

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

923 WRIT PETITION NO.13903 OF 2018

KHANDERAO BABURAO ADATRAO KOLI AND OTHERS
VERSUS
THE PROJECT OFFICER NATIONAL HIGHWAY AUTHORITY
SOLAPUR AND OTHERS

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Advocate for Petitioners : Mr. A V Patil Indrale
AGP for Respondents: Mr. S B Pulkundwar
Advocate for Respondents : Mr. N J Patil For R No.3,
Mr. V H Solanke h/f Mr. Sakolkar V T For R No.1,
Mr. D M Dhanure For R.no. 2

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CORAM : NITIN W. SAMBRE & S. G. CHAPALGAONKAR, JJ.
Dated: March 23, 2023

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PER COURT :-

1. Heard.
2. The challenge in the petition is to the order dated 27th April, 2018 passed in exercise of powers under section 3-H-3 of the National High Ways Act, 1956 whereby respondent no.3 is declared to be entitled for receipt of the compensation of land gat no.224 to the extent of 18R. We are informed that respondent no.3, pursuant to the impugned order, have already withdrawn the amount by furnishing an undertaking that as and when so directed, the amount shall be redeposited.

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3. In this background, the petitioners would urge that the petitioners are shown to be the owners of the property which is acquired by virtue of aforesaid award, whereas respondent no.3 is shown to be in possession of the same. According to him, possession of respondent no.3 is sought to be testified based on the title deed on 2nd October, 2003 which was executed by one Suraj Khan in their favour. Suraj Khan claimed to have purchased the property from Raju Babu Akhade, who claimed to have purchased the property from ancestors of the petitioners namely Baburao Koli.

4. It appears that sale deed executed in favour of respondent no.3 mentions survey no.125 which respondents alleged to be corresponded to gat no.224 from which the land was acquired and, as such, the authority while passing the order impugned has in their capacity recorded a finding that in the implementation of the consolidation scheme, there appears to be some mistake and as such permitted withdrawal of the compensation.

5. Learned counsel for the petitioners in this background submits that land gat no.224 consisting of 30R land, out of

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which 18R land was acquired for which award came to be passed. According to the petitioners, there is no iota of evidence that land which was transferred to respondent no.3 is out of gat no.224 and title stood in the name of respondent no.3 which travel through Raju Akhade and Suraj Khan. He would urge that respondent-competent authority while passing the order impugned has transgressed its powers having regard to section 3-H of the National High Ways Act. He would urge that without there being any evidence on record, the authority has committed error of passing the order impugned thereby recording finding without jurisdiction that there is an error in implementation of the consolidation scheme and, as such, respondent no.3 is entitled for withdrawal of the amount of compensation.

6. The counsel for respondent no.3 would support the impugned order as according to him, it was for the petitioner to establish before the competent authority that the land gat no.224 and survey no.125 are two different lands and deceased Baburao through whom they have claimed title has not executed any such transfer. He would further claim that respondent authority who is already vested with the power of
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the revenue authority was justified in recording findings of error in implementation of consolidation scheme.

7. Learned counsel for the competent authority submits that the petitioner has chosen not to appear before the competent authority when the order impugned was passed and as such, the arguments canvassed by the petitioners was only available for consideration before the competent authority and in view of absence of any dispute, the competent authority was justified in passing the order impugned.

8. We have appreciated the aforesaid submissions.

9. The fact remains that title vested is in respondent no.3 in relation to land s.no.125 is not disputed by the petitioners by taking out any independent proceeding viz. a suit questioning such title deed.

10. In the aforesaid background, the respondent/competent authority, who is also a revenue authority, does not appear to be with any convincing evidence that the consolidation scheme implemented in the matter in question suffers from error and as such benefit of the same should be extended to the

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respondent no.3. Such findings recorded by the respondent competent authority prima facie appears to be without jurisdiction and in such an eventuality, rightly so claimed by the counsel for the petitioners the only option is to refer the dispute to the Civil Court pursuant to the provisions of Section 3 of Section 3H of the National Highways Act, 1956.

11. In view of the above, what can be noticed is the order impugned passed by the authority thereto holding that respondent no.3 is entitled for withdrawal of the compensation based on title-deed ought not to have ordered as there is no jurisdiction in the authority to declare that consolidation scheme implemented suffers from an error; rather which would have been justified in the facts of the case to refer rival claims to the competent Civil Court.

12. In this view of the matter, the order impugned passed by the competent authority on 27th April, 2018 is hereby quashed and set aside.

13. We direct objection/reference made by respondent no.3 to be referred to competent Civil Court by the competent

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authority pursuant to the provisions of section 3H-(3) of the National High Ways Act, expeditiously.

14. As the Reference being received by the Civil Court, we deem it appropriate to leave the issue to the discretion of the Civil Court to pass a workable order in the matter of compensation to be awarded. Writ Petition accordingly allowed in the above terms.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

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