

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6842 OF 2023

Appasaheb Haribhau Patil
Age 72 Years, Occu: Agri,
R/o Darewadi,
Tq. And Dist. Ahmednagar.

... **PETITIONER**

V/s.

1. The Union Of India,
Through, Project Director
National High Way Authority,
Ahmednagar
NHA-1, PIU Ahmednagar,
C/o, Ahmednagar Dist, Labour
Co-Operative Society, Shram Sahkar,
Sahkar Sabhagruh Road,
Behind Market Yard, Ahmednagar,
2. The Competent Authority
Sub-Divisional Office &
Land Acquisition Officer
Ahmednagar, Division Ahmednagar,
3. Malhari Dagdu Karande,
Age, 59 Years, Occu, Agri,
4. Badrinath Yashwant Berad,
Age, 56 Years, Occu, Agri,
5. Namdev Dagdu Karande,
Age, 58 Years, Occu, Agri,

Respondent No. 3 to 5 R/o,
Darewadi, Tq, and Dist, Ahmednagar.

... **RESPONDENTS**

...
Mr. PK. Palve, Advocate for the Petitioner
Mrs. Sudha Chintamani, Advocate for Respondent No.2
Mr. V.V. Tarde, Advocate for Respondent No.5
...

**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.**
DATE : 4th August, 2023

JUDGMENT (Per: Y.G. Khobragade, J.) :-

1. Rule. Rule made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

2. The Petitioner has put-forth prayer clause-B, C & D as under:

“B. By issuing the writ of Certiorari or any other appropriate writ order direction in the like nature, the impugned order dated, 6/10/2022, in L.A.R. Objection No. 6/2022, passed by the respondent no. 2 authority be quashed and set aside to the extent of petitioner.

C. That the respondent no.2, may be directed to make payment of compensation amount, alongwith appropriate interest, to the petitioner to the extent of his acquired area from the land gut no. 145/1A at Village Darewadi Tq, and Dist, Ahmednagar.

D. Pending the hearing and final disposal of the writ petition the execution, implementation and operation of order dated, 6/10/2022, In L.A.R.Objection No. 6/2022, passed by the respondent no. 2 may be stayed/ suspended to the extent of petitioner.”

3. At the first instant we would like to narrate undisputed fact that, on 05.04.1988, the Petitioner purchased portion of land ad-measuring 0.23 R

out of gut no.145/1A/1/1 situated at village Darewadi, District Ahmednagar. Accordingly, mutation entry bearing no.2235 in the name of the Petitioner was effected in the year 1988 itself and since then he is in possession of said land. Further the Respondent No.3-Malhari Dagdu Karande, Respondent No. 5 Namdev Dagdu Karande and their siblings also purchased portion of land admeasuring 0.23 R out of Gat No. 145/1A/1/1. Similarly, the Respondent No.4-Badrinath Yashwant Berad & three others have purchased 0.15 R land from Gut no. 145/1A/1/1. The Petitioner and Respondents are holding their lands independently as per 7/12 extract.

4. On 28-11-2018, the Respondent No. 1 published the Notification under Sec. 3 D (1) of the National Highway Act,1956 and acquired entire Gut no.145/1A/1/1 of village Darewadi acquired for Ahmednagar - Karmala - Tembhurni road widening project. The Competent Authority determined the total amount of compensation to the tune of Rs.1,65,37,068/-.

5. On 11.08.2021, the Respondent No.2 issued a Notice to all the owners of Gut no.145/1A/1/1 calling upon them to furnish necessary documents for disbursement of compensation amount to the extent of the acquired land. However, the Respondent No.3- Malhari Dagdu Karande filed objections about disbursement of compensation. According to him he has filed

RCS No. 306/ 2012 for Partition and Separate possession against his siblings in respect of the land which is acquired and a Regular Civil Appeal No. 308 2018 is pending before the Court of learned District Judge. Therefore, he has prayed that the compensation amount should not to be disbursed only in favor of the Petitioner and Respondent No.5, but it can be disbursed with consent of all owners.

