

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH : NAGPUR****CIVIL APPLICATION NO. 1379 OF 2020****IN****WRIT PETITION NO. 950 OF 2020****(Ashok S/o Hirasingh Rathod vs. The State of Maharashtra and other)**

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A. P. Tathod, Advocate for applicant.
Mr. A. R. Chutke, AGP for respondent Nos.1 to 4.
Mr. R. P. Joshi, Advocate for respondent Nos.5 to 16.

CORAM : MANISH PITALE J.

DATE : 17/08/2021

CIVIL APPLICATION NO. 1379 OF 2020

This is an application filed by the petitioner seeking permission to bring on record legal representatives of respondent No.9. It is stated that although respondent No.9 expired some time ago, instructions to bring the legal representatives on record with their details were received recently and thereupon the application was moved immediately. There is no specific objection raised to the prayer made in the present application.

2. Accordingly, the application is allowed and the legal representatives of deceased respondent No.9, details of whom are stated in paragraph 4 of

the application are permitted to be brought on record.

3. Mr. Joshi, learned counsel appearing for respondent Nos.5 to 16, waives notice on behalf of the said legal representatives of deceased respondent No.9.

4. Application stands disposed of.

5. Insofar as respondent No.12 is concerned, it is further stated that said respondent also expired long ago. Since her legal representatives are already on record as respondents herein, no specific application is required to bring them on record. Consequently, the name of respondent No.12 is deleted from the array of respondents.

WRIT PETITION NO. 950 OF 2020

By this writ petition, the petitioners have challenged order dated 20/01/2020, passed by the respondent No.3 – Sub Divisional Officer, whereby an application filed by the petitioners seeking direction not to disburse the compensation amount to respondent Nos.5 to 16 was dismissed and it was observed that if no interim stay order was brought from the competent Court within 30 days, the

compensation amount would be disbursed to the land owners.

2. Mr. Tathod learned counsel for the petitioners submits that the impugned order is unsustainable for the reason that there is absence of proper reasoning. It was further submitted that in view of the dispute raised on behalf of the petitioners, the respondent No.3 ought to have referred the matter under Section 3H(4) of the National Highways Act, 1956, to the Competent Civil Court for adjudication. In fact, this Court recorded the aforesaid submission while issuing notice on 18/02/2020 and granting interim relief in favour of the petitioner.

3. Mr. R. P. Joshi, learned counsel has appeared on behalf of contesting respondent Nos.5 to 16. It is conceded that the manner in which the impugned order was passed by respondent No.3 left much to be desired, but it was emphasized that the nature of dispute being raised by the petitioner did not justify exercise of power under Section 3H(4) of the aforesaid Act. It was submitted that even if the dispute being raised by the petitioners was to be adjudicated, it was not a dispute pertaining to apportionment of amount of compensation. It was

submitted that the dispute was only as to whether the highway constructed in the present case went through the lands of petitioners and respondent Nos.5 to 16 or only through the land belonging to respondent Nos.5 to 16. Thus, there was a dispute regarding the entitlement to the amount of compensation rather than apportionment of the same. The said entitlement was not based on dispute with regard to the title but rather on the question as to lands through which the highway is actually being constructed by the National Highway Authority.

4. A perusal of the material on record does show that the application filed on behalf of the petitioners simply prayed for a direction not to disburse the amount of compensation to the respondent Nos. 5 to 16. Briefly put, the dispute between the parties is limited to the question as to whether the highway being constructed runs through the lands of petitioners, as well as respondent No.5 to 16 or only through the land belonging to respondent Nos. 5 to 16. This aspect could certainly have been decided by the respondent No.3, upon perusal of the relevant record available in the process of acquisition of the lands for the purpose of construction of the highway. A dispute of this nature can certainly not be

termed as a dispute pertaining to apportionment of compensation or a dispute concerning the title of the lands in question. Therefore, there is substance in the contention raised on behalf of the respondent Nos.5 to 16, that the dispute could not have been referred to the Competent Civil Court under Section 3H(4) of the aforesaid Act.

5. At the same time, in the absence of determination of the claims made by the rival parties in the peculiar facts and circumstances of the present case, the respondent No.3 could not have passed the impugned order and directed that unless an interim order was received from a Competent Court, the amount of compensation would stand disbursed to the land owners.

6. In view of the above, the impugned order is found to be unsustainable. Consequently, the Writ Petition is partly allowed. The impugned order passed by respondent No.3 is quashed and set aside.

7. The matter is remitted back to the respondent No.3 for a proper decision on the objection raised by the petitioners. Considering the nature of dispute, it would be appropriate that the respondent No.3, as the Competent Authority itself,

decides the objection by perusing the available record and if necessary carrying out inspection of the lands of the petitioners, as well as respondent Nos.5 to 16.

8. The petitioners and respondent Nos. 5 to 16 shall appear before the respondent No.3 on **30th August, 2021**. The respondent No.3 shall then take up the application filed by the petitioners for consideration in the manner indicated above and to dispose of the same as expeditiously as far as possible and in any case within a period of three months from today.

9. Needless to say, the amount of compensation lying with the respondent No.3 shall not be disbursed till the proceeding now remitted before the respondent No.3 is decided finally.

10. Liberty is granted to the parties to file proper pleadings and additional documents, if necessary. It is further clarified that this Court has not expressed any opinion on the rival contentions raised by the parties before the respondent No.3.

11. Writ Petition is disposed of in above terms. No order as to costs.

JUDGE