

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

WRIT PETITION NO. 10146 OF 2015

Shaikh Nizam s/o Shaikh Jainuddin

...Petitioners

Versus

The State of Maharashtra & Ors.

...Respondents

.....

Shri. C. R. Deshpande, Advocate for the petitioners

Shri. A. A. Jagatkar, AGP for respondent nos. 1 and 2

Shri. G. K. Thigale, Advocate for respondent no. 3

Shri. A. B. Dhongade, Advocate for respondent no. 2

Shri. A. A. Lomte h/f Shri. S. J. Salunke, Advocate for respondent
nos. 5, 9, 11, 12, 14 to 22, 29, 30, 34, 35, 37 & 39

.....

AND

CIVIL APPLICATION NO. 10333 OF 2017

IN

WRIT PETITION NO. 10146 OF 2015

AND

WRIT PETITION NO. 4458 OF 2017

Gopal s/o Vasantrao Tekale & Other

...Petitioners

Versus

The State of Maharashtra & Ors.

...Respondents

.....

Shri. G. K. Thigale, Advocate for the petitioners

Shri. A. A. Jagatkar, AGP for respondent nos. 1, 2 & 4

Shri. C. R. Deshpande h/f Shri. H. V. Tungar, Advocate for
respondent no. 6

Shri. A. B. Dhongade, Advocate for respondent nos. 3 & 5

.....

**AND
CIVIL APPLICATION NO. 13661 OF 2018
IN
WRIT PETITION NO. 4458 OF 2017**

**CORAM : BHARATI H. DANGRE, J.
DATE : FEBRUARY 10TH, 2022**

PER COURT : -

1. Heard learned Counsel Shri. C. R. Deshpande for the petitioner, the learned AGP for respondent nos. 1, learned Counsel Shri. A. B. Dhongade for respondent no.2 and Shri. G. K. Thigale for respondent no. 3.

2. The petition is filed by the petitioner who claim to be an owner and in possession of 5 hectors of land out of Survey No. 92, which he claim to have purchased under the registered Sale Deed and the petitioner claim to be in possession of the said land. Out of the said land, some portion i.e. 97 *Are* (9700 sq.mtrs.) came to be acquired by the Central Government for the purpose of National Highway No. 211. The acquisition proceedings commenced in File No. 4/12A/12 and on 06.08.2014, the award was declared under Section 3[G] of the National Highways Act. Upto this stage, there was no objection raised by any person to the land acquisition proceeding is the submission of the learned Counsel Shri. C. R. Deshpande.

3. In the year 2014, the respondent nos. 3 to 39 filed objection petition before the Competent Authority and the said objections are placed on record along with the petition and listed as Annexures 'A-1' to 'A-21'. From the objections, it can be discerned that the objectors claim that they are interested in Survey No. 92 as it is claimed that in the said survey number, one Shri. Manohar Palimkar had purchased a plot under the guise of Arogya Nagar Gruh Nirman Sahakari Society Limited, Beed and in an unauthorized way, the said plot was sold to the petitioner, and therefore Plot no. 171 in Survey No. 92 belong to deceased - Manohar Palimkar and the objectors are entitled for compensation of the said plot. All such objections raised before the authority claim interest in survey no. 92, to be owned and possessed by the objectors.

4. I have also perused the copy of the sale deed under which the petitioner claim to have purchased the said land, which is described in the Sale Deed, annexed at Exh. 'B' to be land from Survey No. 92, *ad measuring* 5 hector and the boundaries are described vaguely as the brick kiln of Aksad Pinjari and other lands on east, the disputed land with Datta Mandir on west, the land sold by Agrawal to the north, and Beed - Samnapur road at south. In the Survey No. 92, the location of the 5 hector of land is only described

in this manner vaguely. As far as the objectors are concerned, they also claim a plot in survey no. 92 without its boundaries but with distinct description and they claim to have purchased the said piece of land from Survey No. 92.

