

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2314 OF 2021

- PETITIONERS:** 1] Shri Waman s/o Dattuji Malekar, aged about 55 years, Occ. Agriculturist, R/o. Dorli, Post-Kural, Tah. Wani, Dist. Yawatmal
- 2] Shri Shantaram s/o Atmaram Khandalkar aged about 46 years, Occ. Agriculturist, R/o. Mungoli, Post- Sakhara, Tah. Wani, Dist. Yawatmal
- 3] Shankar s/o Dadaji Sapat, aged about 58 years, Occ. Agriculturist, R/o. Dhoptala Colony (Sasti), Tah. Rajura, Dist. Chandrapur
- 4] Shivaji s/o Latari Gaurkar, aged about 37 years, Occ. Agriculturist, R/o. Wirar (Gade), Tah. Korpana, Dist. Chandrapur.
- 5] Pravin s/o Latari Wadaskar, aged about 44 years, Occ. Agriculturist, R/o. Antargaon, Tah. Korpana, Dist. Chandrapur
- 6] Subhash s/o Mahadeo Wandre, aged about 50years, Occ. Agriculturist, R/o. Arvi, Tah. Rajura, Dist. Chandrapur
- 7] Madhukar s/o Mahadeo Wandre, aged about 44 years, Occ. Agriculturist, R/o. Arvi, Tah. Rajura, Dist. Chandrapur

- 8] Bhalchandra s/o Bapuji Dahule, aged about 38 years, Occ. Agriculturist, R/o. Pancharpauni, Tah. Rajura, Dist. Chandrapur
- 9] Indubai w/o Shankar Sapat, aged about 39 years, Occ. Agriculturist, R/o. Dhoptala Colony (Sasti), Tah. Rajura, Dist. Chandrapur
- 10] Pravin s/o Ramchandra Gaurkar, aged about 30 years, Occ. Agriculturist, R/o. Wirar (Gade), Tah. Korpana, Dist. Chandrapur

...VERSUS...

- RESPONDENT:**
- 1] Vishwanath s/o Karnuji Sontakke, aged about 81 years, Occ. Retired R/o. Saibaba Ward, Himgiri Apartment, Civil Lines, Chandrapur
 - 2] Western Coal Fields Ltd., through its Area General Manager, Wani Area, At Urja Gram Tadali, Post Tadali, Tah. & Dist. Chandrapur,
 - 3] Latari s/o Jitra Gaurkar, aged about 68 years, Occ. Agriculturist,
 - 4] Ramchandra s/o Jitra Gaurkar, aged about 63 years, Occ. Agriculturist,
- Both Nos. 3 and 4 R/o. Wirur (Gadegaon) Tah. Korpana, Dist. Chandrapur

AND

WRIT PETITION NO. 3736 OF 2021

- PETITIONERS:** 1] Latari s/o Jitra Gaurkar, aged about 68 years, Occ. Agriculturist,
- 4] Ramchandra s/o Jitra Gaurkar, aged about 63 years, Occ. Agriculturist,
- Both Nos. 1 and 2 R/o. Wirur (Gadegaon)
Tah. Kurparu, Dist. Chandrapur

...VERSUS...

- RESPONDENT:** 1] Vishwanath s/o Karnuji Sontakke, aged about 81 years, Occ. Retired R/o. Saibaba Ward, Himgiri Apartment, Civil Lines, Chandrapur
- 2] Western Coal Fields Ltd., through its Area General Manager, Wani Area, At Urja Gram Tadali, Post Tadali, Tah. & Dist. Chandrapur,
- 3] Shri Waman s/o Dattul Malekar, aged about 55 years, Occ. Agriculturist, R/o. Dorli, Post-Kural, Tah. Wani, Dist. Yawatmal
- 4] Shri Shantaram s/o Atmaram Khandalkar aged about 46 years, Occ. Agriculturist, R/o. Mungoli, Post- Sakhara, Tah. Wani, Dist. Yawatmal
- 5] Shankar s/o Dadaji Sapat, aged about 58 years, Occ. Agriculturist, R/o. Dhoptala Colony (Sasti), Tah. Rajura, Dist. Chandrapur

