

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 2267 OF 2021

Ratna M.Kini & Others .. Petitioners.
v/s.
Atmaram D. Patil
(since deceased) through
LR- 1a- Anusaya A. Patil & Others .. Respondents.

Mr. Sandesh D. Patil with Mr. Chintan Shah i/b. Mr. Prithviraj S.Gole, for
the Petitioners.
Mr. Shailesh Redekar, for Respondent Nos.1 to 3.
Mr. Vishal S.Khanavkar, for Respondent No.4.
R. S. Pawar, AGP for the Respondent-State.

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**CORAM: S.V. GANGAPURWALA &
VINAY JOSHI,JJ.
DATED : 30th MARCH, 2022.**

PC:-

The objections filed by the Petitioner referable to Section 3(H)(4) of the National Highway Act, is rejected.

2 The learned Counsel for the Petitioners submit that Nana was the original owner. He was cultivating the land. He had two wives namely – Jankibai and Radhibai. Radhibai predeceased Nana. The Petitioners are claiming through Radhibai.. As after Nana, Jankibai was alive, 32 M certificate is issued in favour of Jankibai. However, the same was for the benefit of the family.

3 According to the learned Counsel, the Petitioner is litigating against the Respondents. As a disputes exists, the matter is ought to be referred to the Civil Court.

4 The learned Counsel for the Respondents submit that earlier when the Petitioner was litigating in the review proceedings, he never came out with the theory that Nana had second wife namely – Radhibai. It is for the first time while filing the objection, the Petitioner has raised this plea. The Petitioner is not related to the family of the Respondents.

5 The learned Counsel submits that the Mutation Entry 1981 is an uncertified entry relied by the Petitioner. The same is also not certified. When the Petitioner approached the Tahsildar for certifying the said entry, that application is rejected. The Petitioner has no iota of right.

6 We have considered the submissions. The Petitioner claims to be from the branch of Sukur. The Petitioner alleges that Sukur was born through Nana and Radhibai, whereas the case of the Respondent is that the Nana did not have 2nd wife namely Radhibai nor son namely Sukur. The same appears to be a debatable issue. In view of that, the Competent Authority could not have decided the same.

7 In the result, we pass the following order:-

- (i) The impugned order is set aside. The authority shall refer the dispute to the concerned Civil Court. The same shall be referred preferably within eight weeks.
- (ii) The Respondents herein are allowed to withdraw the amount as per the award. The Respondents shall jointly submit solvent security to the extent of 50% of the amount to the Court where the matter would be referred.

8 The Court where the matter is referred, shall make an endeavor to decide the same expeditiously. All contentions of the parties are kept open.

9 The Petitioner may carry out the amendment forthwith to bring on record the legal heirs. The learned Counsel already appears for the legal heirs.

10 Writ Petition is disposed of. No costs.

(VINAY JOSHI,J.)

(S.V.GANGAPURWALA,J.)