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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.630 OF 2018

Kishor Sadhu Irle and Another

PETITIONERS

VERSUS

Lalita Ramesh Khadke and Others

RESPONDENTS

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Mr. Hanumant P. Jadhav, Advocate for the petitioners

Mr. S. N. Kendre, AGP for respondent - State

Mr. Sanjay A. Wakure, Advocate for respondent No.1

Mr. R. B. Bhosale, Advocate for respondent No.2

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 1st APRIL, 2022

ORDER :

1. The petitioners are aggrieved by the order passed by respondent No.2, thereby refusing to refer the dispute raised by the petitioners, to the competent civil court under section 3H (4) of the National Highways Act, 1956.

2. Regular Civil Suit No. 376 of 2016 is filed by the petitioner against respondent No.1 seeking a declaration that respondent No.1 has no concern with the suit land and she has entered her

name to 0.0414 portion of the acquired land in seven twelve extract, on the basis of fabricated documents. Even revenue entries in favour of respondent No.1 are challenged by the petitioners before Sub Divisional Officer. In the said suit, temporary injunction is granted against respondent No.1 in favour of the petitioner.

3. On 3rd October, 2016, the petitioners lodged an objection with respondent No.3 contending that the petitioners have purchased the acquired land from Vikas Karande by way of registered sale deed No. 642 of 2008 on 19th March, 2008 and since then they are in possession and ownership of the land Gut No. 186, admeasuring 3 Hectare 64 *Are*, situated at Mauje Wadgaon (Lakh), Taluka – Tuljapur. After the petitioners sold 20 *Are* land from their property to Mankarna Karande in 2009, the petitioners have 3 Hectare 44 *Are* land with them. Sisters of Vikas Karande, Sharda Dongare and Gangabai Vyawahare filed Regular Civil Suit No. 79 of 2011 (New No. 79 of 2012) against the petitioners, which was dismissed and in the said decision it is held that the petitioners are owners and possessors of 3 Hectare 44 *Are* land out of Gut No. 186 situated at Mauje Wadgaon (Lakh), Taluka – Tuljapur. The petitioners, therefore, claimed that considering these aspects, name of respondent No.1 be deleted

from the acquired land 0.0414 and the petitioners' names be entered for the said land.

4. The petitioners have also initiated appropriate proceedings before the revenue authority for cancellation of the name of respondent No.1, the same is also pending. The petitioners have also filed complaints to police station, Tuljapur, Tahsil office and Sub Divisional Office, Osmanabad so also to the Collector. Hence, it is claimed that name of respondent No.1 be deleted from the acquired property and the name of petitioners be entered.

5. Respondent No.2 passed the impugned order, rejecting the objection raised by the petitioners on the ground that cancellation of the registered sale deed executed in the name of the respondents, bearing No. 1197/2016 by which the respondents purchased 1 hectare 96 R land is not sought by the petitioners. The mutation Entry No. 1109 taken on the basis of the said registered document is yet not cancelled. The petitioners have not taken objection at the time of the joint measurement of the land. The objection of the petitioners, therefore, is rejected and the amount of compensation of Rs.10,45,764/- is directed to be paid to respondent No.1. The petitioners are aggrieved by this order.

6. Heard learned advocate for the petitioners. Learned advocate for respondent No.1, learned advocate for the acquiring body as well as the learned Assistant Government Pleader.

7. Perusal of the record indicates that admittedly, the dispute is raised by the petitioners about the amount of compensation. Section 3H (4) of the said Act mandates that if any dispute arises, the same has to be referred to the Principal Civil Court of original jurisdiction within whose limits of jurisdiction, the land is situated. It was, therefore, incumbent on the part of respondent No.2 to refer the dispute to the competent civil court.

8. The Division Bench, in "**Arun Trimbakrao Lokare V/s State of Maharashtra and Others**" (2017) 6 Mh.L.J. 612 (Coram : S. C. Dharmadhikari and Mangesh S. Patil, JJ.), has held thus -

"16. It is a settled principle of interpretation of statute that the provisions of the any statute are to be so interpreted as to give effect to each of them to the extent possible without giving 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 them 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.”

9. The same view is consistently followed by co-ordinate benches of this Court. In the light of the said decision also, respondent No.3 ought to have referred the dispute to competent civil court.

10. Though the learned advocate for respondent No. 1 tried to justify the impugned order by contending that the petitioners have no concern whatsoever with the acquired portion of the land and it was the land validly come in the possession and ownership of respondent No.1, I am of the view that these aspects cannot be gone into at this stage and in view of section 3H (4) of the said Act, respondent No. 2 ought to have referred the matter to the competent civil court, particularly in view of the fact that the civil suit for injunction in respect of the said land filed by the petitioners is pending.

11. Learned advocate for respondents No. 1 and 2 have

informed this Court that already the amount of compensation is withdrawn by respondent No.1, when there was no stay or injunction operating. In that view of the matter and taking into consideration the fact that the learned advocate for respondent No.3 states that whenever an amount of compensation is permitted to be withdrawn, an undertaking is obtained from the concerned, that they would deposit the amount of compensation in case any dispute arises, following order is passed-

ORDER

- a. The impugned order dated 28th December, 2017 passed by respondent No.2 is hereby quashed and set side.
- b. Respondent No. 2 is directed to refer the dispute about apportionment of the land acquisition compensation amount in respect of land bearing Gut No. 186 admeasuring 0.0414 at village Wadgaon (Lakh) Taluka – Tuljapur, to the competent civil court, within a period of two weeks from the date of receipt of writ of this order.
- c. Respondent No.1 shall furnish surety to the satisfaction of the competent civil court that in case

proceedings are decided against her, she will deposit the amount of Rs.10,45,764/- in the civil court within a period of four weeks of such decision.

- d. Writ petition is allowed in above terms.

[NITIN B. SURYAWANSHI]
JUDGE

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