. This gave rise to a dispute and though the award was passed and the compensation of Rs. 9000/- sq.mtr. of land (0.97 Are) was determined to be Rs.1,06,70,000/- in the name of the petitioner, the objectors also claimed the interest in the said land and claimed compensation by filing objections and the objectors being 34 in number, the respondent no.2-Competent Authority, after affording an opportunity of hearing to the petitioner as well as the objectors, arrived at a conclusion that the ingredients of Section 3[H] of the National Highways Act, 1956 are satisfied, since several persons claim to be interested in the amount liable to be paid for the land under acquisition and since the dispute arose, he deemed it fit to refer the dispute to the Civil Court of original jurisdiction. The said order is passed on 11.06.2015 and is impugned in the present petition.

. On 12.10.2015, this Court granted stay, as a consequence the effect and operation of the order making Reference came to be stayed and a restrained order was passed to the effect that if the amount is not already transmitted, then it shall not be transmitted.

5. During the course of hearing of the writ petition, the learned Counsel for respondent no. 2 was directed to file an affidavit and accordingly the Dy. Collector and the Competent Authority, Land Acquisition, Jaikwadi Project, Beed - Smt. Bharati d/o Annaso Sagare has filed her affidavit on 28.01.2022. In the said affidavit, she has categorically placed on record the details of the amount due under the original award dated 06.06.2014 as well as the amount due under the modified award passed on 02.08.2016, in the wake of the new Land Acquisition Act, 2013. As far as the original award is concerned, under which an amount of Rs. 1,06,70,000/- was payable, it is stated that Vatsalabai and other 34 persons raised objection on 13.11.2014, which came to be decided collectively by an order dated 11.06.2015 and the amount was sent to the Civil Court under L.A.R. No. 347/2015. The said order is the subject matter of challenge in Writ Petition No. 10146 of 2015.

. As far as the modified award declared on 28.12.2016 is concerned, it is stated that Vatsalabai and other 21 raised objection on 19.08.2016, which came to be decided collectively by order dated 28.12.2016 and the objection raised by 23 objectors was rejected and the compensation was directed to be paid to the petitioner. This order is subject matter of challenge in another Writ Petition No.

4458/2017, and argued by Advocate Thigale. The affidavit proceed to state that the modified amount is of Rs. 4,82,46,994/-, out of which an amount of Rs.3,75,76,994/- is already paid to Shaikh Nizam Shaikh Jainuddin i.e. the petitioner in Writ Petition No. 10146 of 2015 and the remaining amount i.e. 1,06,70,000/- is made over to the Civil Court in L.A.R. No. 347/2015. It is further stated in the affidavit that the entitlement of the petitioner and other objectors is pending before the Civil Court for an amount of Rs.1,06,70,000/-, though Shaikh Nizam Shaikh Jainuddin has received the major chunk of the compensation i.e. Rs. 3,75,76,994/-.

6. The learned Counsel for the petitioner – Shri. C. R. Deshpande, do not dispute that the petitioner, he is representing, has received an amount of Rs. 3,75,76,994/-. The controversy now only revolve around the amount of compensation under the original award i.e. 1,06,70,000/-.

. The learned Counsel Shri. Deshpande submit that if Section 3[H] of the National Highways Act, 1956 is carefully perused and particularly sub-section [3] thereof, the Competent Authority is duty bound to determine the persons, who in it's opinion, are entitled to receive the amount payable to each of them. The learned Counsel would submit that the Competent Authority cannot get itself relieved

of this duty cast upon it to determine who are the persons entitled to receive the compensation and merely on the pretext that a dispute has arisen, shall not make a Reference to the Civil Court. The submission advanced by the learned Counsel is to the effect that when the stage of awarding compensation under the modified award came, the objections preferred by the 23 objectors came to be rejected by the Competent Authority and the amount was disbursed in favour of the petitioner and according to Shri.Deshpande, this is the right exercise of power by the Competent Authority by adjudicating upon the claim and when the said claim is rejected, by considering the petitioner to be the owner and possessor of the property, the amount under the modified award has been made over to him. He would, however, submit that as far as the earlier objections raised on 06.06.2014 by Vatsalabai and 34 others, this exercise ought to have been followed.

