

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.574 OF 2020

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Harishchandra Pandurang
Bakkam & Anr.

..... Petitioners

Vs.

Competent Authority and
sub Divisional Officer,
Mangaon Division, Mangaon

..... Respondents

Mr. Pradeep D. Dalvi for the Petitioners
Mr. Pradeep Mahadeo Patil a/w. Pravin Gole a/w. Ruturaj N.
Deshmukh for Respondent Nos.3 and 4
Mrs. M. P. Thakur, AGP for the State

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

DATED : MARCH 25, 2022

P.C.

1 The Petitioners seek direction against Respondent
No.1 to pay compensation along with interest.

2 The learned Advocate for the Petitioners submits that
the Award was passed in favour of the Petitioners wherein
compensation of Rs.75,49,511/- was awarded. According to
the learned Counsel for the Petitioners, the Petitioners had

raised an objection referable to Section 3H(4) of the National Highways Act, 1956 (for short “Highways Act”). Once the objection was raised by the Petitioners, the Competent Authority cannot pay compensation to the Respondents. The Petitioners have filed Civil Suit for recovery of compensation qua the present Respondents however, that cannot preclude the Competent Authority from referring the matter to the Civil Court for its decision. The learned Counsel submits that once the objection is raised with regard to the payment of compensation, then the Competent Authority has to refer the matter to the Civil Court. The learned Counsel relies on the judgments of the Division Bench of this Court in the case of **Arun Trimbakrao Lokare Vs. State of Maharashtra**¹, another in Writ Petition No.6919 of 2018 dated 22nd December 2018 and judgment in Writ Petition (ST) No.14231/2019 delivered relying upon the earlier judgment in Arun Trimbakrao Lokare.

3 The learned Advocate for the Petitioner submits that the Affidavit was got executed by playing fraud upon the Petitioners.

¹ 2017(6) Mh.L.J. 612

4 The learned Counsel for the Respondents submits that the Respondents are residing upon the structure of which the land has been acquired. The Petitioners realized this fact. In view of that the Petitioners, on their own accord, executed an affidavit-cum-consent letter for making payment of compensation to these Respondents. Same was executed before the Executive Magistrate. After having executed the Affidavit, the amount of compensation was paid to these Respondents by the Competent Authority. The Petitioners are blowing hot and cold.

5 In the present matter, it appears that the Petitioners had executed an Affidavit-cum-consent letter thereby allowing the payment of compensation to be made to the present Respondents. The said affidavit appears to be dated 15th July 2017.

6 It further appears that thereafter an objection was raised by the present Petitioners. The Petitioners also appear to have filed Civil Suit bearing No.176 of 2018 before the Civil Court at Alibaug. In the said suit, the Petitioners have claimed the relief that the amount of compensation of

Rs.75,49,511/- is illegally paid and the same should be refunded to the present Petitioners. The said Civil Suit appears to be filed in the year 2018. The said Civil Suit is still *sub judice* . In the said Civil Suit also it does not appear that the Petitioners have made any allegations with regard to the Affidavit.

7 The Petitioners have not challenged the said Affidavit in the Suit though in the copy of the plaint some averments are made in regard to the affidavit.

8 No doubt, if the issue of title arises under Section 3H(4) of the Highways Act, the Competent Authority is required to refer the dispute to the Civil Court. A *prima facie* case is required to be put up before the Competent Authority before taking the decision. It is not that, as a blanket rule, in each and every case de hors the issue of title, the matter has to be referred to the Civil Court by the Competent Authority. A *prima facie* case has to be considered and if it comes to the conclusion that the dispute arises to the ownership and possession then in that case, the Competent Authority should certainly not adjudicate

upon the case but refer to the Civil Court as contemplated under Section 3H(4) of the Highways Act.

9 In the present matter, the relief is already claimed for the refund of the compensation from the Respondents, by filing a Civil Suit. The Civil Court is already seized of the matter. This Court, cannot exercise its writ jurisdiction under Article 226 of the Constitution of India for deciding the title or otherwise and moreso when the Civil Court is seized with the matter. The objection of the Petitioners is still pending. No decision has been taken by the Competent Authority on the objection of the Petitioners. The Competent Authority may, after hearing all the parties, take decision. Depending upon the decision of the Competent Authority the parties may take further steps.

10 With these observations, the Writ Petition stands disposed of. No costs.

(VINAY JOSHI, J.)

(S.V. GANGAPURWALA, J.)