

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

940 WRIT PETITION NO.1001 OF 2022

GULAB SAKHARAM CHAVAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Pathan Hamzakhan I.
AGP for Respondents State: Mr. A. S. Shinde
Advocate for respondent No.3: Mr. R.B. Bhosale
Advocate for respondent Nos. 4 to 6: Mr. S.G. Joshi

**CORAM : MANGESH S. PATIL &
 S. G. CHAPALGAONKAR, JJ.**

DATE : 06.01.2023

ORDER:

1. Heard learned advocate for the petitioner, learned advocate for contesting respondents 4 to 6, and learned AGP as well a advocate representing respondent No. 3 -competent authority under the National Highways Act, 1956.
2. The petitioner is aggrieved by the order dated 14.02.2019 passed by respondent No.3-competent authority holding that in view of the pendency of regular civil suit between the petitioner on one hand and respondent Nos. 4 to 6 on the other in respect of partition of the land Gat No. 267 admeasuring 8 Are, the amount of compensation shall not be disbursed.

3. It appears that the land was acquired for National Highway under the National Highways Act and an award was passed in the name of the petitioner but it was objected to by respondent Nos. 4 to 6. Though it was styled as objection under section 3-C(2), apparently, it was an objection under section 3-H(4) of the Act which can be raised by a person putting forth his entitlement to have a share in the compensation.

4. Once it was informed to the respondent No.3- competent authority and he was aware that a suit between the rival claimants was pending, the appropriate course for him to have followed was to make a reference to the Civil Court in tune with the mandate of law laid down under section 3-H(4) of the Act. This Court had also an occasion to consider this aspect in the matter of **Arun Trimbakrao Lokare Vs. State of Maharashtra**, [2017(6) Mh.L.J. 612]. Instead of following such a well recognized course, respondent no.3-competent authority has, halfheartedly, merely directed not to disburse the amount of compensation.

5. Though several submissions have been advanced on behalf of the petitioner as well as the contesting respondents regarding their respective entitlement to have compensation, it would be a pure question of fact, which we will not be able to decide in a petition under

Article 226 of the Constitution of India. Besides, when the legislature, in its wisdom, has expected the competent authority to make a reference to the civil court for the obvious reason that the entitlement to have share in the compensation would depend upon the facts to be established which can happen only after recording evidence which the civil court alone would be able to do, we need not go into the disputed questions put up by the rival claimants.

6. In the circumstances, we partly allow the petition. Quash and set aside the impugned order and direct respondent no.3 competent authority to make a reference to the Civil Court as contemplated under section 3-H (4) of the Act in the light of order in the matter of **Arun Trimbakrao Lokare (supra)**.

7. The amount of compensation deposited in this court shall be returned to the competent authority.

8. Hearing of the suit and the reference shall stand expedited.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)