

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

WRIT PETITION NO. 14925 OF 2021

Janardan s/o Digambar Dawkhare,
Age 63 years, Occ. Security Guard,
R/o. 216, Achalapur City, Tq. Achalapur,
Dist. Amravati,

At present r/o. Hastinapuram Society,
Lane 2, Sukhsagar Nagar, 2nd Floor,
Flat No. 202, Katraj, Tq. Haveli, Dist. Pune.

... **Petitioner.**

VERSUS

- 1) The Union of India,
Through its Principal Secretary,
National Highway Authority of India,
New Delhi.
- 2) The State of Maharashtra,
Through its Principal Secretary,
Public Works Department,
Mantralaya Mumbai-32.
- 3) The Executive Engineer,
National Highway Division No. 9,
Bombay Agra Road, Nashik Dist. Nashik.
- 4) The Competent Authority & The Sub
Divisional Officer, Sangamner, Tq.
Sangamner, Dist. Ahmednagar.
- 5) Jaywant s/o Vitthal Dawkhare,
Age 57 years, Occ. Service,
R/o. 1958, JP Road, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.

- 6) Vaibhav s/o Vitthal Dawkhare,
Age 47 years, Occ. Service,
R/o. 1958, JP Road, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.
- 7) Swati w/o Nitin Nilgar,
Age 55 years, Occ. Household,
R/o. Bhoom Tq. Bhoom, Dist.
Osmanabad.
- 8) Jyoti w/o Subhash Nirali,
Age 53 years, Occ. Household,
R/o. 9, Narayan Niwas, Shantinagar,
Wagle Estate, Thane, West.
- 9) Shailaja w/o Ramakant Pulkundwar,
Age 51 years, Occ. Household,
R/o. Meher Nagar, Garkheda,
Aurangabad, Tq. & Dist. Aurangabad.
- 10) Vaishali w/o Ashok Wawdhane,
Age 49 years, Occ. Household,
R/o. 1958, JP Road, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.
- 11) Kusum w/o Vitthalrao Dawkhare,
Age 78 years, Occ. Household,
R/o. 1958, JP Road, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.

... Respondents.

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Advocate for the Petitioner : Mr. K. N. Shermale.

Standing Counsel for Unjion of India/Respondent Nos. 1, 3 & 4 : Mr. B.
M. Dhanure.

Advocate for Respondents No. 5 to 9 : Mr. A.S. Bajaj.

Advocate for the Respondent No. 10 : Ms. Harshita M. Manglani.
A.G.P. for the Respondent No. 2/State : Mrs. R.P. Gaur.

CORAM : **MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : **28.07.2022.**

ORAL ORDER : (PER : MANGESH S. PATIL J.)

Heard. Rule. The Rule is made returnable forthwith. The learned advocates waive service on behalf of respective respondents. At the request of the parties, the matter is heard finally at the stage of admission.

2. In fact, the issue that is being raised is no more *res integra*.

3. An objection raised by the petitioner purportedly under Section 3-H(4) of the National Highways Act, 1956, has been decided by the competent authority instead of referring it to the Civil Court. In case of **Arun Vs. State of Maharashtra; 2017 (6) Mh.L.J. 612**, this Court has clarified the distinction between 3-H(3) and 3-H(4). Under the latter provision, the competent authority does not have jurisdiction to sit over and decide the dispute and it is imperative for it to refer the matter to the civil court.

4. It appears that since the parties were before this Court in Writ Petition No. 7347/2018 and this Court had directed the competent authority, to decide the objection, it seems to have proceeded to decide it on merits. As can be seen from the order passed by this Court, it was not expected of the authority to decide the dispute in any case. In fact, after clarifying the distinction between subsection (3) and (4) of Section 3-H, even it was directed that the competent authority in case it decided to refer the matter to civil court under Section 3-H(4) should transmit the money to civil court. Therefore, there is no scope to hold that the competent authority was labouring under some impression that it was called upon to decide the

objection on its own merits.

5. Be that as it may, once having seen that the competent authority does not have any jurisdiction under Section 3-H(4) to decide the dispute and has to refer it to the civil court, the impugned order is clearly illegal and needs to be quashed and set aside.

6. However, it is pertinent to note that even before the impugned order was passed, the petitioner had filed a suit for partition. A copy of plaint is available on record wherein he has included the properties under acquisition and has claimed 1/8th share in all the properties.

7. Still, it appears that when the parties were before this Court in Writ Petition No. 7347/2018 a claim was put up on petitioner's behalf of having 1/3rd share in the acquired lands. Assuming for the sake of arguments that he is putting up a dispute in respect of apportionment of compensation, the dispute would be only to the extent of his share which at the most, even according to his own stand before this Court, would be 1/3rd.

8. In the circumstances, it would be appropriate that the dispute is to be treated as only in respect of 1/3rd of the amount of compensation, which the competent authority will have to refer to the civil court for decision in accordance with law.

9. The Writ Petition is partly allowed. The impugned order is quashed and set aside. The competent authority shall now refer the dispute to the extent of 1/3rd of the amount of compensation to the civil court.

10. The Rule is made absolute accordingly.

11. At this juncture, the learned advocate Mr. Shermale for the petitioner submits that by the order dated 03.01.2022, interim relief was granted whereby the competent authority was prevented from releasing the

compensation in favour of the respondent Nos. 5 to 11 and the arrangement may be continued for eight weeks to enable the petitioner to approach the Supreme Court.

12. Since some kind of interim relief has been in operation till date, in order to afford an opportunity to the petitioner, the same shall continue for a period of four weeks.

(SANDEEP V. MARNE J.)

(MANGESH S. PATIL, J.)

mkd/-