

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

**WRIT PETITION NO.8457 OF 2019
WITH WP/11115/2019**

**ANUSAYA SAKHARAM KAWALE
VERSUS
SUMAN @ KANTABAI TUKARAM KHARTE AND OTHERS**

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Advocate for Petitioner : Mr. Rahul R. Karpe h/f Mr. Anup D. Mane

AGP for Respondents – State : Mr. S. N. Kendre

Advocate for Respondents No. 1, 2 & 5: Mr. Subhash Chillarge

Advocate for Respondent No.4 : Mr. R. B. Bhosle

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 13th JULY, 2022

PER COURT :

1. This petition filed under Articles 226 and 227 of the Constitution of India is directed against the order dated 01/07/2019 passed by the learned Civil Judge Senior Division, Latur below Exhibit-39 in Regular Civil Suit No.296/2018, thereby allowing the application filed by respondents No. 2 and 5 and permitting them to withdraw the amount of compensation of their share.

2. The petitioner and respondents No. 1 and 2 being original plaintiffs, filed R.C.S. No.296/2018 against respondents No. 3 to 6 for partition and separate possession and declaration of their 1/4th equal share in the ancestral suit property. The petitioner is sister of respondents Nos. 1, 2 and 5. Plaintiffs in the suit have claimed the relief that defendants No. 1 & 2 be restrained from

disbursing the compensation amount of suit property to defendants No.3 and 4 till the disposal of the suit.

3. During the pendency of suit an amount of compensation of Rs.1,60,15,484/- was deposited by the acquiring body for acquisition of one of the suit property. Alongwith the suit, application Exhibit-5 seeking temporary injunction is filed by the plaintiffs on which the trial Court has passed the order on 17/10/2018 directing the parties to maintain the *status quo* till final decision of application Exhibit-5.

4. The original plaintiffs No.1 and 2 and defendant No.3 filed application Exhibit-39 claiming that as per the compromise arrived at between them, they may be permitted to withdraw an amount of Rs.36,46,759/- for plaintiff No.1, Rs.36,46,758/- for plaintiff No.2 and amount of Rs.47,18,096/- for defendant No.3. They also placed on record copy of the compromise arrived at between them along with the said application. The said application was strongly opposed by the petitioner – original plaintiff No.3. On 04/05/2019, the trial Court after perusing Nazir report passed following order :-

"Perused application and Nazir report. It is fact that, compromise taken place between plaintiff No.1, 2 and defendant No.3. They themselves decided their shares in the amount. The amount which they claimed is not equal in proportion. Therefore, before passing order it is

necessary to hear plaintiff No.3 hence call say of plaintiff No.3 to this application."

5. Thereafter, after hearing the parties at length the trial Court has partly allowed the application Exhibit-39, thereby permitting plaintiff No.2 to withdraw amount of Rs.30,00,000/- and defendant No.3 was permitted to withdraw amount of Rs.40,00,000/- from the compensation amount. The remaining amount was directed to be fix deposited in National Bank till the decision of the suit. Petitioner is aggrieved by this order.

6. Heard Mr. Rahul R. Karpe, learned advocate h/f Mr. Anup D. Mane, learned advocate for petitioner, Mr. Subhash Chillarge, learned advocate for respondents No.1, 2 and 5, Mr. R. B. Bhosle, learned advocate for respondent No.4 and the learned Assistant Government Pleader for respondent – State.

7. The learned advocate for petitioner strenuously submits that since there was a dispute in respect of apportionment of compensation amount, the trial Court was duty bound to refer the dispute to the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated in terms of Section 3-H(4) of the National Highways Act, 1956 (for short 'the said Act'). In support of his submission he relied on ***Arun Trimbakrao Lokare Vs. State of Maharashtra and Others, 2017(6) Mh.L.J. 612*** and

Ashok Ramling More Vs. Union of India and Others, 2017(2) All.M.R. 792. He further submits that original plaintiffs No.1 and 2 and defendant No.3 have played fraud and entered into a compromise which should not have been considered by the trial Court. The petitioner has already filed police complaint against plaintiffs No. 1 and 2 and defendant No.3 for forgery and impersonation at the time of recording the compromise. He further submits that in spite of there being clear-cut report of Nazir that plaintiffs No. 1 and 2 and defendant No.3 have themselves decided their share, the trial Court ignoring the same has erroneously proceeded to allow the application only on the ground that compensation amount lying in the Court and cannot be used by plaintiff No.2 and defendant No.3 would naturally cause injustice. The legal objections raised by the petitioner were not at all considered by the trial Court while passing the impugned order. He, therefore, submits that the impugned order cannot be sustained and the same is liable to be quashed and set aside by allowing the writ petition.

