

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

**WRIT PETITION NO. 2455 OF 2021
WITH
INTERIM APPLICATION NO. 17766 OF 2022
IN
WRIT PETITION NO. 2455 OF 2021**

Netra Naresh Pardhi & Ors. ... Petitioners

Versus

Robinhood Joe Pereira & Anr. ... Respondents

.....

Mr. Anil D'souza with Mr. Yogesh Rawool i/b. Mr. S.S. Redekar for the
Petitioners.

Ms.Neha Bhide, 'B' Panel Counsel for the State.

Ms.Simantini Mohite with Ms. Siddhi Bhosale for Respondent No.1.

.....

**CORAM : NITIN JAMDAR &
SHARMILA U. DESHMUKH, JJ.**

DATED : 13 SEPTEMBER 2022

P.C. :-

Heard the learned Counsel for the parties.

2. By this petition, the Petitioners have challenged the order dated 18 February 2021 passed by the Respondent No.2-Competent Authority and Sub Divisional Officer, Vasai.

3. In the petition, the Petitioners have asserted that the Petitioners are owners and in actual physical possession of agriculture land bearing Survey No. 79, area admesasuring 12100 sq. meters at village Shirsad, Taluka-Vasai, District – Palghar. Out of the said property, the area admeasuring 7740 sq. meters is acquired for the project proposed by National Highway Authority of India. The Respondent No.1 had objected before the Respondent No.2 claiming compensation in respect of part of the structure. The Respondent No.2 by order dated 18 February 2021 withheld the amount to the tune of Rs. 82,05,664/- out of the total compensation of Rs. 10,10,66,232/-.

4. When the petition came up on board before the Division Bench on 14 June 2022, the following order came to be passed :

“ Learned counsel for the parties have invited our attention to the impugned order dated 18th February, 2021 passed by the authority which indicates that final order is yet to be passed which would be passed after considering the report that is called for by the authority.

2. Learned counsel for the parties have also invited our attention to the interim order passed by this Court on 14th October, 2021 directing the respondent no.2 not to give effect to the order dated 18th February, 2021 until further orders, if the same is not given effect till date.

3. Learned counsel for the petitioners and the respondent no.1 agreed that the final order be passed by the authority

in furtherance of the said order dated 18th February, 2021 expeditiously. Statement is accepted.

4. We accordingly direct the respondent no.2 to pass final order expeditiously and not later than 8 weeks from today. It is made clear that a copy of the order that would be passed shall be served upon the learned counsel for the petitioners as well as respondent no.1 within one week from the date of passing such order. The order that would be passed shall not be implemented for three weeks from the date of communication of the order. If any of the party is aggrieved by the said order the said party would be at liberty to file application in this writ petition for appropriate relief.

5. This Court will pass further orders after considering the order that would be passed by the authority and the amendment if any required to be carried out by the aggrieved party. In view of the order passed by this Court today, the order dated 14th October, 2021 insofar as paragraph (4) is concerned, stands modified.

6. Place the matter on board on 7th September, 2022 under the caption of directions.

7. It is made clear that this Court has not decided the issue of maintainability of this petition raised by the learned counsel for the respondent no.1 and the same would be considered on the next date”.

5. Thereafter, the Respondent No.2 has passed an order on 7 July 2022 which sought to be challenged by the Petitioners through interim application for amendment.

6. We have considered the writ petition along with amendment application treating as amendment to be allowed.

7. The order dated 7 July 2022 which is now sought to be questioned, the Respondent No.2 has referred to the contention of the Petitioners and a report submitted by the Survey Officer dated 16 December 2021 and has opined that it is not possible to discern the ownership of the structure, bore-well and fruiting trees. The Authority came to the conclusion that there arises a dispute which needs to be referred by the Authority under Section 3H (4) of the National Highways Act, 1956 and accordingly directed that the matter is referred to the Principal Court of original jurisdiction where the land is situated, and the parties will get the rights adjudicated under the said provision before the Court of competent jurisdiction.

