5/A/1) admeasuring 1 H. 80 Are, and Survey No.44/34 (old survey No.44/5/B/2) measuring 82 Are at

village Kasara Dumala, Tq. Sangamner, District Ahmednagar. The above lands had fallen to the share of their grandfather Dattatraya Laxman Dawkhare and after him to the petitioners' father, namely Vitthal Dattatraya Dawkhare.

- b) The land admeasuring 1 H. 2 Are out of the above survey numbers was acquired under the National Highways Act. The Competent Authority had passed an award on 24.04.2006.
- c) The petitioners had filed an application before the Arbitrator-Cum-Collector, Ahmednagar, under Section 3(G)(5) of the National Highways Act 1956. ('1956 Act' for short). The Arbitrator-Cum-Collector was pleased to allow the application granting enhanced compensation. After the Arbitrator passed the award, the amount determined by him was deposited with respondent No.4, the Competent Authority Land Acquisition authorized by the Central Government by notification issued under the 1956 Act.

d) Respondent No.4 issued a notice to the petitioners dated 19.05.2016 calling upon them to collect the compensation determined by the Arbitrator-Cum-Collector, Ahmednagar. However, respondent No.5 raised an objection on 18.04.2016 and claimed the share in the compensation amount before respondent No.4.

4. Respondent No.5 Janardhan had filed a suit for partition and separate possession before the Civil Judge Junior Division, Sangamner. The acquired lands were also the suit properties in the said suit. However, on 05.10.1995, he withdrew the said suit unconditionally.

5. Until the Arbitrator determined the compensation amount, respondent No.5 never raised any objection, neither before the Arbitrator nor respondent No.4. Since the amount of compensation determined by the Arbitrator was high, respondent No.5 raised a false claim of his share in the acquired lands on 18.04.2016.

6. The petitioners further submit that a charge was created on the properties in question for Rs.30,000/- in respect of the whole property shared by the grandfather of petitioners' and the real uncle of respondent situated at village Samnapur and Kasara Dumala to be shared by the grandfather of petitioners', and real uncle of respondent No.5. The entry of said charge was deleted with the consent and statement of the father of respondent No.5 in 1970 by Circle Inspector. However, the entry of the charge remained intact till 1996. The deceased father of the petitioners applied to delete that entry from the record. The said entry was deleted by following the procedure of law vide mutation entry No.2269 dated 12.04.1996. They took a stand that the mutation entry in the other rights column creating a charge of Rs.30,00 was deleted mala fide. The said entry was deleted with the consent and statement of Digambar (the father of respondent No.5) in 1970 vide mutation Entry No.2269 dated 12.04.1996. Unfortunately, in the mutation entry, though the statement of Digambar was recorded, the name of

Shantabai was mentioned. Respondent No.5 is taking disadvantage of that inadvertent mistake.

7. Respondent No.5 impugned the mutation entry Nos.2269 and 377 before the Sub Divisional Officer, Sangamner, along with delay condonation application. The present petitioners opposed the delay condonation application. However, the learned Sub Divisional Officer was pleased to condone the delay by an order dated 12.03.2018 and posted the case for further hearing. Petitioner Nos.1, 2, and 7 impugned the order of the Sub Divisional Officer, Ahmednagar, before the Additional Collector, Ahmednagar, by way of two separate revisions. The Additional Collector was pleased to dismiss the revisions by two separate orders dated 10.04.2018 and 27.04.2018. Against the said orders, the petitioners have preferred writ petition No.7473 of 2018. The Hon'ble Single Bench of this Court is pleased to grant the *status quo* order in favour of the petitioners.

8. Respondent No.4 filed affidavit-in-reply contending that respondent No.5 Janardan and Jagannath (the

brother of respondent No.5) have filed a written objection dated 18.04.2016. They have informed that there is a dispute regarding land survey No.44/9 of Village Kasara Dumala and contended not to pay enhanced compensation to the petitioner Nos.1 to 7. Respondent No.5 also preferred R.T.S. Appeal No.225 of 2016, in which ad-interim stay is granted. Therefore, the enhanced compensation is not yet paid to the petitioners. The dispute between the petitioners and respondent No.5 needs to be decided by the Civil Court. The petitioners have filed a Writ Petition No.7473 of 2018 before the Hon'ble High Court. The matter is related to the same dispute wherein this Court has granted *status quo* to the proceedings and in respect of mutation entries.

