

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

WRIT PETITION NO. 6029 OF 2021

Ashok Kamlakar Chaudhary & Others .. Petitioners

Versus

The Competent Authority & Others .. Respondents

Mr. Raju D. Suryawanshi, Advocate for the Petitioners.

Mr. Sanjay Patil, Advocate for Respondent Nos. 3 and 4.

Mr. Anoop V. Patil a/w Mr. Shashank Shubham, Advocates for Respondent No. 2 (N.H.A.).

Ms R. M. Shinde, AGP for the Respondent-State.

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

DATE : 15th MARCH, 2022.

P.C:

1. The award under the National Highway Act qua land Gat Nos. 4 / 4 and 2 / 1 is passed in favour of Respondent Nos. 3 and 4. The Petitioners filed an objection before the competent authority qua the disbursement of amount. It appears that the application of the Petitioners was not decided and Respondent Nos. 3 and 4 have withdrawn an amount of Rs.1,050,0000/- and odd. From the said amount it appears that TDS is

also deducted by the authority. The case of the Petitioners is that the father of Petitioner Nos. 1 to 4, Respondent No. 3 and husband of Respondent No. 4 had purchased the property. After his death, the Petitioner Nos. 1 to 4 and Respondent Nos. 3 and 4 have share in the same. Respondent No.3 illegally got mutated his name in the revenue record. The said mutation entry was also set aside. The learned Counsel further submits that the competent authority disbursing the amount and the authority setting aside the mutation entry is one and the same, still had permitted Respondent Nos. 3 and 4 to withdraw the amount. The said action of the competent authority is grossly illegal. The learned Counsel submits that the matter ought to have been referred to the Civil Court by the competent authority.

2. The learned Counsel for Respondent Nos. 3 and 4 submits that Respondent No. 3 has filed an appeal against the order of setting aside the mutation entry and in the appeal, the stay has been granted by the Appellate Authority. The learned Counsel submits that Respondent Nos. 3 and 4 only have the legitimate right to claim the amount and the same is rightly disbursed. Respondent Nos. 3 and 4 are also entitled for the remaining amount pending with the competent authority.

3. It is not disputed that the property bearing Gat No. 4 / 4 and 2 / 1 has been acquired. It also appears that the father of Petitioner Nos. 1 to 4, Respondent No. 3 and the husband of Respondent No. 4 had purchased

the property under a registered instrument. The case of the Petitioners appears to be that all the persons are entitled for the compensation whereas according to Respondent Nos. 3 and 4, the partition was effectuated and pursuant to the partition, the mutation entry was sanctioned. *Prima facie*, there is no instrument of partition on record.

4. The dispute appears to be of the apportionment of the amount qua the rights of the parties. Inasmuch as Respondent Nos. 3 and 4 claim that there is a partition whereas according to the Petitioners, the partition was never effectuated.

5. In view of the aforesaid conspectus, the proper recourse for the competent authority under Section 3-H (4) of the National Highways Act 1956 was to refer the said dispute to the Civil Court i.e. the Principal Civil Court of the original jurisdiction.

6. Considering the fact that part of the amount is already withdrawn by Respondent Nos. 3 and 4, the said amount is required to be safeguarded.

7. In the light of the above, we pass the following order:

ORDER

i) The competent authority shall refer the objection filed by the

Petitioners for the decision to the concerned Principal Civil Court of original jurisdiction immediately, preferably within 15 days from the receipt of copy of this order. The remaining amount with the competent authority i.e. Rs.73,00,000/- and odd shall be transmitted to the concerned Civil Court.

ii) The Respondent Nos. 3 and 4 shall give solvent security to the tune of Rs.1,05,00,000/- i.e. the amount withdrawn by them, to the satisfaction of the Court where the matter is referred to for the decision.

iii) The Court where the matter is referred to shall decide the same expeditiously and if possible preferably within one year.

iv) The parties shall co-operate in the expeditious disposal of the said proceedings.

v) The District Judge or the Court where the matter is referred to shall pass further order for disbursement of the amount in tune with the final decision rendered by him.

vi) Writ Petition is accordingly disposed of. No costs.

(VINAY JOSHI, J.)

(S. V. GANGAPURWALA, J.)