

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3641 OF 2020
WITH
WRIT PETITION NO.3643 OF 2020

Ankush Ramchandra Kapse & Ors. Petitioners

Vs.

The Competent Authority of Land
Acquisition & Dy. Collector & Ors. Respondents

Mr. V. S. Kapse a/w. Mr. Shailesh D. Chavan for the
Petitioners

Mr. Shriram S. Kulkarni a/w. Mr. Devidas Jadhav and
Mr. M. K. Vig for Respondent Nos.2 to 7

Mr. A. I. Patel, Additional Government Pleader with
Mrs. A. A. Purav, AGP for Respondent No.1.

Mr. Shriram S. Kulkarni I/b. Devidas Jadhav for
Respondent Nos.2 to 7

Mr. Sandeep S. Ladda a/w. Sabre Alom Adesh jadhav for
NHAI

**CORAM: S.V. GANGAPURWALA &
VINAY JOSHI, JJ.**

DATED : MARCH 31, 2022

P.C.

1 The Petitioners are assailing the orders passed by the
Competent Authority under Section 3H(4) of the National
Highways Act, 1956 (for short "Highways Act") referring
the dispute amongst the parties to the Principal Court of
Original Civil Jurisdiction.

2 The learned Counsel for the parties have taken us through various documents and the Affidavits filed to contend that as far as the payment of amount of compensation qua the structure is concerned, the Respondents, at no material point of time, disputed that the Petitioners are not entitled to the compensation amount of the structures. On the contrary, an agreement was arrived at between the parties that the amount of compensation of land and the structures would be received at one and the same time by the respective parties. The learned Counsel further submits that Respondent No.1 has withdrawn the amount of compensation for land and when the Petitioners were entitled to the amount of compensation of the structures, the same is denied to the Petitioners on erroneous grounds.

3 The learned Counsel submits that in each and every case, it is not necessary that the matter be referred to the Principal Civil Court of Original Jurisdiction, more particularly, when the undisputed and admitted facts discern from the record. According to the learned Counsel, the order being erroneous, deserves to be set aside.

4 The learned Counsel for Respondent Nos.2 to 7 submits that the order has been rightly passed. There was no impediment for Respondent Nos.2 to withdraw the compensation amount of the land. The objection is raised to the entitlement of the Petitioners qua the structure by filing an objection. Same has been considered. As and when the dispute arises with regard to the apportionment and/or entitlement the provision of Section 3H(4) of the Highways Act mandates that the matter be referred to the Principal Civil Court of Original Jurisdiction.

5 We have heard the learned Counsel for the National Highways Authority and learned AGP also.

6 Under the impugned order, the Competent Authority has referred the matter to the Principal Civil Court of Original Jurisdiction to decide the dispute amongst the parties.

7 Whenever the dispute of title and/or entitlement referable to the right of a person is subject matter of a dispute, the course to be adopted by the Competent

Authority is to refer the matter to the Civil Court as provided under Section 3H(4) of the Highways Act.

8 It is also true to suggest on the part of the Petitioners that in each and every matter, as a blanket rule, the matter is not required to be referred to the Civil Court when the rights of the parties are already settled.

9 To illustrate, if there is already a decree of Civil Court, in such circumstances, the Competent Authority would not refer the matter to the Civil Court. In the present case, it appears that there was some agreement between the parties and now the parties have raised objection to that agreement. Same, naturally, will have to be decided by the Civil Court.

10 In the light of the above, we are not inclined to interfere with the said order.

11 The anxiety of the Petitioners also appears to be legitimate that they are not yet paid penny and that if the matter is referred to the Civil Court, it will take long time for its decision.

12 The matter is already referred to the Principal Civil Court of Original Jurisdiction and numbered as Land Acquisition Reference No.16 of 2020. The parties shall appear before the Civil Court on 7th June 2022 and shall cooperate in expeditious disposal of the proceedings.

13 The Civil Court, where the matter is referred, shall endeavour to decide the said proceedings expeditiously and preferably within nine months from the date of appearance of the parties before it. The parties shall not seek unnecessary adjournment and shall cooperate the Court in expeditious disposal of the proceedings.

14 As far as other prayers of the Petitioners with regard to the redeposit of the amount or otherwise is concerned, the Petitioners may make an Application to the Civil Court and such Application would be decided by the Civil Court on its own merits.

15 Depending upon the final decision, the Civil Court may pass further orders with regard to the disbursement.

16 The Writ Petitions stand disposed of accordingly. No costs.

(VINAY JOSHI, J.)

(S.V. GANGAPURWALA, J.)