

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

WRIT PETITION NO. 5394 OF 2021

Narayan Sudam Patil and Ors. ... Petitioners

V/s.

The National Highway Authority & Ors. ... Respondents

with

WRIT PETITION NO. 5416 OF 2021

Balkrishna Pandurang Mundhe and Anr. ... Petitioners

V/s.

The National Highway Authority & Ors. ... Respondents

Mr. Saurabh Oka for the Petitioners in both Petitions

Mr. Rakesh L. Singh i/b. M.V. Kini & Co. for Respondent No.1 – NHAI

Mr. Abhijeet A. Joshi with Aditya A. Joshi for Respondent Nos. 3 to 16

Mr. R.S. Pawar, AGP for the Respondent - State

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

DATE : 04 OCTOBER 2022

P.C. :-

Heard the learned Counsel for the parties, taken up for disposal.

2. By these Petitions the Petitioners have sought a writ of mandamus directing the Respondent No.2 not to disburse or pay the compensation amount awarded in respect of the subject land which has been acquired by the National Highway Authority and disburse the compensation amount to the private Respondent Nos. 3 to 16.

3. The Petitions as filed are, as rightly pointed out by the Respondents, premature. Section 3-A to 3-I of the National Highways Act 1956, provides for the methodology for acquisition of the land under the Act of 1956. Section 3-A lays down the power to acquire the land and when the Central Government is satisfied that for a public purpose in respect of the National Highway the land is required, a notification to that effect is to be issued. Under Section 3-B, the power is conferred to enter for survey of the property by the designated authority. Section 3-C states that any person interested in the land may, within the stipulated period, raise an objection to the Competent Authority in writing. Section 3-D lays down declaration of the acquisition. Section 3-E lays down power to take possession. Section 3-F lays down right to enter into the land where land has vested in the Central Government. Section 3-G, is about determination of amount payable as compensation. Section 3-H lays down deposit and payment of amount. Section 3-H reads thus :-

“3-H. Deposit and payment of amount.—

(1) The amount determined under section 3G shall be

deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(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.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent. per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that

Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.”

Thus, Section 3-H(3) contemplates where several persons claim to be interested in the amount deposited, the Competent Authority will determine the persons who in its opinion are entitled to receive the amount payable to each of them. Section 3-H(4) states that if any dispute arises as to the apportionment of the amount or any part thereof, the Competent Authority shall refer the same to the decision of the principal civil court. Therefore, Section 3-H contemplates two areas. If there is no dispute of whatsoever nature, then the Competent Authority can take a course of action as under Section 3-H(3). When a dispute arises as contemplated under Section 3-H(4), a particular course of action is to be adopted by the competent authority.

4. As on date, the competent authority has not taken any decision as to whether proceed under Section 3-H(3) or 3-H(4) of the Act and before the Competent Authority is to take a decision in that regard, the Petitions are filed and further proceedings are stalled. According to us, the decisions will have to be taken by the Competent Authority as to whether the case falls under Section 3-H(3) or 3-H(4) of the Act, and therefore, it is not necessary to intervene at this stage.

5. The Writ Petitions are disposed of directing the Competent Authority to take a decision as above within a period of six weeks from the date the order is uploaded. The Competent Authority however, will not give effect to its decision for the period of four weeks thereafter. Contention of the parties on merits as well as existence of dispute or otherwise, are kept open.

SHARMILA U. DESHMUKH, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

Digitally signed
by JYOTI
PRAKASH
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Date:
2022.10.11
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