

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

WRIT PETITION NO. 2880 OF 2021

Dinesh R.Patil .. Petitioner.
v/s.
The Competent Authority & Others .. Respondents.

Mr. Anil D'Souza, for the Petitioner.
Mr. S. S. Panchpor, AGP for the Respondent-State.
Mr. Vishal Patil, for Respondent No.2.

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**CORAM: S.V. GANGAPURWALA &
VINAY JOSHI, JJ.
DATED : 13th APRIL, 2022.**

PC:-

The objections filed by the Petitioner under Section 3H(4) of the National Highways Act, 1956, is rejected.

2 We have heard the learned Counsel for the Petitioner, learned AGP and the learned Counsel for the contesting Respondents.

3 The Petitioner claims on the basis of the Will allegedly executed by Sunder Raghav Patil. Sunder Raghav Patil was the wife of Raghav Patil. It is contended by the learned Counsel for the Petitioner that she died issue-less and that she had executed Will in favour of the present Petitioner. The mutation entry on which the Respondents relied upon was not certified for 28 years and after 28 years, the said mutation entry is certified, ignoring the objection of the present Petitioner. The Petitioner has 1/7th share in the acquired property.

4 The learned Counsel for the Respondents submits that the mutation entry was effectuated in the year 1992 in favour of the Respondents. The partition has already taken place. The mutation entry is evidencing the oral partition that had taken place amongst members of the family. The mutation entry can be relied to prove that the partition was effectuated and the same was acted upon.

5 It appears that the Petitioner is claiming on the basis of Will executed by Sunder Raghav Patil. Merely on the basis of the mutation entry, it could not be possible to arrive at a conclusive finding about the partition. Evidence would be required to be led by the parties in that regard. The Petitioner will also have to prove Will allegedly executed in his favour by Sunder Raghav Patil in accordance with law. All this would be disputed questions of facts vis-a-vis the ownership over the property. In that view of the matter, we pass the following order:-

- (i) The impugned order is quashed and set aside;
- (ii) The Competent Authority shall refer the objections filed by the Petitioner and the dispute to the Principal Court of Civil Jurisdiction;
- (iii) The Respondents had withdrawn the entire amount of compensation of Rs.2 Crores 25 lakhs and odd amount. The Petitioner claims 1/7th share. In view of that, Respondents shall jointly submit a solvent security to the extent of Rs.30 lakhs before the Principal Court of Civil Jurisdiction within a period of 8 weeks from today;

- (iv) Depending upon the decision of the Principal Court of Civil Jurisdiction, the learned Judge shall pass further orders with regard to the amount in question;
- (v) The parties shall co-operate in expeditious disposal of the proceedings.

6 Writ Petition is disposed of. No costs.

(VINAY JOSHI,J.)

(S.V.GANGAPURWALA,J.)