

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

Writ Petition No. 3198 of 2021

Vilas Madhukarrao Gawande
Aged : 54 yrs. Occu : Agriculturist
R/o Post Hiwri, Ward no. 3,
Tal and District Yavatmal.

.... Petitioner

... Versus ...

- (1) The Collector
Yavatmal District,
Yavatmal.
- (2) The Sub-Divisional Officer and
Land Acquisition Officer, Yavatmal
Taluka and District Yavatmal.
- (3) Sanjay Madhukarrao Gawande
Aged : 57 yrs. Occu : Agriculturist
R/o Hiwri, Ward no. 3,
Taluka and District Yavatmal.

.... Respondents

Mr. P. S. Khubalkar, Advocate for the petitioner
Mr. K. L. Dharmadhikari, A.G.P. for respondents 1 and 2
Mr. M. G. Sarda, Advocate for respondent 3

CORAM : ROHIT B. DEO, J.

DATED : 18-2-2022

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally with
consent of learned counsel appearing for the parties.

2. The petitioner has a limited grievance.
3. The Sub-Divisional Officer and Land Acquisition Officer, Yavatmal, vide order impugned dated 17-8-2021, was pleased to reject the objection preferred by the petitioner to payment of compensation to respondent 3 qua the land acquired which is agricultural land admeasuring 0.5400 HR forming part or portion of Field Survey 186/1.
4. It is not in dispute that the award is in favour of the petitioner. However, the Land Acquisition Officer has made the payment of the compensation to respondent 3 - who happens to be the brother of the petitioner. While respondent 3 secured the compensation amount on the strength of an authority letter allegedly executed by the petitioner, according to the petitioner, the signature on document is forged.
5. Respondent 3 further contends that even *de hors* the aspect of the authority letter, the land which is acquired is the subject matter of gift deed executed by the petitioner in his favour. This assertion too is denied by the petitioner who contends that the land gifted does not include the land acquired.

6. Considering the factual dispute, the authority was obligated to refer the issue of entitlement to compensation to the civil court in accordance with Section 3(H)(4) of the National Highways Act (Act).

7. Ignoring the statutory scheme, the authority purported to invoke jurisdiction under Section 3(H)(3) of the Act and decided the issue.

8. In my considered view, the authority fell in serious error in not making the reference. Since the position of law is not *res integra*, I need not make elaborate reference to the plethora of authorities holding the field. Suffice it to refer to the relatively recent decision of this Court [Coram : A. A. Sayed & S.C. Gupte, JJ. dated 7-9-2018 in Writ Petition 5198 of 2018 (Shri Nandkumar Dwarkanath Rajpurkar and anr. Vs. Shri Anant Raghunath Chande and ors.)].

9. The order impugned is quashed and the Land Acquisition Officer, Yavatmal is directed to make the reference to the Civil Court within 15 days from today.

10. Within seven days from the receipt of notice which may be issued by the Civil Court, respondent 3 shall furnish in the Civil Court

bank guarantee to the tune of 50% of the compensation received and the solvent surety for the rest amount received. Before permitting respondent 3 to participate in the reference proceedings, the reference court shall ensure that this condition is complied with.

11. The reference Court is requested to decide the reference as expeditiously as possible, and in any event, within six months from the date of receipt of the reference.

12. The petition is allowed in the aforestated terms.

JUDGE

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