8. The learned Counsel for the Petitioners sought to contend that the Petitioners are tribals and therefore, the properties owned by them would have protection of the provisions of Section 36A of the Maharashtra Land Revenue Code and the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. The learned Counsel states that in view of the mandate of these provisions, no rights would flow in favour of the Respondent No.1 as such agreement, if any, in respect of transfer of the land to the Respondent No.1 would be *per se* illegal. The learned Counsel states that being a settled position of law, there was nothing to be adjudicated and no

dispute arose before the Respondent No.1 and therefore, the case was covered under Section 3(3) of the Act of 1956. The Petitioners in the application for amendment, have sought to put forth the claim of the Petitioners in respect of the ownership and the underlying principles of the Act of 1974 and of Section 36A of the Maharashtra Land Revenue Code. The learned Counsel has relied upon the decision of the Division Bench of this Court in the case of *Gautamsheth Kisan Wadve and Another Versus Kisan Gangaram Kale and Others*¹. The Respondents support the impugned order. The Respondent No.1 has filed reply affidavit wherein the Respondent No.1 has put forth his claim to the property and has referred to the objections filed on 27 July 2022.

9. Section 3H of the Act of 1956 is regarding deposit and payment of amount determined under section 3G of the Act of 1956 . Section 3H (3) deals with the contingency where several persons claim to be interested in the amount deposited. Under Section 3H (3), the Competent Authority will determine the person who in his opinion is entitled to receive the amount payable to each of them. However, Section 3H (4) lays down that if any dispute arises as to the apportionment or any part thereof or to any person to whom the same or any part is payable, the Competent Authority shall refer the dispute to the decision of the principal civil court of original jurisdiction. Section 3H (3) will have to be read along with 3H (4), and when a dispute arises the Competent Authority is under mandate to refer

1 2020 SCC OnLine Bom 828

the dispute to the decision of the principal civil court of original jurisdiction.

10. In this petition, we are not considering the merits of the dispute but the jurisdiction of the Competent Authority under Section 3H of the Act. Advisably the legislature has granted limited power to the Competent Authority under Section 3H of the Act and has left the adjudication of the disputed questions to the Competent Court. Merely because one party asserts that there is no dispute, it does not cease to be a dispute, if it exists.

11. In the present case, the dispute is raised by the Respondent No.1 in his objections and elaborated in the reply. He has stated that lease granted in his favour was for a period of 99 years and the lease deed was placed on record. It was stated that this was a permissive possession and the Respondent No.1's-father took possession of 16 gunthas in the year 1999. He has asserted that thereafter a bore-well was constructed, and fruiting trees were planted and a structure was constructed. The Competent Authority has held that it is unable to discern who is the owner of the structure, bore-well and fruiting trees. The Competent Authority has also referred a report submitted by the Survey Officer. Therefore, apart from the title to the land, a serious dispute as to the ownership of the structure, bore-well and fruiting trees had arisen before the Competent Authority. In light of the facts that the Competent Authority found a dispute in respect of the structure, bore-well and fruiting trees, which was intrinsically

connected with the land, the decision in the case of *Gautamsheth Kisan Wadve (supra)* would not apply in the facts of the case.

12. In light thereof, if the Competent Authority was of the opinion that issue needs to be decided by the Competent Court, we cannot hold that the order is illegal or perverse. However, being mindful of nature of the rights claimed by the Petitioners, the appropriate course of action would be to direct the concerned Competent Court to decide the matter in a time bound manner.

13. In view of above discussion, we dispose of the writ petition with following order :

ORDER

- (a) The challenge to the impugned order is rejected;
- (b) The Petitioners and Respondent No.1 will appear before the Competent Court on 26 September 2022;
- (c) The Competent Court will make an endeavor to decide the matter within a period of three months from the date parties appear before it, subject to earlier time bound commitments;
- (d) Both, the Petitioners and Respondent No.1 will not take unnecessary adjournment. If the Competent Court finds that the parties are needlessly prolonging the matter,

it will be open to the Competent Court to adopt appropriate course of action;

(e) All contentions of the parties are kept open.

14. Writ petition is disposed of in above terms.

(SHARMILA U. DESHMUKH,J.)

(NITIN JAMDAR, J.)

TRUPTI
SADANAND
BAMNE

Digitally signed by
TRUPTI SADANAND
BAMNE

Date: 2022.09.22
16:04:27 +0530