9. The learned counsel for respondent No.5 made a statement before the Court that respondent No.5 is the legal heir of the son Balaji. Hence has an interest in the lands acquired. Since the petitioners have obtained the stay in Writ Petition No.7473 of 2018, the amount of

compensation has been correctly not released by respondent No.4. A serious issue of fraudulent mutation entry is involved, and it is pending before the Competent Authority. Respondent No.5 is the son of Digambar, and he has 1/3rd share in the acquired lands. The petitioners deliberately deprived him of his legal and legitimate right to have a share in the acquired land. Therefore, the petition deserves to be dismissed.

10. The learned counsel Mr. Bajaj for the petitioners would argue that the Hariba had owned the various landed properties, including the acquired land. Respondent No.5 and the petitioners are from different branches. The petitioners are the grand sons and grand daughters of Dattatray, who was the cousin of the father of respondent No.5. The great grandfather of the petitioner, namely Laxman predeceased his real brother Balaji. Balaji, in his lifetime by way of registered will deed dated 16.12.1942 made a family arrangement/partition of the properties among the family members. The father of petitioners and the

father and uncle of respondent No.5 jointly got equal share in the properties of Hariba. The petitioners' grandfather got properties of Village Kasara Dumala, in the oral partition in petitioners' grandfather and the real uncle of respondent No.5, namely Tukaram. Under the will, share in one house was given to the father of respondent No.5 and charge of Rs.30000/-, was created on all lands to be shared by Tukaram and the grandfather of petitioners. The entry of said charge was recorded in the other rights column in the revenue record. The father of the petitioners' paid the money of his share to release the charge. The statement in that regard was recorded by the Circle inspector in 1970. However, its entry remained intact and corrected vide mutation entry No. 2269 dated 12.04.1996. Respondent No.5 never objected to the title of the father of the petitioner. He withdrew the partition suit unconditionally. To bolster his arguments, he referred to the copy of the plaint from the paper book of this petition on page Nos.49 to 55.

11. He would further argue that in no case, respondent No.5 can claim 1/3rd share in the compensation amount. He can claim a share in the properties gone to the share of his real uncle. Respondent No.5 never disputed the will of Balaji and the charge of Rs.30,000/- was on the entire land. His father in his life never disputed the family arrangement. Withdrawal of the suit unconditionally has adverse effects. Now the respondent No.5 cannot object to the title. A huge amount, around two crores, is lying without any use with respondent No.4 since 2016. It is lying without investment in the Bank. It is a huge loss to the petitioners. Respondent No.5 has no *prima facie* interest in the acquired lands, and hence respondent No.4 be directed to release the compensation amount immediately in favour of the petitioners. Another petition filed by this petitioner has no bearing or concern with releasing the compensation amount.

12. Per Contra learned counsel Mr. K. N. Shermale for respondent No.5 would vigorously argue that the

petitioners have obtained the stay to the revenue proceeding in W.P.No.7473 of 2018. Hence, the entire proceeding before respondent No.5 is stalled. The fraud is played, and the entry of charge in favour of the father of respondent No.5, was deleted, and thereby his legal heirs are deprived of the legitimate share in the acquired lands. *Prima facie* respondent No.5 has 1/3rd share in the compensation amount. Until the appeal challenging the mutation before the Sub Divisional Officer is decided, respondent No.4 cannot apportion the compensation amount. In this situation, respondent No.4 is correct in not apportioning the amount. The title of the acquired lands is apparently under the shadow of a doubt. Hence, no direction as prayed by the petitioner can be given. The petition is devoid of merit. Therefore, it be dismissed.

13. The learned AGP for respondent No.4, adopting the arguments of respondent No.5, added that respondent No.4 was willing to decide the objection under section 3H (3) of the National Highway. However, the dispute of

mutation entry was seized with the competent Revenue Authority, he could not decide the objection. He had no intention to violate the right of either claimant. He had no interest in detaining the compensation amount.

14. It is apparent from the paper book of the petition and the arguments advanced by the respective counsels that the dispute of shares amongst the petitioner and respondent No.5 has a chequered history. It is undisputed that respondent No.5 had claimed his share by knocking on the doors of Civil Court by filing suit. However, he withdrew it unconditionally. Then, respondent No.5 again raised a dispute of his share by way of objection before respondent No.4 after the compensation amount was deposited with him. Respondent No.4, in his affidavit-in-reply, has contended that if any objection is raised on the compensation amount of land acquisition, claiming the share in that amount, the Competent Authority under Section 3H (3) of the 1956 Act is empowered to decide to whom the compensation amount is to be paid.