7. The learned Counsel may be justified in advancing the said submission, but when the facts involved are carefully perused and particularly the objections raised by the 34 objectors, which are placed on record along with Writ Petition No. 10146/2015, the competent authority arrived at a conclusion that a dispute has arisen in respect of the amount of compensation awarded against the land

from Survey No. 92, *ad measuring* 9700 sq.mtrs., and though the learned Counsel for the petitioner would submit that the authority ought to have discerned that his portion of land is separate from the one that is being claimed by the objectors and by determining the said aspect the compensation could have been awarded in his favour. In my considered opinion, the Competent Authority, who has passed the impugned order, has categorically observed that on consideration of the objections raised, which revolve around Survey No. 92 and the objectors have claimed distinct pieces of land from Survey No. 92 and the petitioner has also claimed to be in ownership and possession of 5 hectores of land from Survey No. 92, without the distinct pieces of land in Survey No. 92 being determined, a dispute has arisen between the parties. The Competent Authority has, therefore, rightly made a reference to the Competent Court and since a stay is obtained in the present proceedings, the Reference is kept pending since the year 2015. If there is a dispute and the matter has been referred to the Civil Court, it ought to be decided expeditiously since the compensation which is awarded under the award on acquiring the land is not disbursed in favour of any of the party. However, merely because the Competent Authority has carried out the exercise at the later stage when the additional compensation came to be awarded in the form of modified award, which, in any case, is the subject matter

of Writ Petition No.4458/2017 and on 04.04.2017, a stay has been granted to the effect that the respondents are restrained from making any payment as regard the suit land i.e. Survey No. 92, *ad measuring* 5 Hecter situated at the proposed Arogya Nagar Gruh Nirman Society, Beed, till the decision of the Reference Court. However, the parties are at consensus to the effect that, the amount was already disbursed before the stay could be granted. As a consequence, the petitioner in Writ Petition No. 10146/2015 is seized of the amount of Rs. 3,75,76,994/-.

8. The learned Counsel Shri. Thigale appearing for the petitioner in Writ Petition No. 4458/2017 would submit that, since the amount is disbursed in favour of the alleged owner Shaikh Nizam Shaikh Jainuddin prior to grant of stay, he is desirous of withdrawing the said writ petition with liberty to agitate his grievance in the petition before the reference Court, since on account of the dispute the matter has already been made over to the Reference Court.

. In the wake of this, Writ Petition No. 4458/2017 is disposed off as withdrawn with liberty being granted to the petitioners to agitate their grievance before the Reference Court which would include their grievance pertaining to the impugned order dated 28.12.2016 passed by the Competent Authority and also

about the disbursement of the payment in favour of the petitioner in Writ Petition No. 10146 of 2015 to the extent of Rs. 3,75,76,900/-. In these circumstances, since dispute arise, the parties are at liberty to contest the claim in the said petition before the Competent Court.

9. At this stage, the learned Counsel Shri. Thigale pressed into service the Civil Application No.13661 of 2018, which is filed in the writ petition, seeking impleadment of the applicants as petitioners, in the wake of the fact that they are the objectors who had raised the objection and they are the plaintiffs in Reg. Civil Suit No. 593/1999. Subject to the verification, by the competent Reference Court about the applicants to the Civil Application No. 13661 of 2018 being the objectors, who had initially filed objection before the competent authority, even the liberty is extended to the applicants in this civil application. Necessarily the Civil Application No. 13661 of 2018 is allowed. The necessary amendment be carried out in the clause title of the petition within a period of one week from today.

10. As far as Writ Petition No. 10146/2015 is concerned, since a specific statement is made by the Competent Authority in it's affidavit to the effect, that the order dated 11.06.2015 impugned in the said writ petition has been stayed by this Court on 12.10.2015

but before passing the order, an amount of Rs. 1,06,70,000/- was already deposited before the District Court, Beed on 17.08.2015, the Writ Petition do not deserve any consideration on merits, since I am of the opinion that the order dated 11.06.2015 making a Reference to the Civil Court in the wake of the discord/dispute existing, the writ petition deserves a dismissal. It is, however, clarified that the entitlement of the petitioner to the receipt of an amount of Rs.3,75,76,994/- as well as his claim for an amount of Rs.1,06,70,000/- shall be finally determined by the Civil Court in L.A.R. No. 347/2015. Since the L.A.R. No. 347/2015 has been stayed since the year 2015 under the orders of this Court, the learned Reference Court is requested to conclude the proceedings in the Reference within period of one year from today.

11. In the wake of the petitions being disposed off, the pending civil application, if any, stand disposed off.

[BHARATI H. DANGRE]
JUDGE