

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14121 OF 2018

Himayat Noor Patel
Age 65 years, Occu. Agriculture
R/o. Ausa, Tq. Ausa,
District Latur

.. Petitioner

Versus

1. The Project Director
National Highway Authority of India
Unit Nanded, District Nanded
2. The Competent Authority
(Land Acquisition)
And the Sub Divisional Officer
Ausa-Renapur, District Latur
3. Trimbakdas Shankarlal Zanwar,
Age 65 years, Occu. Agriculture
R/o. Khandare Galli,
R/o. Ausa, Tq. Ausa,
District Latur

Since deceased through his L.Rs

- 3-a. Padmabai wd/o. Trimbakdas Zanwar
Age 55 years, Occu. Household
- 3-b. Brijmohan s/o. Trimbakdas Zanwar
Age 40 years, Occu. Medical Practitioner,
- 3-c. Sou. Rachana w/o. Anoop Baheti,
Age 33 years, Occu. Household,

All R/o. Aditya Sanskruti Society,
Latur (City), Latur, Tq. & Dist. Latur

.. Respondents
(Original Respondents)

AND

CIVIL APPLICATION NO. 2298 OF 2019 IN WP/ 14121 / 2018
(Shaikh Farooq Gulam Jilani V. The Project Director, National Highway
Authority of India and others)

...

Mr. V. D. Hon, Senior Advocate i/b. Mr. A. V. Hon, Advocate for Petitioner
Respondent no. 1 served - absent
Mr. R.R. Bangar, Advocate for Respondent No.2
Mr. S. S. Rathi, Advocate for Respondent No.3-a to 3-c
Mr. S.P. Urgunde, Advocate for the applicant in CA/2298/2019

...

CORAM : MANGESH S. PATIL, J.

DATE : 11 JULY 2022

ORAL ORDER :

Heard. Rule. Rule is made returnable forthwith. By consent of the parties, the petition is heard finally at the stage of admission.

2. The petitioner is aggrieved primarily with clause no. 3 of the order passed by the arbitrator in a proceeding under section 3-G of the National Highways Act, 1956 ("**the Act**"). The direction reads as under :-

"3) The intervener's application is hereby allowed to the extent of compensation amount of the land Adm. 667 Sq. Mtr. with the enhancement and the multiplying factor. The competent authority Land Acquisition is hereby directed to refer the dispute in respect of the rights and compensation amount of the land Adm. 667 Sq. Mtr. Of Sy. No. 218 of AUSA to the Principal District Judge Latur as per Sec. 3 (H) of National Highways Act. "

3. It is necessary to note that though, in prayer clause (B), the petitioner has even raised an objection in respect of clause no. 4, the learned senior advocate Mr. Hon for the petitioner submits that the petitioner is not pressing the challenge to the award passed by the arbitrator and the direction in clause no. 4.

4. Learned senior advocate Mr. Hon would submit that in a proceeding under section 3-G of the Act, the arbitrator could not have issued any such direction which only a competent authority could have issued under section 3-H(4) of the Act. The direction was clearly beyond the jurisdiction of the arbitrator. The petitioner is not challenging the award as such which he could have done only under section 34 or 37 of

the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"). He is merely aggrieved by the direction to refer the dispute under section 3-H(4) of the Act as if he was the competent authority. The direction being clearly without jurisdiction, this Court should quash and set aside it.

5. Mr. Hon would further submit that the dispute as to if the petitioner is a permanent tenant and a deemed purchaser has reached finality inasmuch as, an attempt by the respondent no. 3 to put up a challenge to the tenancy authority holding the petitioner to be the deemed purchaser has reached finality. His revision under section 91 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 along with the application for condonation of delay was not registered since the Maharashtra Revenue Tribunal refused to condone the delay. The respondent no. 3 had challenged that order in this Court unsuccessfully and even the Special Leave Petition preferred by him has been dismissed by the Supreme Court. He would therefore submit that since the petitioner has been held to be the deemed purchaser, there was no question of respondent no. 3 putting up any claim to receive the compensation. Therefore, apart from the aspect of jurisdiction, even the facts were such that the arbitrator could not have issued any direction for referring the dispute under section 3-H(4) of the Act, that too by way of a direction to the competent authority who is empowered to disburse the amount of compensation under section 3-H of the Act.

