

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 771 OF 2019
WITH
INTERIM APPLICATION NO. 3927 OF 2019

Smt.Mangala Manohar Chavan
since deceased through her legal heirs
Shri Mahesh Manohar Chavan and others. ... Petitioners.

V/s.
Union of India and others. ... Respondents.

Mr.Shailendra S. Kanetkar with Mr.Nikhil Dangre
for the Petitioners.
Ms.K.N.Solunke, AGP for the State.
Mr.Vivek V. Salunke for Respondent Nos.3 to 8 and 11.

SANJAY
KASHINATH
NANOSKAR

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

DATE : 15 September 2022.

P.C. :

The Petitioners are granted leave to amend the petition to bring heirs of Respondent No.9 on record. Amendment to be carried out within three working days. Interim Application is disposed of accordingly.

2. Heard the learned counsel for the parties.

3. The Petitioners are aggrieved by the order passed by Respondent No.2- Competent Authority/ Sub-Divisional Officer, Khed refusing to make reference to the competent court under section 3H(4) of the National Highways Act, 1956. By the impugned order, the Sub-Divisional Officer observed that there appears to be a dispute and it is not possible to resolve the same and, therefore, the parties should get their disputes regarding *inter se* rights resolved from the civil court. The learned counsel for the Petitioners submitted that under section 3H(4) of the Act of 1956 if the Competent Authority comes to the conclusion that there is *inter se* dispute which is beyond the jurisdiction of the Competent Authority to decide, then it is provided in the statute itself that the said dispute should be referred to the competent court i.e. Principal Civil Court of original jurisdiction.

4. The learned AGP, on instructions, states that the dispute would be referred to the civil court and the order was erroneously passed.

5. The learned counsel for Respondent Nos.3 to 8 and 11, however, contends that there exists no such dispute and, therefore, the Competent Authority could have taken action instead of referring the dispute to the competent court and that the matter may be sent back to the Competent Authority to decide whether the case falls under section 3H(3) or section 3H(4) of the Act of 1956.

6. As to the existence of dispute, the learned counsel for the Petitioners shown to us an application filed by the Petitioners raising objection and the response of Respondent Nos.3 to 8 and 11. The Petitioners have asserted their claim based on entries of 7/12 extract, certain sale-deeds and claim as tenants. As to the sale-deeds of 1955 referred by the Petitioners, the stand of Respondent Nos.3 to 8 and 11 is that the sale-deed is bogus sale-deed. Considering the entries in 7/12 extract and the disputed title deed, a dispute has clearly arisen which needs to be adjudicated by the competent court.

7. Therefore, as stated by the learned AGP, Respondent No.2- Competent Authority will make a reference to the competent court as per section 3H(4) of the Act of 1956. The impugned order is accordingly quashed for that purpose.

8. Since it is on the statement of learned AGP that the matter is being referred to the competent court, when the reference is made to the competent court, all parties including the one whose heirs have been brought on record by way of interim application would be made parties in the reference.

9. Writ petition is disposed of in the above terms.

(SHARMILA U. DESHMUKH, J.)

(NITIN JAMDAR, J.)