- 6] Shivaji s/o Latari Gaurkar, aged about 37 years, Occ. Agriculturist, R/o. Wirar (Gade), Tah. Korpana, Dist. Chandrapur.
- 7] Pravin s/o Latari Wadaskar, aged about 44 years, Occ. Agriculturist, R/o. Antargaon, Tah. Korpana, Dist. Chandrapur
- 8] Subhash s/o Mahadeo Wandre, aged about 50 years, Occ. Agriculturist, R/o. Arvi, Tah. Rajura, Dist. Chandrapur
- 9] Madhukar s/o Mahadeo Wandre, aged about 44 years, Occ. Agriculturist, R/o. Arvi, Tah. Rajura, Dist. Chandrapur
- 10] Bhalchandra s/o Bapuji Dahule, aged about 38 years, Occ. Agriculturist, R/o. Pancharpauni, Tah. Rajura, Dist. Chandrapur
- 11] Indubai w/o Shankar Sapat, aged about 39 years, Occ. Agriculturist, R/o. Dhoptala Colony (Sasti), Tah. Rajura, Dist. Chandrapur
- 12] Pravin s/o Ramchandra Gaurkar, aged about 30 years, Occ. Agriculturist, R/o. Wirar (Gade), Tah. Korpana, Dist. Chandrapur

Shri N.R.Bhishikar, Advocate for Petitioner in WP No.2314/2021 and for Respondents Nos. 3 to 12 in WP No.3736/2021.

Shri A.A.Naik for Respondent No.1 in WP No.2314/2021 and WP No.3736/2021.

Shri R.Masurkar, Advocate for Respondent Nos. 3 and 4 in WP No.2314/2021 and for petitioners in WP No.3736/2021.

Smt. M.Munshi, Advocate for Respondent No.2 in WP No.2314/2021 and WP No.3736/2021.

Shri P.R.Parsodkar, Advocate for intervenor in WP No.2314/2021

CORAM : AVINASH G. GHAROTE, J.

DATE : 28/09/2021.

[Common Judgment]

1] Heard Shri N.R.Bhishikar, learned counsel for Petitioner in WP No.2314/2021 and for Respondents Nos. 3 to 12 in WP No.3736/2021; Shri A.A.Naik, learned counsel for Respondent No.1 in WP No.2314/2021 and WP No.3736/2021; Shri R.Masurkar, learned counsel for Respondent Nos. 3 and 4 in WP No.2314/2021 and for petitioners in WP No.3736/2021; Smt. M.Munshi, learned Advocate for Respondent No.2 in WP No.2314/2021 and WP No.3736/2021 and Shri P.R.Parsodkar, learned counsel for intervenor in WP No.2314/2021.

2] **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsels appearing for the parties.

3] The order dated 21.6.2021 passed by the learned Special Tribunal constituted under Section 14(2) of the Coal Bearing

Areas (Acquisition and Development) Act, 1957 (for short "the Act of 1957" hereinafter), is challenged in the present petitions, whereby the application for stay of the proceedings was rejected.

4] Mr. Bhishikar, learned counsel for the petitioners submits that the Tribunal constituted under the Act of 1957 does not have the power to decide the title dispute between the parties. The limited jurisdiction which is granted under Section 14 of the said Act of 1957 is to determine the quantum of compensation and specify the persons to whom the compensation shall be paid. In the instant matters, since the dispute already stood pending before the Civil Court, in Regular Civil Suit No. 30/2019 (Vishwanath vrs. Latari), an application came to be filed for stay of the proceedings, which has been rejected. While rejecting the same, he submits that, the learned Tribunal rendered a finding that the Tribunal would have jurisdiction to determine who is a real owner entitled to the compensation and consequently the title to the property, which finding, according to him, cannot be sustained and therefore, the impugned order needs to be quashed and set aside and the application for stay needs to be allowed.

5] Mr. Masurkar, learned counsel appearing for Respondent Nos. 3 and 4 supports the submissions of Mr. Bhishikar, learned counsel for the petitioners.

6] Mr. Naik, learned counsel for Respondent No.1 submits that the Tribunal may have jurisdiction to decide the title, for which he places reliance upon language of Section 14 (5) & (6) of the Act of 1957, which empowers the Tribunal, according to him, to even go into the question of a title, while deciding the person to whom compensation is to be paid, in case of a dispute, as otherwise, it would become impossible for the Tribunal to follow the mandate as conferred upon it by virtue of Section 14(5). He further submits that sub-section (6) of Section 14 even empowers the Tribunal, to take such a decision even when there is a dispute as to the person or persons entitled for compensation. Relying upon the provisions of sub-section (8) of Section 14, which confers powers of the Civil Court upon the Tribunal and Section 17(2) as well as the second proviso thereto, he submits that the Tribunal would have the authority to go into a title dispute. Further placing reliance upon

Section 26, he submits that the jurisdiction of the Civil Court has been barred, to the extent as indicated therein and therefore, since the Tribunal has jurisdiction to determine who is entitled for compensation, it would logically mean that the Tribunal would also have the right to determine the title to the property. Mr. Naik, learned counsel further fairly points out the decision of this court as rendered in *Sandip Ramesh Dakhare vs. Mrs. Suchita Bala Gore and ors*, 2020 (1) ALL MR 551, which holds contrary to his argument. He also relies upon *Kishor Chintaman Bodhe vs. Special Tribunal and ors*, in WP 4935/2017, dated 11.9.18, to contend that the proceedings for compensation cannot be stayed, even if the issue of title is pending in the Civil Court, as interim order could be obtained from the Civil Court.

