

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 8871 OF 2023**

Sushila Bansilal Mundada and Others ..Petitioners

Versus

The Union of India and Others ..Respondents

...

Mr. Chaitanya C. Deshpande, Advocate for the Petitioners.

Mr. S. G. Karlekar, AGP for the Respondent-State.

...

**CORAM : NITIN JAMDAR, ACTING CJ &
S. G. CHAPALGAONKAR, J.**

DATE : 25 JULY 2023.

PER COURT :-

. Heard the learned Counsel for the parties.

2. The Petitioners have challenged the order passed by the Arbitrator under the National Highways Act, 1956 (for short 'Act of 1956') rejecting the application filed by the Petitioners for appointment of the Court Commissioner for joint measurement of the land. This application has been rejected by the Arbitrator holding that there is no provision under the National Highways Act for appointment of the Court Commissioner.

3. Learned counsel for the Petitioners submits that the proceedings before the Arbitrator would be governed by the provisions of the Arbitration and Conciliation Act, 1996 (for short 'Act of 1996') and under Section 26 of the Act of 1996, the Arbitral Tribunal has power to appoint an expert to report it on specific issues to be determined by the Tribunal.

4. The Tribunal in the impugned order has stated that Section 3-G (6) of the Act of 1956 provides that the provisions of the Act of 1996 would apply to every Arbitration under the Act of 1956. However, he has not noticed Section 26 of the Act of 1996. Neither the Petitioners have made any reference to Section 26 of the Act of 1996 in their application.

5. In light thereof, we are of the opinion that the Arbitrator will have to decide regarding the applicability of Section 26 of the Act of 1996 and rule upon the same as it is matter of jurisdiction. If the Arbitrator comes to the conclusion that Section 26 of the Act of 1996 is applicable then he will proceed to decide the application on merits.

6. Accordingly, the impugned order is quashed and set aside and the Application No.27/2018 filed by the Petitioners is restored to file.

7. Writ Petition is accordingly disposed of.

8. Learned counsel for the Petitioners states that the Arbitration proceedings are still pending, however it is open to the Arbitrator to consider the stage of the proceedings as a criterion, if the application is to be heard on merits.

(S. G. CHAPALGAONKAR, J.) (ACTING CHIEF JUSTICE)

Devendra/July 23