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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.6157 OF 2022

Anandibai J. Dalvi ...Petitioner

V/s.

Competent Authority And
Sub-Divisional Officer, Vasai & Anr. ...Respondents

Mr.Vishal Khanovkar for the Petitioner.

Ms.M.S. Bane, AGP for the State – Respondent No.1.

Mr.Yatin Malvankar for the Respondent Nos.2-A to 2-F.

**CORAM : R.D. DHANUKA &
GAURI GODSE, JJ.**
DATE : 11TH APRIL, 2023.

P.C. :-

1. Rule. Ms.Bane, learned AGP waives service for the Respondent No.1. Mr.Malvankar, waives service for the Respondent Nos.2-A to 2-F. Rule is made returnable forthwith.

2. By this Petition filed under Article 226 of the Constitution of India, the Petitioner has prayed for a writ of certiorari for quashing and setting aside the order dated 20 April, 2022 passed by the Respondent No.1 thereby rejecting the objections raised by the Petitioners in respect of the land bearing Survey No.7/5 and 7/17.

3. The Petitioner has impugned the said order on various grounds prayed in the Petition and more particularly on the ground that the said order is in breach of Section 3-H (4) of the National Highways Act, 1956 which provides that 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.

4. It is submitted by the learned counsel for the Petitioner that both the parties have put up their rival claims before the Competent Authority in respect of the writ property based on various factual issues.

5. Our attention is invited to the impugned order dated 20 April, 2022 passed by the Competent Authority thereby rejecting the objections raised by the Petitioner and refusing to refer the dispute to the Civil Court.

6. Learned counsel for the Respondent Nos.2-A to 2-F vehemently urged that the documents relied upon by the Petitioner would clearly indicate that the Petitioner was not entitled to seek any claim in the writ property, whereas the objections raised by the Respondent Nos.2-A to 2-F would clearly indicate that the entire

claim in respect of the writ property ought to have been paid to the Respondent Nos.2-A to 2-F exclusively. Learned counsel tried to justify the order passed by the Competent Authority rejecting the objections raised by the Petitioner.

7. A perusal of the record indicates that there were various objections raised by the Petitioner as to why the Petitioner should be paid compensation and not the Respondent Nos.2-A to 2-F and at the same time various grounds were also raised by the Respondent Nos.2-A to 2-F as to why compensation should be paid to them. A perusal of Section 3-H(4) of the National Highways Act, 1956 indicates that 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.

8. In the instant case, there were disputes between the parties against each other in respect of the apportionment of the amount as well as entitlement thereto. The Competent Authority however, instead of referring the dispute to the decision of the Principal Civil Court of original jurisdiction has adjudicated all the disputes totally contrary to Section 3-H(4) of the National Highways Act, 1956, which is not permissible. It was the mandatory duty of the

Competent Authority to refer the dispute to the decision of the Principal Civil Court of original jurisdiction insofar as the dispute between the Petitioner and the Respondent Nos.2-A to 2-F in respect of 60% of compensation is concerned. At this stage, it would be appropriate to mention that insofar as 40% of the compensation declared by the Competent Authority in favour of the owners of the property is concerned, neither the Petitioner nor the Respondent Nos.2-A to 2-F has any dispute in respect of such 40% of compensation. The owners have not challenged the order passed by the Competent Authority before this Court so far.

9. We accordingly pass the following order :-

a). The Competent Authority is directed to refer the dispute between the Petitioner and the Respondent Nos.2-A to 2-F as to the apportionment of the amount or part thereof regarding 60% of the compensation amount, as contemplated under Section 3-H (4) of the National Highways Act, 1956 to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated within four weeks from today.

b). The Competent Authority shall also compute the compensation in respect of the 60% of the compensation in respect of Survey No.7/5 and 7/17 only and deposit the amount of compensation with the Principal Civil Court of the original jurisdiction

within four weeks from the date of such computation with intimation to the Petitioner as well as the Respondent Nos.2-A to 2-F.

c). The Civil Court shall decide the dispute between the parties on its own merits without being influenced by the observations made and the conclusion drawn by the Competent Authority in the impugned order insofar as the share of 60% is concerned.

d). If any of the parties propose to apply for withdrawal of the amount that would be deposited by the Competent Authority with the Civil Court, such party would be at liberty for such withdrawal by making an application with a copy to be served upon other side. The Civil Court would be at liberty to consider such application for withdrawal of the amount after hearing both the parties and to pass appropriate order on its own merits.

e). If the Civil Court is of the opinion that none of the parties shall be allowed to withdraw any of the amount or part of the amount, the balance amount shall be invested by the Civil Court in fixed deposit of a Nationalized Bank initially for a period of three years and thereafter for like period depending upon the pendency of civil dispute between the parties.

f). It is made clear that the order passed by the Competent Authority on 20 April, 2022 only in respect of payment of 60% compensation between the Petitioner and the Respondent Nos.2-A to

2-F, only in respect of Survey No.7/5 and 7/17 is quashed and set aside and not the entire order.

g). It is made clear that if any issue is raised by any of the parties under Section 85 or 85 (A) of the Maharashtra Tenancy Agricultural Lands Act, 1948, the Civil Court to pass appropriate order under the provisions of the Maharashtra Tenancy Agricultural Lands Act, 1948.

10. The Writ Petition is allowed in aforesaid terms. Rule is made absolute. No order as to costs. All concerned parties including the Civil Court to act on the authenticated copy of this order.

(GAURI GODSE, J.)

(R.D. DHANUKA, J.)