Accordingly, he issued the notices to both the side. But due to the ad-interim stay in R.T.S appeal, the compensation is yet not disbursed.

15. The various factual issues have been involved in the dispute among the petitioners and respondent No.5, which are in the domain of the Civil Court. The disputed facts usually are not dealt with under the extraordinary jurisdiction under Article 226 of the Constitution of India. But the question remains, how does the Competent Authority respondent No.4 deal with the objections or disputes raised falling under section 3H (3) and (4) of the 1956 Act. Sub-section 3 of section 3H of the Act 1956 imposes an obligation on the Competent Authority to determine who is/are entitled to receive the amount payable to each claimant claiming an interest in the said amount.

16. In subsection 3 of Section 3H of the Act 1956, there is a term “in its opinion”. It means the Competent Authority has to form an opinion based on the claims of such persons. The Hon’ble Division Bench of this Court

has dealt with sections 3H (3) and (4) of the 1956 Act in Arun Vs. State of Maharashtra, W.P.No.1949 of 2017, decided on Jun 29, 2017. The Hon'ble Division Bench was discussing the issues and related provisions of law and observed in paragraph Nos.13, 16 and 17 as follows :

“13. Taking into consideration the scheme of the Act and the provision of sect 3-H (supra), the Central Government is expected to deposit the amount of compensation determined under section 3G in respect of the and acquired for building, maintenance, management, or operation of National Highway or part thereof. As per subsection (2) of section 3-H the competent Authority has to disburse that amount to the person/persons entitled thereto. Sub-section (3) provides that where there are several persons staking claim to be interested in the amount of such compensation, the competent authority is under obligation to determine and record its opinion as to the entitlement of such person/persons to receive such amount. Sub-section (4) then provides that wherever there is any dispute as to the apportionment of the amount or any part thereof, the competent authority has to refer the dispute to the decision of the Principal Civil Court of original Jurisdiction within limitation of whose jurisdiction the land situates.”

“16. It is a settled principle of interpretation of statute that the provisions of any statute are to be interpreted to give effect to each of them to the extent possible without giving any rise to any conflict or overlapping. This principle of harmonious construction needs to be applied in the matter before hand vis a vis sub-section (3) of section 3-H, while interpreting Sub-section (3). Such application would lead us to interpret these provisions in harmonious manner putting neither of otiose. A careful reading of these provisions would reveal that when

several persons are entitled to claim compensation, the competent authority has power and jurisdiction to record an opinion and determine the persons who are entitled to receive share/s and only enables him to apportion the amount of compensation amongst them according to the share they are entitled to. As against this, Sub-section (4) contemplates a situation where the dispute is raised as to the entitlement of the compensation by several persons and the jurisdiction to decide such dispute is conferred upon the Principal Civil Court of Original jurisdiction. In other words, whenever there is dispute raised by any person as to the right to receive either the whole or portion of the compensation, the competent authority is obliged to refer the matter to the Principal Civil Court of Original jurisdiction.”

“17. In view of such legal position, when Sub-section (4) of Section 3-H specifically requires the dispute as to entitlement to receive compensation determined under Section 3-G of the Act to be referred to and decided by the Principal Civil Court of original Jurisdiction, it by implication necessarily excludes jurisdiction of the competent Authority which is entitled to merely decide the point of apportionment of compensation amongst several persons under Sub-section (3) of Section 3-H. Such interpretation, in our view, strikes a balance between Sub -section (3) and Sub-section (4) of the Act and make them operative in separate spheres. The submission of the learned Advocate for the petitioner, on these lines therefore deserves to be accepted”.

17. The clear mandate in the above case is, the Competent Authority cannot sit over the objection. He is obliged to form an opinion on who is/are entitled to the compensation. On determining such share/s he has to offer the same to respective parties. If the parties

dispute it again, he must refer the dispute to the Principal Civil Court of original jurisdiction. The material available before him and documents and facts of the claims may be the basis for his opinion.

18. So far as the lands to be acquired under the 1956 Act is concerned, where the Central government is satisfied that for the public purpose any land is required for the building, maintenance, management, and operation of the National Highways, it may, by notification in the Official Gazette, declare its intention to acquire such lands. After the declaration of such intention, within twenty-one days, the person interested may object to the use of land for the purpose or purposes mentioned in Sub-section (1) of Section 3-A of the Act 1956. Such objection may either be raised personally or through a legal practitioner before the Competent Authority. The competent Authority on giving a hearing to the concerned and making such further inquiry, either allow or disallow the objections. Any order passed by the Competent Authority is final.

