

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

WRIT PETITION NO. 6252 OF 2021
WITH
WRIT PETITION NO.6250 OF 2021

Smt. SumanJ. Mamkar .. Petitioner.
v/s.
State of Maharashtra
& Others .. Respondents.

Mr. Nitin V. Gangal with Prerna Shukla and Ashok Kadam, for the
Petitioner in both the Petitions.

Smt. M. S. Bane, AGP for the Respondent-State in both the Petitions.

Mr. S. S. Redkar, for Respondent Nos.2 to 4 and 6 to 18 in W.P. No. 6250
of 2021.

Mr. Saurabh Butala and Harshad Sathe, for Respondent Nos.30, 32, 34,
35, 41, 42, 44 and 45 in W.P. No. 6252 of 2021.

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**CORAM: S.V. GANGAPURWALA &
VINAY JOSHI, JJ.**

DATED : 1st APRIL, 2022.

PC:-

Heard the learned Counsel for the Petitioner, learned Counsel
for the Respondents and the learned AGP

2 The objections by the Petitioners filed under Section 37 (H)
(4) of the National Highways Act, 1956 are rejected.

3 The learned Counsel for the Petitioner submits that the
Competent Authority could not have arrogated himself the powers of the
Civil Court. When the dispute of title exists, the Competent Authority has
no option but to refer the dispute with the Principal Court of Civil

Jurisdiction. The learned Counsel submits that Petitioner has placed on record the documents to substantiate that the Petitioner is the original tenant. The learned Counsel further submits that in spite of the fact that the interim order was passed by the Court on 4th October, 2021, the payment has been made by the Competent Authority. The same is the contempt of the order of this Court.

4 The learned AGP submits that she has no instructions about payment, if any, made.

5 The learned Counsel for the contesting Respondents submit that the Petitioner has no iota of right. One Kalya Soma was the original tenant. The Petitioner has no concern. The Petitioner's ancestor were not tenants of the subject property. The details of the same are also recorded. The Competent Authority has rightly passed the order.

6 There cannot be any disputes with regard to the proposition that if bonafide claim exists and the dispute is with regard to the title and right in the property, the Competent Authority has to refer it to the Principal Court of Civil Jurisdiction.

7 In the present case, though the Petitioner relied upon the one document and has subsequently filed the proceedings before the Tenancy Court, the entries in the name of Kalya, is mutated for more than 51 years. The same appears from the facts. However, considering the fact that some dispute exists, we pass the following order:-

- (i) The impugned order is set aside.
- (ii) The Competent Authority shall refer the dispute to the concerned Principal Court of Civil Jurisdiction. The said exercise shall be done

preferably within eight weeks from today. Upon reference being made, the Principal Court of Civil Jurisdiction shall make an endeavour to decide the same expeditiously.

- (iii) The parties shall co-operate in disposal of the proceedings.
- (iv) The heir of the tenant i.e. the present Respondents shall give solvent security jointly of 10% of the amount they have withdrawn before the Principal Court of Civil Jurisdiction. The decision shall be taken with regard to the disbursement of the amount, if any, in tune with the final decision delivered by the Principal Civil Court.

8 Both the Writ Petitions stand disposed of. No costs.

(VINAY JOSHI,J.)

(S.V.GANGAPURWALA,J.)