

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3127 OF 2021

Ankush Ramrao Dighe
Age – 44 years, Occu – Agril.,
R/o. Karegaon, Tq. Loha,
Dist. Nanded

.. Petitioner

VERSUS

1] The Union of India
Through Ministry of Road Transport
and National Highways, New Delhi

2] The Competent Authority / Sub Divisional Officer,
(Land Acquisition Officer), Kandhar,
Dist. Nanded

3] Bhagwat Shankarrao Gangamwar,
Age – 48 years, Occu – Business,
R/o Rana Nagar, Sarafa Bazar, Nanded
Dist. Nanded

4] Umesh Rameshwar Roda,
Age – 48 years, Occu – Business,
R/o Rana Nagar, Sarafa Bazar, Nanded,
Dist. Nanded

.. Respondents

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Advocate for petitioner : Mr. Anil M. Gaikwad
Standing Counsel for the respondents nos. 1 and 2 : Mr. S.S. Deve
Advocate for the respondents nos. 3 and 4 : Mr. B.R. Waramma

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

DATE : 15 DECEMBER 2022

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. Rule made returnable forthwith. Mr. Deve,
and Mr. Waramma, learned advocates for the respondents waive

service for the respective respondents. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner is challenging the order passed by the respondent no. 2 who is a competent authority under the National Highways Act, 1956 ("**Act**") whereby he has rejected his objection raised under section 3-H of that Act.

3. Mr. Gaikwad, learned advocate for the petitioner would submit that the respondent no. 2 - competent authority has no power and jurisdiction to decide the objection filed under section 3-H of the Act. The only course open for him was to make a reference to the civil Court. He has proceeded to exercise the jurisdiction not vested in him and has undertaken a scrutiny of the petitioner's claim on merits.

Mr. Gaikwad would further submit that the petitioner has already filed a suit and it was obligatory on the part of the respondent no. 2 to make a reference of the dispute to the civil Court. The order being illegal, it be quashed and set aside.

4. The learned advocate Mr. Waramma who appears for respondents nos. 3 and 4 submits that the respondent no. 2 - competent authority is not expected to act like a postman whenever an objection is received before him under section 3-H(4) of the Act. Unless he was satisfied that *prima facie* the petitioner had some right, he could

not have made any reference. By the impugned order, he has merely recorded the reasons why he was not making a reference. Therefore, it cannot be said that he has no jurisdiction even to undertake a superficial enquiry.

Mr. Waramma would further submit that the respondent no. 2 is a quasi judicial authority as has been held in the matter of *Bhupendrasingh Parmar* (writ petition no. 5286 of 2018) and since the petitioner is impugning the order passed by quasi judicial authority, the matter would lie before a Single Judge.

5. The issue is no more *res integra*. This Court in the matter of ***Arun Trimbakrao Lohkare Vs. State of Maharashtra*** (writ petition no. 1949 of 2017 dated 29 June 2017) has elaborately discussed the power and jurisdiction of a competent authority while dealing with the provisions of section 3-H(3) and 3-H(4) of the Act. It has been expressly held that whenever a dispute is raised as to the entitlement or even in respect of apportionment, the only course available for him is to make a reference to the civil Court under section 3-H(4) of the Act. He has no jurisdiction to decide the disputed claims which obviously would require evidence to be recorded. In view of such state of position in law, the impugned order passed by the respondent no. 2 is clearly without jurisdiction.

6. True it is that already a civil suit has been filed by the petitioner impleading even the respondent no. 2 - competent authority. However, in our considered view, such pendency of a civil suit would not have any bearing as far as the issue in the matter in hand is concerned. On the contrary, if the respondents are alive to the fact of pendency of the suit, the respondent no. 2 should have himself refrained from sitting over the disputed claims *inter se* between the petitioner and respondents nos. 3 and 4. Instead, he has undertaken that exercise and has passed the impugned order which is not sustainable in law.

7. We allow the petition, quash and set aside the impugned order.

8. We direct the respondent no. 2 to now make a reference to the civil Court under section 3-H)(4) of the Act at the earliest and in any case within four weeks from today.

9. Rule is made absolute in above terms.

[Y. G. KHOBRADE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/