7] Mrs. Munshi, learned counsel appears for Respondent No.2. Mr. Parsodkar, learned counsel appearing for intervenor support the contention of Mr. Naik, learned counsel for Respondent No.1.

8] The Act of 1957, was brought into effect for the purpose of acquisition of coal bearing land, as indicated by Section 9 and the matters related thereto, as well as for determining the quantum of compensation; the persons entitled thereto and the apportionment.

9] The language of Section 17 (2) of the said Act of 1957 indicates three situations, where the Tribunal would have the power; (i) sufficiency about the amount of compensation; (ii) the title to receive it & (iii) the apportionment thereof.

10] The language of Section 14 (5) of the said Act of 1957 indicates that in deciding the dispute and making an award, the Tribunal has to specify the person or persons to whom the compensation has to be paid, and in case there is a dispute as to the same and the Tribunal finds that more than one person is entitled to the compensation, it has also to determine the apportionment regarding the amount. The entitlement of the Tribunal to determine the amount of compensation or the person to whom it is to be paid would not mean that the Tribunal would have the power and authority to determine the title of the property. Though powers

under the CPC have been conferred upon the Tribunal under Section 14(8), they are limited in nature, restricted to the collecting of evidence and enforcing the attendance of witnesses, for the purpose of determining the compensation and the persons to whom prima facie it would become payable. The conferment of the above powers of the Civil Court upon the Tribunal are limited to above extent and not otherwise. They do not empower the Tribunal to enter into a controversy, whereby the dispute raised as to the title of the property could be determined by the Tribunal. The expression "or the title to receive it" as occurring in Section 17(2) of the said Act of 1957, has to be read in consonance with the empowerment of the Tribunal as contained in Section 14 (5) & (6) of the said Act of 1957 and cannot be construed to mean the conferment of a right upon the Tribunal to determine the title to the property. It is to be noted that the Act does not constitute the Tribunal as Civil Court, nor does it make the determination by the Tribunal a decree to be binding upon the parties, in case dispute is raised before it.

11] The second proviso to Section 17(2) would also necessarily mean the determination regarding the quantum of

apportionment in respect of a person who claims to be interested and not otherwise.

12] The bar under Section 26 is not an absolute bar, but a bar limited to the actions taken by the Tribunal under the Act.

13] The position as regards the power of the Tribunal, to determine a title dispute has been considered by this Court in **Sandip Ramesh Dakhare** (supra) and it has been held that the Tribunal would not have a right to determine the title, which could only be determined by a Civil Court of competent jurisdiction, with which I respectfully concur. It would therefore be necessary to state that the Tribunal constituted under Section 14(2) of the Act of 1957, would not have the power or authority to go into the aspect of title to the property, if the same arises before it. That being the position, the impugned order which holds that the Tribunal has such a power cannot be sustained and therefore, is required to be quashed and set aside.

14] It is an admitted position that the proceedings regarding possession of the property is pending before the Civil Court in

Regular Civil Suit No. 30/2019, which necessary would involve the issue as to the title and the decision by the said Court would be binding upon the parties as well as the Tribunal.

15] The issue regarding the proceedings to be permitted to be gone ahead, pending such determination, has to be considered in light of the above position as to whether any dispute has remained as to the quantum of compensation to be determined by the Tribunal. Mr. Naik, learned counsel submits that a claim for enhancement of compensation, has been made by Respondent No.1 in the proceedings under Section 14, which is pending before the Tribunal, which shall have to be permitted to be decided, leaving the question of apportionment thereto subject to the decision of the Civil Court in the suit pending before the Civil Court. In my considered opinion, such a course of action, would not prejudice the petitioner, as in case the petitioners are held to have title to the land, they would equally be entitled to the enhanced compensation, in case the same is granted by the Tribunal, and such a course of action is equally contemplated in **Kishor Chintaman Bodhe** (supra) relied upon by Mr.Naik, learned counsel for some of the respondents.

16] The petitions are therefore allowed. The impugned order dated 21.06.2021 (18.06.2021) is quashed and set aside. The proceedings before the Tribunal shall go on in respect of the question of enhancement of the compensation. However in so far as the determination of the entitlement of the person to receive the same is concerned, the same shall be subject to result of Regular Civil Suit No. 30/2019 (old Civil Suit No. 87/2009). Needless to say that in case any request is made before the Court having session of Regular Civil Suit No. 30/2019, considering that the same is pending since 2009, the said request shall be considered appropriately and the suit shall be decided as expeditiously as possible. No costs.

JUDGE