

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.8185 OF 2018

Gokul @ Gopal Bapu Dawale and anr.

....Petitioners

Versus

The competent Authority and the sub
divisional officer and ors.

....Respondents

Mr.Vivek Vijay Salunke for the Petitioner.

Mr. V. S. Gokhale, 'B' panel counsel for the Respondent Nos.1 & 4-State.

Mr. Sachin R. Pawar for the Respondent No.2.

Mr. Sagar Talekar for the Respondent No.3.

**CORAM : PRASANNA B. VARALE &
SHRIKANT D. KULKARNI, JJ.**

DATE : 13th JUNE, 2022.

P.C. :

1. Heard finally at the admission stage with consent of both sides.
2. The dispute between parties revolves around making reference to the Principal Civil Court in view of the provisions of Section 3H(4) of the National Highways Act,1956.
3. According to the Petitioners, the subject matter (land Gut No.68/37) situated at village Bhadav, Taluka Mangaon, District Raigad, is their ancestral property and they have legal right and interest in the subject land. Area of 26R land was affected due to construction of the National Highway No.66. The competent Authority / Sub Divisional Officer, Mangaon, Division Mangaon, before making payment of

compensation in respect of acquired land, called upon the interested persons including the Petitioners to submit their objections, if any. Accordingly the Petitioners submitted their objections before the competent Authority. The Petitioners contended that since dispute is raised about apportionment of compensation and entitlement thereof, it was mandatory for Respondent No.1 – competent Authority to refer the dispute to the competent Civil Court. Respondent No.1 – competent Authority has turned down the request made by the Petitioners. In this background, the Petitioners have knocked the doors of this Court by invoking writ jurisdiction.

4. Heard Mr. Vivek Salunke, learned counsel for the Petitioners, Mr. V. S. Gokhale, learned AGP for Respondent No.1 & 4-State and Mr. Sagar Talekar, learned counsel for Respondent No.3.

5. Perused the documents produced by the Petitioners in support of their claim.

6. Mr. Salunke, learned counsel for the Petitioners vehemently submitted that the subject land is an ancestral property of the Petitioners. The Petitioners have legal right and interest in the subject land. Even though their names do not appear in the revenue record, their legal right to receive the compensation can not be denied. He submitted that since the dispute is raised about entitlement / apportionment of compensation

before the competent Authority, it is mandatory for the competent Authority to refer the dispute to the competent Civil Court in view of Section 3H(4) of the National Highways Act, 1956. He submitted that the competent Authority has refused to refer the dispute to the competent Civil Court. He submitted that since the dispute is raised about apportionment of compensation and payment thereof, no option is left before the competent Authority except to refer the dispute to the competent Civil Court. To support his argument, Mr. Saluke has placed reliance on the following citation;

i. Arun s/o Tribakrao Lokare v. State of Maharashtra & ors. 2017(6) Mh.LJ

ii. Rajaram Waman Rane v. Ramkrishna Mahadev Rane (2019) 3 AIR CC 2001

iii. Ashok Ramling More v. Union of India 2017(4) LJSOFT 85

By taking help of above stock of citations, the learned counsel for the Petitioners urged to allow this Petition.

7. Mr. V. S. Gokhale, learned AGP for Respondent Nos.1 & 4 and Mr. Sagar Talekar, learned counsel for Respondent No.3 supported the decision given by the competent Authority / Sub Divisional Officer, Mangaon, Division Mangaon. They submitted that the Petitioners are nowhere in picture since the year 1979. They have not taken any steps to assert their legal rights in respect of subject land for more than 30 years. The Petitioners are now raising the dispute that too in the year 2018 when they received the letter from the competent Authority before the

disbursement of compensation. They submitted that the dispute between the parties including the subject land is already reached in the Civil Court at Mangaon. The suit is filed by the Petitioners against Respondent Nos.3 and others for partition and separate possession of the suit property including the subject land. The Suit is *sub-judice*. The Petitioners are yet to establish their legal right in respect of the subject land and mere for the sake of raising the dispute, the dispute cannot be referred to the Civil Court as contemplated under Section 3H(4) of the National Highways Act, 1956.

8. Mr. Sagar, learned counsel for Respondent No.3 submitted that Respondent No.3 had purchased the property / subject land, and his name is already entered in the revenue record. He submitted that the R.T.S. Appeal preferred by the Petitioners came to be dismissed. He submitted that the Petitioners are not in possession of the subject land and the Petitioners have challenged the sale deed by way of Suit and sought declaration. In this background, it may not be proper and just to refer the dispute to the Civil Court when the Petitioners are nowhere in picture in respect of the subject land since the year 1979.