6. Mr. Hon would further submit that objection that was raised by the respondent no. 3 before the arbitrator, styled as one under section

3-G(5) of the Act was not tenable. He was not entitled to take any part in the arbitration proceeding. His attempt to seek a direction under section 3-H(4) of the Act was premature. He could have moved such application before the competent authority at an appropriate stage. His request even on that count should not have been considered.

7. Learned advocate Mr. Rathi for the respondent no. 3-a to 3-c would submit that going by the scheme of the Act, particularly section 3-G, a public notice is required to be issued calling the response from the persons having interest in the land acquired. Even if the respondent no. 3 is ultimately found to be not entitled to receive any such part of the compensation but he was a person having interest and had rightly put up an objection before the arbitrator pursuant to such enabling provision.

8. Mr. Rathi would further submit that it is not that the respondent no. 3 was for the first time raising such objection before the arbitrator. In-fact, even before the arbitrator could decide the arbitration proceeding, an objection was raised with the competent authority under section 3-H of the Act. It was not decided either way. Even in the award passed by the competent authority on whose reference the arbitration proceeding under section 3-G of the Act was decided, there was a reference in respect of the objection raised by the respondent no. 3. He would, therefore, submit that irrespective of the fact as to whether the arbitrator could have taken cognizance of his intervention in a proceeding under section 3-G of the Act, the direction at the most would be redundant or superfluous inasmuch as the respondents' objection under

section 3-H of the Act has already been pending with the competent authority which has no alternative but to refer it to the civil court as contemplated under section 3-H(4) of the Act. Therefore, irrespective of the arbitrariness, legality or otherwise of the direction under challenge, the net effect would be the same wherein the respondent no. 2 – competent authority will have to act in accordance with the provisions of section 3-H(4) of the Act as interpreted by this Court in the matter of **Arun S/o Trimbakrao Lokare Vs. State of Maharashtra and Others;** reported in **2017 (6) Mh.L.J. 612.**

9. Mr. Rathi for respondents no. 3-a to 3-c as also Mr. Bangar who appears for respondent no.2 – competent authority would submit that, in-fact, the petitioner is challenging may be a part of the award of the arbitrator and by virtue of the provisions of section 3-G(6) of the Act, the remedy for the petitioner could have been to take recourse to section 34 or section 37 of the Arbitration Act.

10. Learned advocate Mr. Urgunde for the intervenor who has filed civil application no. 2298 of 2019 would submit that the intervenor has purchased 79 Are portion from the respondent no. 3 from the same land survey no. 218. Even he is interested in having the compensation. He had approached the respondent no. 2 – competent authority but since his objection was not being considered, he had to approach this Court in writ petition no. 1949 of 2017 and Division Bench had to direct respondent no. 2 – competent authority to refer his dispute to a civil court under section 3-H(4) of the Act. On failure to do so, even the intervenor

had to apply under the Contempt of Courts Act and, therefore, even his objection needs to be referred to the civil court independently or may be along with the objection that is being raised by the respondent no. 3.

11. Taking up the objection as to the maintainability of the writ petition, true it is that a proceeding before the arbitrator under section 3-G of the Act is governed by the provisions of the Arbitration Act in view of sub section (6). In the normal case scenario a person interested in putting up a challenge to the award of the arbitrator will have to take recourse to either section 34 or section 37 of the Arbitration Act.

12. Pertinently, as has been mentioned herein-above, the challenge herein put up by the petitioner is not to the award in substance. The petitioner is merely aggrieved by the direction reproduced herein-above whereby taking cognizance of the application filed by the respondent no. 3, direction has been given to the competent authority – respondent no. 2 to make a reference under section 3-H(4) to the Principal District Judge, Latur. Consequently, it is imperative to ascertain if an arbitrator in a proceeding under section 3-G of the Act could have exercised such a jurisdiction in issuing such a direction.

