

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4108 OF 2021

Balkrishna Thakya Patil & Ors.

..Petitioners

Versus

Suresh Ganpat Patil & Ors.

..Respondents

Ms. Yogita Deshmukh-Chitnis for Petitioners.

Ms. Priyanka Tiwari i/b. Cusher Ashley for Respondent No.3.

Mr. J. M. D'Silva for Respondent No.7.

Mr. S.H. Kankal, AGP for State/Respondent Nos.23 and 24.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.

DATE : OCTOBER 11, 2023

P.C.:

1. We have heard Ms. Deshmukh-Chitnis, learned counsel for the petitioners, Ms. Tiwari, learned counsel for respondent no.3, Mr. D'Silva, learned counsel for respondent no.7 and Mr. Kankal, learned AGP for State/respondent nos.23 and 24. The other respondents, although served, are not represented.

2. This petition under Article 226 of the Constitution raises a short issue namely a challenge to the order dated 04 May, 2021 passed by the Sub-Divisional Officer, Palghar Division, Palghar in rejecting the petitioners' objections as raised under Section 3G of the National

Highways Act, 1956 (for short, “**NH Act**”).

3. The dispute in the present proceedings concerns Gut No. 178 which is stated to be the self acquired property of father of the petitioners namely Thakya Patil and after his death, the said land is stated to be the exclusive share and ownership of the petitioners. It is also the case of the petitioners that remaining Gut Nos.48, 129/1, 121/1/1/1A are jointly owned by the petitioners and the respondents, but exclusively possessed by the petitioners.

4. The case of the petitioners in so far as Gut No.178 is concerned, is to the effect that there is a Sale Deed dated 22 April, 1946 which was executed in favour of late Thakya Patil, father of petitioners “as purchaser” by the vendor ‘Mrs. Chandrabhagabai Nathu Kondu Patil’. There are also sale deeds in respect of Gut No.129/1 and Gut No. 48 dated 19 January, 1951 and 27 October, 1947 respectively, with which there appears to be no dispute.

5. Gut No. 178 along with other lands were acquired for the purposes of Mumbai Vadodara National Highway under the National Highways Act, 1956, the petitioners in pursuance of a notice issued by the competent authority under Section 3G of the NH Act, submitted their

objections to the competent authority *inter alia* pointing out the rights of the petitioners in respect of Gut No. 178 and also categorically pointing out that there was a Sale Deed executed in favour of deceased Thakya Patil dated 22 April, 1946 in respect of Gut No. 178 and accordingly asserted their right in respect of the said land to receive compensation. In such context, learned counsel for the petitioners has drawn our attention to the communications addressed by the petitioners dated 30 January, 2020, 04 December, 2020 and 23 February, 2021, which are part of the paper-book. Perusal of the said communications/objections would indicate that the petitioners not only made a reference to the sale deed, but a copy of the said sale deed was also annexed to the said communications/objections of the petitioners. Thus, such relevant documents, which according to the petitioners established their right, title and interest in respect of the said land, were accordingly on the record of the competent authority in deciding the petitioners' objections. The grievance of the petitioners is, however, that in passing the impugned order dated 04 May, 2021, the competent authority proceeded purely on 7/12 extracts and not taken into consideration the effect of the sale deeds. It is contended by the learned counsel for the petitioners that the 7/12 extracts are not determinative of the substantive rights in respect of the property in question. They are merely revenue entries and for the purpose of collection of revenue for

which such revenue record is maintained. It is thus, her submission that although the sale deed was placed on record, the effect of the sale deed and legal rights under the sale deed were not at all considered/examined by the competent authority in rejecting the petitioners' objections and the entitlement to receive the compensation.

6. On perusal of the impugned order passed by the competent authority, we find much substance in the contentions as urged on behalf of the petitioner. We find that the competent authority has merely taken into consideration the 7/12 extracts, however, although a reference is made that the sale deed accepting that the same was placed on record, there is neither any reason nor any discussion in regard to effect of the sale deed by which substantive rights, according to the petitioners, were created of the ownership of Gut No. 178.

7. In such view of the matter, we are of the clear opinion that the impugned order cannot be sustained, and the competent authority would be required to re-hear the petitioners and the respondents and pass an appropriate order in accordance with law. We accordingly allow this petition by following order:-

ORDER

- i. The impugned order dated 04 May, 2021 passed by the competent

Page 4 of 5

11 October, 2023

authority is hereby quashed and set aside.

ii. The competent authority is directed to hear the parties on all the documents and after considering all such documents, pass a reasoned order and more particularly taking into consideration the sale deeds which are placed on record for his consideration in determining the entitlement of the parties for award of the compensation in regard to the acquisition in question.

iii. Let such fresh order be passed by the competent authority within a period of six weeks from today.

iv. All contentions of the parties in that regard are expressly kept open.

v. After such orders are passed, it would be open to the competent authority to pass further appropriate orders under the provisions of Section 3G of the National Highways Act, 1956 for final determination of the compensation.

vi. Disposed of in the above terms. No costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]