9. The grievance of the Petitioners is about referring the dispute for apportionment of compensation in respect of subject land to the competent Civil Court in view of the provisions of the National Highways Act, 1956. The Petitioners claimed to have an interest in the subject land

on the basis of genealogy annexed with his objection at page 24 to the Petition.

10. Before going into the merits of the Petition, it would be just and proper to have a glance on the provisions of the National Highways Act, 1956 more particularly Section 3H(4) which reads thus;

“3H. Deposit and payment of amount .-(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.”

11. In Arun Trimbakrao Lokare v. State of Maharashtra (supra), the division Bench of this Court has held in paragraph 16 which reads thus;

“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.”

Practically same view has been taken by the Division Bench of this Court in case of *Rajaram Waman Rane v. Ramkrishna Mahadev Rane (supra)* and *Ashok Ramling More v. Union of India (supra)*.

12. There cannot be any legal debate that considering the provisions of Section 3H(4) no option is available to the competent Authority to deal with the dispute, but to refer the same to the Principal Civil Court having original jurisdiction which would be competent to deal with the issue and determine the right of the parties.

13. Now coming back to the facts of the case. On going through the documents and papers produced by the Petitioners more particularly copies of mutation entries 803 and 804 at page nos.14A and 14B, the Petitioners are claiming their rights by standing into the shoes of their predecessor Bapu Bhagogi Dawale. The Petitioners have given genealogy which is annexed to the Petition and thereby attempted to claim their legal right and interest in the subject land. It is material to note that the Petitioners

are no where in picture since the year 1979. Their name do not find place either in the column of title or possession since the year 1979. They have not availed any legal remedy to establish their legal rights till they received notice from the competent Authority. It is material to note that in a long time span of more than 39 years, the subject land came to be transferred by way of sale deeds, and the mutation entries have been effected by following due procedure. The R.T.S. Appeal preferred by the Petitioners have been dismissed as appearing from the record. In this background, the decision rendered by the competent Authority refusing to refer the dispute to the competent Civil Court cannot be said to be defective in the eye of law.

14. Another important point is that the Petitioners have already filed a Civil Suit in the Court of Civil Judge, Junior Division, Mangaon for declaration, partition and perpetual injunction in respect of the properties including the subject land, to which Respondent no.3 is already a party-defendant. The Petitioners seem to have applied for interim injunction, but the Petitioners seem to have not produced any order passed on the interim Application. In this background, it is very much clear that the Petitioners are nowhere in picture in respect of the subject land since the year 1979. They have not raised the grievance when the subject land came to be sold and mutation entries came to be effected. They have slept over their so

called rights for more than 39 years and raised dispute for the first time in the year 2017/18. The Civil Suit filed by the Petitioners is *sub-judice*, wherein the subject land is also one of the suit property. The competent Civil Court yet to decide the rights of the Petitioners. At the time of final decision of the Suit, if the Petitioners succeed, they may recover the amount of compensation from the concerned person. Let them establish their legal right by way of Suit. In view of peculiar facts of the case, the citations relied upon the learned counsel for the Petitioners do not render any help. The dispute between the parties is already reached to the Court of civil Judge, Junior Division at Mangaon. The subject land is also included in the suit property. In this background, there is no propriety to refer the dispute again to the civil Court. It would be an abuse of law and against the object of the Act of 1956.

15. We do not find any merit in the Petition. The impugned order passed by the competent Authority cannot be said to be defective in view of the above factual scenario. Writ Petition must fail.

16. Writ Petition accordingly stands dismissed.

17. At this stage, Mr. Salunke, learned counsel for the Petitioners submits that there was an interim order operating in favour of the Petitioners till date, the same be continued for further period of six weeks.

18. Learned counsel appearing for the Respondents vehemently

opposed for continuation of interim order and submits that the interim order was passed when all the relevant facts were not placed before the Court and post passing of the interim order, the same was opposed by the Respondents by filing an affidavit-in-reply placing on record all necessary material including certain orders passed by the competent Civil Court. Learned counsel for the Respondents submit that though the affidavit-in-reply was filed on 3rd October, 2018, the order was passed by the Revenue Authority post filing the affidavit-in-reply. Learned counsel for the Respondents thus pray for placing on record this order. Prayer is allowed. The copy of order passed by the Revenue Authority dated 5th May, 2021 is taken on record.

19. Ad-interim order granted earlier to continue for a period of four weeks from today.

(SHRIKANT D. KULKARNI, J.)

(PRASANNA B. VARALE, J.)