

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 WRIT PETITION NO.14089 OF 2019

MANISHA RAJKUMAR MUDGADE AND ANOTHER
VERSUS
RAMKISHAN PANDHARINATH SAWANT AND OTHERS

...
Advocate for Petitioners : Mr. Sachin S. Deshmukh
Advocate for Respondent No.1 : Mr. S.V. Natu
Advocate for Respondent No.4 : Mr. S.S. Deve

...

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

DATE : 27-07-2022

PER COURT :

1. We have heard both the sides finally.
2. The only issue, which according to us is not *res integra* arises in this petition i.e. as to what powers a Sub Divisional Officer / the competent authority under Section 3-H (4) of the National Highways Act, 1956 (hereinafter, in short 'Act') has and whether it extends the jurisdiction to decide the dispute regarding rival claims.
3. Admittedly, a dispute was raised by the petitioners before the competent authority and by the order which is under challenge in this writ petition, he has proceeded to decide the dispute in the form of a Judgment. Pertinently, when admittedly, it was brought to his notice that the parties were already before the Civil Court in a suit for partition, still he has proceeded to decide the dispute.

4. We need only to point out that the issue has already been decided by this Court in the matter of **Arun Trimbakrao Lokare Vs. The State of Maharashtra, 2017 (6) Mh.L.J. 612.** A distinction in sub-section (3) and (4) of Section 3-H of the Act has been laid down. It has been pointed out that the only course that is to be followed by the competent authority is to refer the dispute to the Civil Court. In that view of the matter, the impugned order is without jurisdiction and is liable to be quashed and set aside.

5. The writ petition is allowed.

6. Impugned order is quashed and set aside.

7. The competent authority - respondent no.4 shall now refer the dispute to the Civil Court as contemplated under Section 3-H (4) of the Act and the decision cited herein above.

8. The amount of compensation shall be treated as a suit property in the suit which is already pending. The parties may seek appropriate relief in that suit including claim for disbursement of amount.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)