8. Learned advocate for respondents No. 1, 2 and 5, on the other hand, supported the impugned order. He submits that plaintiffs No.1 and 2 and defendant No.3 have arrived at a compromise and they have decided their respective shares as per

the said compromise. Therefore, the trial Court was justified in permitting them to withdraw the amount by the impugned order. He submits that there has to be an application for referring the dispute to the Principal Civil Court in terms of Section 3-H(4). In the present case, no such application is filed and therefore, the trial Court has rightly permitted the respondents to withdraw the amount. He, therefore, supported the impugned order and submits that there is no substance in the petition and the same be dismissed.

9. Learned advocate for respondent No.4 submits that respondent No.4 has deposited the amount as per the directions of the trial Court. In fact, the said amount ought to have been deposited in the Principal Civil Court of original jurisdiction. However, since the trial Court directed, they have deposited the amount. He further submits that in terms of Section 3-H(4) the dispute is liable to be referred to the Principal Civil Court of original jurisdiction.

10. Learned Assistant Government Pleader has adopted the arguments of learned advocate for respondent No.4. He also submits that as per Section 3-H(4) the dispute is required to be referred to the Principal Civil Court of original jurisdiction.

11. For deciding the controversy it is necessary to consider the relevant provisions of Section 3-H of the said Act :-

"Section 3-H :-

(1)....

(2)....

(3)....

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated."

12. The Division Bench of this Court in ***Arun Trimbakrao Lokare*** (supra) has interpreted the said provision along with Section 3-G of the said Act and Sections 30 and 31 of the Land Acquisition Act, 1894. It is held that the petitioner in that case had undivided share in the acquired land. There was dispute as to entitlement to receive compensation. Hence, the competent authority is obliged to refer the matter to the Principal Civil Court of original jurisdiction. By implication it necessarily excludes jurisdiction of competent authority, which is entitled to merely decide the point of apportionment of compensation amongst several persons.

13. In ***Ashok Ramling More*** (supra), the Division Bench has held that :-

"6. Section 3-H(4) of the Act prescribes that if any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil Court

of original jurisdiction within the limits of whose jurisdiction the land is situated. In the instant matter, on perusal of the objection, it prima facie appears that the dispute raised by the petitioners is in respect of "any person to whom the same or any part thereof is payable". Since, the dispute raised in the matter is in respect of entitlement of the petitioners to claim the amount or part of the amount determined by the competent authority as compensation payable for the acquired property, there is no option available to the competent authority to deal with the dispute but to refer the same for decision of the principal civil Court of the original jurisdiction.

7. It does appear that the competent authority has dealt with the objections and expressed opinion as regards merits of the claim raised by the petitioners. It prima facie appears that the dispute raised does not come within the ambit of section 3-H(3) of the National Highways Act, 1956. In a case, where several persons claim to be interested in the amount deposited under sub-section (1) of section 3-H, the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them. In the instant matter, the dispute is not as regards persons or several persons who claim to be interested in the amount deposited under sub-section (1) of section 3-H of the Act. The dispute raised is in respect of entitlement of the petitioners to receive the amount or part of the amount. The petitioners claim their entitlement on the basis of title derived by them and since the question is raised as regards the title of the petitioners qua the acquired property, we are of the opinion that it is only the Principal Civil Court of the original jurisdiction which would be competent to deal with the issue and pronounce the judgment."

14. In the case in hand, admittedly there is dispute between the petitioner and respondents No. 1, 2 and 5 in respect of apportionment of the compensation amount. In that view of the matter, it was incumbent on the part of the trial Court to refer the

matter to the Principal Civil Court of original jurisdiction for deciding the said dispute.

15. The trial Court has exceeded its jurisdiction while passing the impugned order and has erroneously proceeded to accept the compromise which is claimed to be fraudulent by the petitioner. The reason assigned by the trial Court that the respondent original plaintiff No.2 and defendant No.3 cannot use the compensation amount, which is injustice to them, is also not acceptable. The trial Court, therefore, has committed serious error in not following provisions of Section 3-H(4) and referring the matter to the Principal Civil Court of original jurisdiction. The impugned order, therefore, cannot be sustained and the same is hereby quashed and set aside. The trial Court is directed to refer the dispute of apportionment of amount to the Principal District Judge.

16. The trial of the suit is expedited. Parties are directed to cooperate in the expeditious disposal of the suit. In any case, the suit shall be decided within a period of one year from the date of receipt of writ of this Court. Till the Principal Civil Court of original jurisdiction decides the dispute of apportionment, the compensation amount to be kept in a fixed deposit in a nationalised bank.

17. Trial Court after deciding the suit shall intimate its decision to the Principal Civil Court of original jurisdiction. Considering the fact that the rights of the parties will be crystallised in the decision given by the trial Court and the amount of compensation would be payable in terms of the said decision of the trial Court, the Principal Civil Court of original jurisdiction shall decide the dispute in the light of decision rendered by the trial Court.

18. With these directions, the writ petition is allowed.

19. Accordingly, Writ Petition No.11115/2019 also stands disposed of.

(NITIN B. SURYAWANSHI, J.)