

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8529 OF 2022

Sanskriti Abhijit Pathak and another. ... Petitioners.

V/s.

Sub-Divisional Officer, Palghar Division
and others. ... Respondents.

Mr.Dhruva Gandhi i/b. Mr.Mayank K. Tripathi for the Petitioners.

Mr.A.I.Patel, Addl.G.P with Ms.M.S.Bane, AGP for the State.

Ms.Kiran Doiphode i/b. V.M.Doiphode & Co. for Respondent No.4.

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

DATE : **8 September 2022.**

P.C. :

Rule. Rule made returnable forthwith. Taken up for disposal.

2. The Petitioners have challenged the order passed by Respondent No.1- Sub-Divisional Officer, Palghar and the Designated Authority (Highspeed Rail) dated 15 June 2022 rejecting the application made by the Petitioners on 12 October 2021 under section 23 of the Right to Fair Compensation Act, 2013.

3. Heard the learned counsel for the parties.

4. The learned counsel for the Petitioners makes a grievance that the SDO is not the competent authority to decide the complicated questions regarding *inter se* claims to the compensation and the Act of 2013 contemplates that it be decided by the authority envisaged under section 51 of the Act as per the provision of section 76 of the Act of 2013, The learned counsel for the Petitioners contends that bare perusal of the order passed by the SDO would show that a *bona fide* dispute has arisen and, therefore, deciding this dispute by the SDO was not proper and legal.

5. The learned counsel for Respondent No.4 contended that the order passed by the SDO is not on the application made under section 23 of the Act of 2013 dated 12 October 2021 but the SDO has decided the objections taken by the Petitioners which were raised by communications dated 30 August 2021 and 4 October 2021. The learned counsel for Respondent No.4 submits that for the SDO/ Collector to make reference under section 76, there has to be an application in the first place.

6. We have considered the rival submissions and perused the impugned order.

7. In the impugned order, the SDO has referred to arguments advanced by the advocates at length on 15 December 2021, 29 December 2021 and 23 February 2022. The SDO has referred to various decisions of the High Court and the Supreme

Court and has analyzed the provisions of the Hindu Law and the rights of the co-parcener and the family members of the co-parceners. The SDO who has passed this order is not an authority under section 51 of the Act which is competent to decide the disputes. Even assuming what was before the SDO was not an application made under section 23, we are not shown any provisions under which the SDO has passed the impugned order. The SDO has concluded the objections raised by the Petitioners by adjudicating upon the same by himself. This was clearly not permissible.

8. Accordingly, we quash and set aside the order dated 15 June 2022. The Collector will take necessary steps as per section 76 and other provisions of the Act of 2013 and refer the matter to the competent authority under section 51 of the Act of 2013.

9. Rule is made absolute in the above terms. Writ petition is accordingly disposed of.

(SHARMILA U. DESHMUKH, J.)

(NITIN JAMDAR, J.)