6. The Petitioner contended that, he is owner of land ad-measuring 0.23 HR bearing khata no.55 Revenue mutation no.2226. His total land 90 sq.mtr., has been acquired by the Respondent No. 1 for road widening. The Respondent No.3, his siblings, the Respondent No.4 Badrinath Yashwant Berad having separate share and that Respondent no. 3 is not concerned with his share in gut no.145/1A/1/1. Therefore, he prayed for disbursement of appropriate compensation amount in respect of his share, which has been acquired by the competent authority.

7. On 06.10.2022, Respondent No.2 passed the impugned order holding that, since one Laxman Dagadu Karande filed an RCS No. 306/ 2012 and arising out of order passed therein a Regular Civil Appeal No. 308 2018 is pending before the Court of the learned District Judge, Ahmednagar, therefore, he referred the dispute for deciding entitlement of apportionment to the

Principal Civil Court of original jurisdiction as per the provisions of Section 3 H (4) of the National Highways Act.

8. The learned counsel appearing for the Petitioner vehemently canvassed that, the petitioner has an independent share to the extent of 0.23 R in Gut No. 145/1A/1/1 in pursuance of sale Deed dated 05.04.1988. The petitioner is not concerned with the dispute between the Respondent no. 3 & 5. Since Respondent no. 2 determined compensation in respect of share of the petitioner, therefore, the Petitioner is entitled to receive said compensation. However, Respondent No.2 misconstrued the provisions of the National Highways Act and wrongly referred the dispute for apportionment of the compensation, though objection of Respondent Nos.3 and 4 was rejected. Therefore, he prays for quashing the impugned order being illegal, bad in law.

9. The Respondent No.2 filed an affidavit in reply and contended that as per 7/12 Extract of Gut no.145/1A/1/1, there are many co-owners including the Petitioner and Respondent Nos.3 to 5. In order to ascertain the exact shares of each claimant in respect of the acquired land, a letter dated 08.12.2021 was issued to the Deputy Superintendent of Land Record, Ahmednagar for joint measurement. As per joint measurement sheet, the area ad-measuring 90 sq.mtr., out of gut no.145/1A/1/1 is shown in the name of

the present Petitioner. Whereas, the land ad-measuring 2019 sq.mtr out of gut no.145/1A/1/1 is shown in the name of the other co-holders. However, in the meanwhile the Respondent No.3 Malhari Karande raised an objection for disbursement of compensation in the name of Petitioner and Respondent No.5 only on ground that, he and other are co-owners of acquired land. Therefore, considering the dispute about apportionment of compensation between the co-owners, Respondent no. 2 referred the dispute to the Principal Civil Court, Ahmednagar under Section 3 H (4) of the National Highways Act.

10. Needless to say that the Petitioner has submitted that, Respondent No.2 released the amount of compensation in favour of Shri Vitthal Tukaram Wagh, who is also a co-holder in gut no.145/1A/1/1, but no compensation was released in his favour. However, on perusal of the objections of Respondent No. 3, it does not appears about any grievance raised by him as against Shri Vithal Tukaram Wagh, but there is objection about releasing amount of compensation as against the present petitioner.

11. Section 3 H (4) of National Highways Act,1956, provides as under:

“ If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil Court of

original jurisdiction within the limits of whose jurisdiction the land is situated.”

12. It is needless to say that the entire gut no.145/1A/1/1 of village Darewadi is acquired by the Respondent No.1 for Ahmednagar - Karmala - Tembhurni road widening project. Respondent No.2 ascertained total compensation amount of Rs. 1,65,37,068/-. Respondent No.3 raised a written objection before Respondent No.2 in respect of disbursement of compensation in favour of the Petitioner and Respondent No.4. Admittedly, the civil proceeding Appeal No.308/2018 arising from Civil Suit No.306/2012 is pending before the Competent Court for adjudication of entitlement of shares in the acquired land. Therefore, as per the provisions of Section 3 H (4) of National Highways Act,1956, Respondent No.2 referred the dispute for deciding about apportionment of compensation. Hence, it does not appear that the impugned order is arbitrary, illegal bad in law. However, it would be just and proper to direct the Principal Civil Judge, Ahmednagar to decide the dispute referred by the Respondent No.2 within a period of four months from the date of receipt of this order.

13. In view of the above, **the petition is disposed off.** No order as to costs.

14. Rule is discharged.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]

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