

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

RAJESH
VASANT
CHITTEWAN

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WRIT PETITION NO.3558 OF 2021

Madhukar Tukaram Jadhav

... Petitioner

Versus

The State of Maharashtra

And Others

... Respondents

Mr. Amit Jamsandekar a/w Mr. Prabhakar M. Jadhav for the
Petitioner.

Mr. S.B. Kalel, AGP for Respondent No.2

Mr. Anil Kalekar for Respondent Nos.3 and 4.

Mrs. Manisha A. Devkar a/w S.M. Katkar for Respondent Nos.4, 6 to
9.

**CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.**

DATE : 24 NOVEMBER, 2021

Judgement : (Per S.M. Modak, J.)

. The only issue arisen in this petition is whether the Competent Authority as per National Highway Act, 1956 (referred to as “1956 Act”) was right in rejecting the objection taken by the Petitioner for disbursal of the compensation in favour of Respondent Nos.3 to 9. The said order was passed on 8 July 2021. Instead of rejecting the objection, according to the Petitioner, the Competent Authority ought

to have referred dispute to Civil Court as contemplated under the provisions of 3-H(4) of 1956 Act.

2 We have heard Mr. Amit Jamsandekar, the learned Counsel appearing for the Petitioner, Mr. S.B. Kalel, learned AGP for Respondent Nos.1 and 2, Mr. Anil Kalekar appearing for Respondent Nos.3 and 5 and Mrs. Manisha A. Devekar, learned Counsel appearing for Respondent Nos.4 and 6 to 9. Considering the nature of dispute, by consent we have taken up the petition for final eharing at admission stage itself. **Admit.** After hearing them and after going through documents, we do not feel that the Competent Authority-Respondent No.2 has committed any mistake in passing the impugned order.

3 The land belonging to Respondent Nos.3 to 9, was acquired for expansion of National Highway No.965-G, Baramati-Indapur-Akluj-Bondale. The land is situated at Village Bondale, Tal. Malshiras, District Solapur. Admittedly, Respondent Nos.3 to 9 are recorded as owners of the said land. The award was declared and compensation was sanctioned on 26 March 2020. When the question of disbursal of the amount had arisen, the present Petitioner has taken objection for the said disbursal. Sum and substance of his objection is as follows :-

- (a) Respondent Nos.3 to 9 have agreed to sale land to the Petitioner for Rs.2,50,000/-;
- (b) The Petitioner paid Rs.2,00,000/- in cash on 10

November 2002 to Respondent No.3-Prakash Kashinath Kadavale;

- (c) there was an entry prohibiting transfer of land without permission on other right column of the 7/12 extract;
- (d) Respondent Nos.3 to 9 are not having rights to get the compensation of above sale transaction;
- (e) the Respondents have failed to execute sale deed and hence, the suit was filed in the Court of Civil Judge Junior Division, Malshiras for specific performance;
- (f) there was a direction sought to execute the sale deed after obtaining permission of the Competent Authority;
- (g) this suit was filed on 01 February 2021.

4 The Respondents have got a different explanation to offer. They have denied any transaction or receipt of any consideration. The Petitioner took the objection before the Competent Authority, vide his objection dated 25 January 2021. The Competent Authority was pleased to reject that objection mainly for the following reasons :-

- (a) the objection is not legal and proper;
- (b) the Petitioner has not produced any document to

show his ownership over the said land;

(c) the Petitioner could not produce the registered document.

5 Hence, the objection was rejected and the Competent Authority decided to conduct hearing on 18 July 2021 as per provisions of Section 3-H(3) of 1956 Act. The Competent Authority decided to issue notice to present Respondent Nos.3 to 9 on the point of apportionment of amount of compensation. It is true that the Competent Authority has to refer dispute to the Civil Court, if there is dispute about apportionment of the amount or persons to whom the amount is payable. This court in case of **Rajaram Waman Rane Vs. Ramkrishna Mahadev Rane**¹, has interpreted the provisions of Sections 3H(3) and 3H(4) of 1956 Act.

6 There was an argument that once when there is a dispute as to apportionment, then only it has to be referred to civil court. In other word, if dispute is as to entitlement, it need not be referred to civil court. This argument was turned down. It was held that “Both the sections have to be read harmoniously and not dis-junctively.” In that case, there was a dispute about ownership of the land. The Respondents’ predecessor in title have admitted ownership of the Petitioner in an earlier correspondence (paragraph-15). On the basis of these facts, the court has held that the petitioners are having rights. On these facts, direction was given to refer the dispute to civil court.

1 (2019) 3 AIR Bom R 93

7 There cannot be any dispute about the obligation on the Competent Authority to refer the dispute to civil court, if there is a dispute as to entitlement as per Section 3H(4) of 1956 Act. The word 'dispute' has not defined in the said Act. So it has to be given a plain meaning. The dispute implies one party alleging his right and another party is denying it. Such dispute has to be resolved on the basis of law governing the field. When there is a transfer of ownership, the provisions of Transfer of Property Act 1882 ("the Act"), would come into picture. Section 54 of the said Act deals with sale of property and how it has to be effected. It is specifically mentioned that the contract to sale property does not create any interest.

8 At the same time, it is true that any agreement for purchase of land can be specifically enforced through court of law as per the provisions of Specific Relief Act. It is true that the Petitioner has filed agreement for sale/*sathe khat/likhan pavti*. Admittedly, it is not registered. Secondly, when we have perused the prayers in the plaint filed in Malshiras Court, we find that the Petitioner has asked for specific performance by executing sale deed after obtaining permission of the Competent Authority. The Petitioner was fully aware that permission of the Competent Authority is required. In the set of facts, what we feel is that the Petitioner can agitate his claim as to the compensation in that suit, that too also by carrying necessary amendment.

9 As per Section 3(H) sub-section (1) of 1956 Act, the Central Government has to deposit the amount of compensation with the Competent Authority. The Petitioner may also expect for depositing that amount in civil court. But when his claim to refer the dispute has not been accepted, his expectation has no relevance.

10 Considering the facts, merits and de-merits as observed above, we do not think that the Petitioner has made out a case for reference of the dispute by taking recourse to the provisions of Section 3(H) (4) of 1956 Act. Our observations pertain facts of this case. And we have not made any attempt to interpret the provisions of 1956 Act. Independently, the Petitioner can approach the civil court in the pending suit. So we find no merit for interference in the impugned order. The Writ Petition is dismissed. No order as to costs. Rule discharged.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)