

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

953 WRIT PETITION NO.9220 OF 2018
WITH CA/2591/2021 IN WP/9220/2018

SHALINI MALOJIRAO BHOSALE
VERSUS
NATIONAL HIGHWAY AUTHORITY THOROUGH
COMPETENT AUTHORITY AND ANOTHER

...
Advocate for Petitioner : Mr. Gangakhedkar Shailendra S.
AGP for the respondent – State : Mr. A.S. Shinde
Advocate for the respondent no. 1 : Mr. R.B. Bhosle
Advocate for respondent no. 2 : Mr. S.V. Suryawanshi h/f. Mr. G.V. Patil
...

**CORAM : MANGESH S. PATIL &
Y. G. KHOBRADE, JJ.**

DATE : 8 DECEMBER 2022

PC :

Heard.

2. The petitioner is aggrieved and challenging the order passed by the respondent no. 1 which is the competent authority under the National Highways Act, 1956 whereby he has rejected her objection filed under section 3-H(4) of that Act.

3. Learned advocate Mr. Gangakhedkar for the petitioner submits that the respondent no. 1 – competent authority had no power and jurisdiction to sit over the civil rights and decide them irrespective of the merits of the objection. He is mandated by law to make a reference to the civil court. Instead he has indulged in and decided it

as if he was competent to decide the issue. He also refers to the decision in the matter of ***Arun Trimbakrao Lokare Vs. State of Maharashtra and others; 2017(6) Mh.L.J. 612*** to buttress his submission.

4. Learned advocate for the respondent no. 1 – competent authority submits that the respondent no. 1 indeed had no power and jurisdiction to decide the objection on merits. He was under statutory obligation to refer the dispute to the competent authority as is contemplated under section 3-H(4) and as laid down in the matter of Arun (supra).

5. Learned advocate for the respondent no. 2 submits that already a suit for partition is pending before the civil court and even otherwise the rights of the petitioner can be decided in respect of all the properties including the compensation determined under the National Highways Act.

6. Suffice for the purpose to observe that the law is well settled. The competent authority whenever is approached under section 3-H(4) of the National Highways Act raising a dispute as to the entitlement it has to make a reference to the civil court of ordinary original jurisdiction as is laid down in the matter of Arun (supra).

7. It appears that instead of following such a course, the respondent no. 1 – competent authority has proceeded to decide right of the petitioner to have part of the compensation even by referring to the provisions of the Hindu Succession Act. We are surprised that he is oblivious of the powers vested in him.

8. Be that as it may. Respondent no. 1 – Competent Authority had no jurisdiction to indulge into the merits of the dispute and should have made a reference to the civil court. The order is clearly illegal and is liable to be quashed and set aside.

9. It appears that pursuant to the award passed by the Arbitrator, compensation has been determined. It was even sought to be disbursed and now a part of it stands deposited in the account of the respondent no. 2 but the account has been seized by the order of this court. It would be appropriate that the civil court which is already seized of the matter would decide even this dispute including the further course to be taken in respect of the amount lying in the account.

10. We allow the writ petition, quash and set aside the impugned order and direct the respondent no. 1 to make a reference in accordance with the observations made herein-above as early as possible.

11. The amount of compensation lying in the account of the respondent no. 2 as also the amount which the respondent no. 2 has already withdrawn shall be treated as a suit property and the civil court shall decide the rival claims on its own merits. The petitioner and the respondent no.2 may apply to the civil court and seek appropriate orders in respect of the amount lying in the account of the respondent no. 2 and directed to be attached by this Court. The attachment would continue till the civil court decides the issue.

12. Pending civil application is disposed of.

[Y. G. KHOBRADE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/