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

WRIT PETITION NO.1574 OF 2022

Chandrashekhar B. Barbade (Decd)
LR Mr. Vaibhav C. Barbade & Ors.

... Petitioners

Versus

The Competent Authority &
Deputy Collector & Ors.

... Respondents

Dr. Ramdas P. Sabban with Pravin Sabban, Arundhati Sabban & Shrikant Kampeli for the Petitioners.

Mr. Y.D. Patil AGP for the Respondent Nos.1 and 2-State.

Ms. Heena Shaikh i/b M.V. Kini & Co. for Respondent No.3.

Mr. Rahul B. Khot h/f Mr.Sachin K. Hande for Respondent No.4.

**CORAM : R. D. DHANUKA &
MADHAV J. JAMDAR, JJ.**

DATED : 15TH JUNE 2022

PC. :

1. Rule.

2. Mr.Patil, learned AGP waives service for Respondent Nos.1 and 2,

Ms.Shaikh, learned counsel waives service for Respondent No.3 and Mr.Khot, learned counsel waives service for Respondent No.4. Rule is made returnable forthwith.

3. By this Petition under Article 226 of the Constitution of India the Petitioners have prayed for Writ of Mandamus or any other Writ for quashing and setting aside the order passed by the learned Collector. The learned Competent Authority and Deputy Collector while rejecting the claim for apportionment and referred the parties to the Civil Court.

4. We have perused the affidavit in reply filed by the State Government. It indicates that the State Government has clearly stated that the compensation awarded is lying deposited with Respondent No.1 which shall be dealt with as per directions that may be given by this Court. It is further stated that in view of dispute between the Petitioners and Respondent No.4-APMC the Petitioners to make reference to the Civil Court, Senior Division, Solapur and to deposit the said amount with Civil Court, Senior Division, Solapur and for such other directions as may be given to disburse the said compensation amount lying deposited with Respondent No.1. This Court vide interim order dated 8th June 2022 had also made an observation that there is no serious objection from Respondent No.1 for depositing the amount of compensation under the award in the Court in view of the fact that there are rival claims between Petitioners and Respondent No.4.

5. In our view since there was serious disputes between the Petitioner

and Respondent No.1-APMC in respect of prayer for compensation, Respondent No.1 himself could not have decided the rival claim of the parties and ought to have referred the parties to the Civil Court for adjudication in view of section 3(h)(iv) of the National Highways Act. In our view the impugned order passed by Respondent No.1 thus deserve to be quashed and set aside. In view of the affidavit in reply filed by the State Government, we direct the State Government to deposit the amount of compensation in the Court of the Principal Civil Court of original jurisdiction under section 3(h)(iv) as prescribed in the National Highways Act within six weeks from today without fail. The Petitioners as well as Respondent No.4 shall be communicated of the deposit by Respondent No.1. Respondent No.1 shall refer the parties to the Civil Court under the said provision. If suit is filed by the Petitioners against Respondent No.4, the parties will be at liberty to apply for further directions in respect of said amount that would be deposited by Respondent No.1 for investment or for withdrawal. If such application is made, the same shall be considered by the Civil Court in accordance with law and on its own merits.

6. It is made clear that this Court has not considered the rival claims of the Petitioner and Respondent No.4. The Civil Court shall decide the rival claims of parties without being influenced by the impugned order quashed and set aside by this order.

7. As far as prayer clause (c) is concerned, entitlement of the Petitioners, if any, for the payment of compensation as claimed in the said

prayer clause (c) is kept open and can be agitated in the aforesaid proceedings.

8. Writ Petition is disposed off in aforesaid terms. Rule is made absolute accordingly. No costs.

9. All concerned parties to act on authenticated copy of this order.

MADHAV J. JAMDAR, J.

R. D. DHANUKA, J.