

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 403 OF 2022.

Sau. Pushpabai Marotrao Jadhav
and others.

...

Petitioners.

VERSUS

The Competent Authority @
Sub Divisional Officer and others.

...

Respondents.

Mr.V.N. Patre, Advocate for Petitioners.
Mr.A.S. Fulzele, Addl.G.P. for Respondent No.1.
Mr.K.S. Narwade, Advocate for Respondent Nos.2 to 4.

**CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.**

DATE : 19 APRIL 2022.

P.C.

This petition is filed challenging the order passed by Respondent No.1 – Sub Divisional Officer/Land Acquisition Officer, Umarkhed, District Yavatmal dated 29 December 2021 holding that Petitioners are not entitled to the compensation awarded pursuant to the Land Acquisition proceeding No.4/47/2015-16 dated 8 August 2019 under the National Highways Act, 1956.

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2. Petitioners are sisters of Respondent Nos. 2 to 4. Considering their relationship, an attempt was made to resolve the dispute through mediation, the matter was referred for mediation, however, the same was not successful.

3. The learned Counsel for Petitioners contend that though Respondent No.1 the Competent Authority has referred to Section 3H[3] of the National Highways Act, 1956 and has decided that Petitioners are not entitled for compensation, the Petitioners case was for apportionment and consequently would fall under Section 3H[4] of the 1956 Act, in which circumstance the Competent Authority was under an obligation to refer the dispute to the decision of the learned Civil Court of original jurisdiction and could not have decided the issue by itself. The learned Counsel for Petitioners has relied upon the decision of the Division Bench (Aurangabad Bench) in case of *Ashok Ramling More .vrs. Union of India and others*¹. The learned Counsel for Petitioners submits that the impugned order therefore be quashed and set aside, and Respondent No.1 be directed to refer the issue to the Competent Court.

4. The learned Counsel for Respondent Nos. 2 to 4 points out that amount has already been disbursed and Petitioners have filed Civil Suit for partition in which a specific prayer is made regarding the amount of compensation.

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5. As regards the decision in the case of *Ashok More (supra)* is concerned, the Division Bench has made a distinction between the parameters of enquiry under Section 3H[3] and 3H[4] of the 1956 Act, however, whether the issue would fall under Section 3H[3] or 3H[4] will depend on the facts of each case. In case of *Ashok More (supra)*, since facts have not been mentioned in detail, it will have to be presumed that the Division Bench found in the facts that Section 3H[4] of 1956 Act would be attracted.

6. However, in present case, whether exercise of powers under Section 3H[3] was correct or otherwise will be academic as the ultimate prayer of the Petitioners is that the issue regarding entitlement of Petitioners should not be decided by the Land Acquisition Officer, but, by the Civil Court. As pointed out by the learned Counsel for Respondents, the Petitioners have filed a Civil Suit for partition. Petitioners have also made a prayer in respect of the amount received by Respondent Nos. 2 to 4 under the award and if Petitioners succeed in the said suit, they will get their share in the amount.

7. Keeping contentions of the parties open, to be agitated in the pending Civil Suit, present Writ Petition is disposed of.

(ANIL L. PANSARE, J) (NITIN JAMDAR, J)