

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

**WRIT PETITION NO. 13978 OF 2017
WITH CA 10154/2018 IN WP NO. 13978/2017**

Shivrani w/o Santosh Naikwade,
Age 32 years, Occ. Household,
R/o. Near Bhusar Ves, Mali Galli,
Ausa, Tq. Ausa, Dist. Latur.

... **Petitioner.**

VERSUS.

- 1) The State of Maharashtra,
Through District Collector Latur,
Tq. & Dist. Latur.
- 2) Sub Divisional Magistrate/
Competent Authority of Land
Acquisition National Highway
No. 361, Tq. Ausa, Dist. Latur.
- 3) Rajesh s/o Gurunath Ogle,
Age Major, Occ. Agriculture,
R/o. Sitaram Nagar, Latur,
Tq. & Dist. Latur.

... **Respondents.**

...

Advocate for the Petitioner: Mr. S.V. Gundre h/f Dr. Pansambal Supriya L.
A.G.P. for the Respondents/State : Mrs. D.S. Jape.
Advocate for the Respondent No. 2 : Mr. R.B. Bhosle.

CORAM : MANGESH S. PATIL, J.

DATE : 30.11.2021.

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. At the request of both the sides the matter is heard finally at the stage of admission.

2. The petitioner had raised an objection before the Land Acquisition Officer-respondent No. 2 claiming a right and share in the amount of compensation determined under the National Highways Act, 1956

(hereinafter 'the Act'). By the impugned order the Land Acquisition Officer rejected the application and disbursed the amount of compensation to the respondent No. 3.

3. The learned advocate Mr. Gundre submits that the petitioner approached this Court and by the order dated 05.12.2017 an *ad interim* relief was granted. He states that pursuant to the order under challenge an amount of Rs. 60,93,360/- was transferred by R.T.G.S. in the account of the respondent No. 3 with Canara Bank on 28.11.2017. Out of that he has already withdrawn an amount of Rs. 50,00,000/- on 30.11.2017. He submits that individual amount which was already lying to his credit in the account with the Bank of Rs. 2,86,547/-together with the remaining amount of compensation has been frozen by the Bank pursuant to the ad interim relief granted by this Court.

4. After hearing the learned advocates of both the sides it transpires that instead of applying the provisions of Section 3-H(4) of the Act in letters and spirit, in spite of there being a dispute existing between petitioner and the respondent No. 3 and in spite of the fact that the respondent No. 2-Special Land Acquisition Officer was alive to the fact that the parties were already before a Civil Court wherein a Regular Civil Suit No. 566/2015 was pending, for the best reasons known to him he has indulged in and undertaken an investigation, as if he was competent to do so under that provision to decide the rights between the parties when he was legally obliged to make

reference to the Principal Court of Original civil jurisdiction. Suffice for the purpose to refer to and rely upon the decision of this Court in the matter of **Ashok Ramling More Vs. Union of India and others in Writ Petition No. 1473/2016 decided on 13.07.2016** and **Rizwana Begum w/o Sharif Pathan and others Vs. The Union of India and others in Writ Petition No. 11504/2017 decided on 20.09.2017.**

5. In view of the above state of affairs, the impugned order is clearly de hors the provisions of the Act rather passed in violation of the mandate of the provision of Section 3-H(4) of the Act and therefore grossly illegal and deserves to be set aside.

6. As has been admitted by the respondent No. 3 in his Civil Application, he has already withdrawn an amount of Rs. 50,00,000/- out of the total compensation of Rs. 60,93,360/-. Needless to state that since the dispute is pending before a Civil Court, this amount which he has already withdrawn as also whatever is in balance in his account towards the compensation would be subject to the out come of the suit and the Civil Court would decide the issue. However, a direction will have to be given to the respondent No. 2-Special Land Acquisition Officer to make a reference as is contemplated under Section 3-H(4) of the Act.

7. The Writ Petition is allowed. The impugned order is quashed and set aside. The respondent No. 2-Special Land Acquisition Officer shall now make a reference under Section 3-H(4) of the Act to the Court of Principal

Court of original civil jurisdiction. Apportionment of the amount of compensation assessed by him shall be subject to the outcome of the suit.

8. The respondent No. 3 shall furnish an undertaking before the Civil Court that in case so ordered in future by the Civil Court he would remit back the amount or a portion thereof depending upon the decision of the suit and the reference.

9. The remaining amount of compensation which is lying in his account with the Bank shall remain frozen. However, he shall be permitted to operate the account in respect of any other sum standing in his account.

10. The Rule is made absolute in above terms.

11. The Civil Application is disposed of.

12. Suit and the Reference shall stand expedited.

(MANGESH S. PATIL, J.)

mkd/-