19. In the case at hand, the petitioners have a specific case that until the Arbitrator passes an award, no objection was raised by respondent No.5 because the Arbitrator determined the market price of the acquired lands in crores. Respondent No.5 has made no comments on these facts. However, he came with a new plea against his partition suit of 1990, that the petitioners have played fraud and got the entry of charge removed from the other rights column from the revenue record. Since the Sub Divisional Officer granted the stay to the disputed mutation, respondent No.4 has sat over the objection from 2016. The petitioners have no dispute that the charge of Rs.30,000/- was created on all the lands to be equally shared by the natural and cousin uncles of respondent No.5. It is a matter of fact-finding on the basis of the evidence produced by the disputing parties before the competent Court of law. The petitioners argue that they have removed the charge to the extent of their share long back in 1970. However, the entry remained intact till 1996. These are the highly

disputed facts. Hence we are not touching those issues because it is a matter in the domain of competent Civil Court.

20. Fortunately, the parties agree on genealogy. Respondent No.5 claimed the share on the pre-existing title in the acquired lands. The withdrawal of the suit has a definite legal effect. However, it is again in the domain of a competent Civil Court.

21. The petitioners have strongly claimed that objector/ respondent No.5 has no exclusive title. In the worst case, he cannot claim more than the value of the charge of Rs.30,000/-, which is not to be paid by them wholly. The real uncle of respondent No.5 also has to share the payment to release the charge. The petitioner raised a serious issue that a considerable amount is lying without investment and interest. It is causing a great loss to them.

22. Section 100 of the Transfer of Property Act speaks of the term "Charge". It may be created by the acts of

parties by any document showing an intention to make the land security for the payment of money.

23. In the appeal memo at paper book page Nos.76 to 84 of this petition reveals that respondent No.5 has specifically mentioned that instead of giving a share to his father in the fields, his real and cousin uncles' branch agreed to pay Rs.30,000/- towards his share, along with interest. The entry, bearing No.375 was recorded to that effect in the revenue record. None of his family had given consent to remove that entry. The petitioners got it removed fraudulently. If these factums are borne in mind, respondent No.5 may have a right to claim the amount to the extent of the liability of the petitioner only. *Prima facie*, these facts may be sufficient to determine the share of respondent No.5 without prejudice to the rights of share and title of both the parties. In the light of the facts of the case, we are of the view that detaining such a huge amount without investment is a great loss not only to the petitioner but also to respondent No.5.

24. The compensation amount remained undisbursed due to the dispute after determining the objection under sub-section (3) and (4) of Section 3-H of the Act of 1956. The Competent Authority has to deposit such amount with the Principal Civil Court of original jurisdiction while referring the dispute under Sub-section (4) of Section 3-H of the Act 1956, as provided under Rule 4 of the National Highways (manner of depositing the amount by the Central Government making requisite funds available to the competent authority for acquisition of land) Rules 2019. In such a situation, the Principal Civil Court of original jurisdiction may disburse the compensation amount on certain conditions either to the extent of share partly or wholly to either party who has a strong *prima facie* claim.

25. In view of the above, we allow the petition partly with the following directions :

A] The competent Authority/ respondent
No.4 on giving the hearing to the

contesting parties, shall decide the objection dated 18.04.2016, raised by respondent No.5 within two months from the date directing the petitioners and respondent No.5 to appear before him, as envisaged in Sub-sections (3) and (4) of Section 3-H of the National Highways Act 1956.

- B] The petitioners and respondent No.5 shall appear before the Competent Authority/ respondent No.4 on 18.10.2021.
- C] In case of referring the dispute to the Principal Civil Court of original jurisdiction under Sub-section (4) of Section 3-H of the National Highways Act 1956, respondent No.4 shall deposit the entire amount of compensation to the Principal Civil Court of original jurisdiction.
- D] On depositing the compensation amount by respondent No.4, if any, the parties are at liberty to withdraw the amount, during the dispute is pending before the Principal Civil Court of original jurisdiction.

E] It is made clear that no court shall be influenced by the findings recorded in this case if any suit/proceeding regarding the acquired lands, is filed.

26. Rule is made partly absolute.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-