13. Suffice for the purpose to observe that the proceeding contemplated under section 3-G of the Act merely requires the arbitrator to arbitrate and decide the just amount of compensation to be paid to the rightful owner pursuant to the acquisition. Though, sub-sections 2, 3 and 4 contemplate claims of persons having interest to be entertained, there

is no further recourse or provision which *prima facie* would enable him to decide the rival claims. Apparently, the arbitrator is merely supposed to decide the just amount of compensation. Even if he is required to invite the objections from the persons having interest, their intervention could be only in arriving at the quantum of compensation and not beyond that. The arbitrator cannot enter into the disputed area as to the apportionment or entitlement which are clearly covered by section 3-H of the Act and require the competent authority either to disburse the amount of compensation under sub-section (3) where there is no dispute or to refer the dispute to the civil court where there is dispute as to the entitlement as has been interpreted in the matter of Arun Lokare (supra).

14. If such is the scheme of the Act, the direction issued by the arbitrator under challenge in the writ petition is *ex facie* beyond the competence and jurisdiction of the arbitrator while determining the compensation under section 3-G of the Act.

15. Once having reached such a conclusion, the question as to if the petitioner could have resorted to section 34 or section 37 of the Arbitration Act does not survive. The direction is clearly beyond the jurisdiction of the arbitrator and this Court in exercise of the writ jurisdiction can certainly examine its legality.

16. As far as the objection being raised by the respondent no. 3 as also the intervenor, as the scheme of the Act suggests the competent authority in the case of respondent no. 3 has already been moved by him

putting up an objection and a claim to share the compensation and in respect of the intervenor, there is a direction by this Court to the respondent no. 2 – competent authority to refer his dispute under section 3-H(4) of the Act.

17. If such is the state-of-affairs, it would be imperative for the respondent no. 2 – competent authority irrespective of the fact that the direction under challenge in this writ petition is found to be without jurisdiction, to act in terms of the provisions of section 3-H(4) of the Act.

18. Learned senior advocate Mr. Hon submits that the entitlement of the respondent no. 3 to have the compensation is clearly based on his claim of being the owner of the property whereas, the decision on the issue about the petitioner having become a deemed purchaser has reached finality. Though the submission is attractive, in my considered view, section 3-H(4) of the Act does not admit of and give any power to the competent authority to first record a *prima facie* satisfaction as to the claim being put up by the rival claimants before making a reference to the civil Court. It is not that only after some enquiry into the rival claims any discretion is to be exercised by him.

19. There is a marked distinction between sub-section (3) and sub-section (4) of section 3-H of the Act. This Court had an occasion to consider it in the matter of Arun Lokare (*supra*) with following observations in paragraph no. 16 as under :-

“16. It is a settled principle of interpretation of statute that the provisions of any statute are to be so interpreted as to give effect to each of them to the extent possible without giving rise to any conflict or overlapping. This principle of harmonious construction needs to be applied in the matter before hand vis-a-vis Sub-Section (3) of Section 3-H, while interpreting sub-section (3). Such application would lead us to interpret these provisions in harmonious manner putting neither of them otiose. A careful reading of these provisions would reveal that when several persons are entitled to claim compensation, the competent authority has power and jurisdiction to record an opinion and determine the persons who are entitled to receive share/s and only enables him to apportion the amount of compensation amongst them according to the share they are entitled to. As against this, sub-section (4) contemplates a situation where the dispute is raised as to the entitlement of the compensation by several persons and the jurisdiction to decide such dispute is conferred upon the Principal Civil Court of original jurisdiction. In other words, whenever there is dispute raised by any person as to the right to receive either the whole or portion of the compensation, the competent authority is obliged to refer the matter to the Principal Civil Court of original jurisdiction.”

20. Going by this interpretation, wherever there is no dispute as regards the persons entitled to receive the compensation, the competent authority would be entitled to apportion it under sub-section (3) but no sooner any dispute is raised, he has no jurisdiction to enter into and decide the rival claims and the matter has to go to the civil Court in the form of a reference.

21. In the result, the respondent no. 2 who is the competent authority before whom the respondent no. 3 as also the intervenor have put up claims inconsistent with the claims being put up by the petitioner

to receive/share the compensation, the respondent no. 2 would be indeed legally bound to follow the law and the direction of this Court.

22. The writ petition is partly allowed.

23. The impugned direction in clause (3) is quashed and set aside.

24. Rule is made absolute in the above terms.

25. Pending civil application stands disposed of.

[MANGESH S. PATIL]
JUDGE

arp/