



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7901 OF 2021

WITH

INTERIM APPLICATION (STAMP) NO.23032 OF 2023

IN

WRIT PETITION NO.7901 OF 2021

Dattatray Ramchandra Patel .. Applicant/Petitioner
v/s.

Shankar Rama Dhodi And Ors. .. Respondents

WITH

WRIT PETITION (STAMP) NO.20595 OF 2019

Shankar Rama Dhodi And Ors. .. Petitioners
v/s.

Competent Authority And Addl. Collector
(Acquisition) Palghar And Ors. .. Respondents

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Ms. Yogita Deshmukh Chitnis, for the Petitioner in WP/7901/2021
and Applicant in Interim Application (Stamp) No.23032/2023.

Ms. Neeta P. Karnik, for the Petitioners in WPST/ 20595/2019.

Ms. P.J. Gavhane, AGP, for State.

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

DATE : 12th OCTOBER, 2023

P.C:-

These are two interconnected petitions. These petitions concern the acquisition of land subject matter of acquisition under the Land Acquisition Act, 1848 and the Railways Act, 1989.

2. For the sake of clarity, the prayers in the respective petitions are extracted, which reads thus:-

“Prayers in Writ Petition No.7901 of 2021:

- a) That the rule be issued.
- b) That the Hon'ble High Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ/ Order/direction directing the Respondent No. 39 to withdraw the proceedings filed before the Court of Civil Judge Senior Division Palghar bearing No. 07 of 2018 and thereby setting aside the Order of reference passed by the Respondent No. 39 under - Section 20H(4) of the Railway Amendment Act 2008 for referring the dispute to the Court of Civil Judge Senior Division.
- c) That the Hon'ble High Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ/ Order/direction directing the Respondent No. 39 to release the award of Rs.29,18,926/- in respect of compensation towards the 46 tree plantations in favour of the Petitioner.
- d) That the Hon'ble High Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ/ Order/direction to the Respondent No. 39 to release the amount of land beneath the Grampanchayat House Construction No. 423, 116.27sq.mt. in favour of the Petitioner.

- e) That the Hon'ble High Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ/ Order/direction directing the Respondent No.39 to release the compensation cost in respect of 5.20 Guntha land in Gut No. 63 in favour of the Petitioner.
- f) That the Hon'ble High Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ/ Order/direction directing the Respondent No.39 to pay compensation cost of Rs, 50,000/- towards the nuisance created by removing the cap /tab of septic tank and borewell.
- g) That the impugned Order date 02/05/16 (annexed hereto as Exhibit AA) and the impugned Communication/Order dated 23/10/18 (annexed hereto as Exhibit-LL) passed by the Deputy District Collector/Chief Project Officer be set aside.
- h) That the access road for new house construction No. 890, shall not be affected and instead of constructing a permanent wall over the access road a manned gate could be constructed, so that the Petitioner's right to way to approach the new house construction No. 890 shall not be affected. That the Railway authorities shall be restrained from constructing a permanent wall over the access road for new house construction No. 890. Instead of that, the Railway authorities be directed construct a manned gate over the access road for the new house construction No. 890.
- i) That during the pendency and final disposal of the present Writ Petition, the proceedings of before the Ld. Civil Judge Senior Division bearing No. 07/2018 sent under reference be stayed.
- j) That the ad interim relief in favour of prayer clause (b), (c), (e), (f), (g).
- k) That the cost of the Petition be awarded to the Petitioner.
- l) That any other & further Order/s in the interest of justice that the Court may deem fit.

Prayers in Writ Petition (Stamp) No.20595 of 2019:

- (a) This Hon'ble Court may invoke its writ jurisdiction under Article 226 of the Constitution of India and issue a writ of certiorari or a Writ, direction or order in the nature of certiorari and call for the records and proceedings of Regular Civil Suit No. 38 of 1989 from the files of Joint Civil Judge, S.D. Palghar and after examining the legality validity and legality validity and propriety thereof
- (i) be pleased to quash and set aside the impugned direction dated 08/10/2018 issued by the Competent Authority and direct it to pay the Compensation of Rs. 16,32,313/- deposited with Civil Court in LAR No. 07 of 2018 for lands situated on survey no. 63 to the Petitioner no. 1.
- (ii) that the Respondent no. 1 and 26 be directed to pay the compensation of Rs.3,00,000/- for the House situated on Survey No. 63 to the Petitioner no.1 and Rs.3,00,000/- to the Petitioner no.2 and 3.
- (iii) direct the Respondent Nos.1 and 26 to release the sum of Rs.17,55,357/- to the Petitioner no.1 and Rs.17,55,357/- to the Petitioner nos.2 and 3 the compensation for the land situated in Survey no.52/2 as per order dated. 07/05/2018 (Exhibit-Q).
- (iv) restrain the Respondent no. 1 and Respondent no. 26 from making any further payments to 2 to 23 as per Awards dated 23/01/2014 and 20/03/2017.
- (a) Pending the hearing and final disposal of Writ Petition this Hon'ble Court may be pleased
 - (i) Restrain the Respondents no. 1 and Respondent no. 26 from making any further payments to Respondent nos. 2 to 23 as per Awards dated 23/01/2014 and 20/03/2017
 - (ii) Direct the Respondents nos. 1 and 26 to deposit the amounts which has been illegally paid to Respondents no. 12 to 17 by receipts dated 27/02/2015 and 04/03/2015 in this Hon'ble Court and permit the Petitioners to withdraw the same.
 - (iii) To Stay the further proceedings of LAR 07 of 2018 pending before the Joint Civil Judge, S.D., Palghar.
 - (iv) Direct the Respondent Nos. 1 and 26 to deposit the compensation amount of Rs. 16,32,313/- and for land survey No.63 and Rs.3,00,000/- House in Survey no.63 in this Hon'ble Court and permit the Petitioner no.1 to withdraw the same.
 - (v) Direct the Respondent Nos.1 and 26 to deposit the sum of Rs.3,00,000/- for House situated in Survey no.63 and permit the Petitioner no. 2 and 3 to withdraw the same.

- (vi) direct the Respondent No.1 and 26 to permit the Petitioner no.1 to withdrew the sum of Rs.17,55,357/-as also direct Respondent nos.1 and 26 to permit Petitioner nos.2 and 3 to withdraw sum of Rs.17,55,357/- the compensation for the land situated in Survey No.52/2 as per order dated. 07/05/2018
- (c) ad-interim relief in terms of prayer clause (b) above;
- (d) liberty to add, alter and/or amend this petition may be granted.
- (e) Cost of this petition be provided.”

3. For convenience the facts in Writ Petition No.7901 of 2021 are being referred. The Petitioner and Respondent Nos. 1 to 38 are family members consisting of brothers and sisters and their legal heirs.

4. The only issue, which arises is in regard to the apportionment of compensation amongst the Petitioner and Respondent Nos. 1 to 38 arising under the land acquisition in question.

5. On 2nd May 2016, Respondent No.39-The Deputy District Collector/Chief Project Officer of Surya Project, Dahanu, Taluka and District-Palghar has referred the matter to the Civil Court under Section 20-H(4) of the Railways Act, 1989, observing that there is a dispute between the parties with respect to apportionment. Similar order was passed on 23rd October 2018 wherein the relevant provisions of the Railways Act were referred so as to refer the proceedings to the Civil Court for adjudication of the

dispute on apportionment of the compensation.

6. It is the contention of the Petitioner that in the light of the consent decree passed between the parties, Respondent No.39 was not justified in referring the matter to the Civil Court for apportionment and, therefore, the reference dated 2nd May 2016 and 23rd October 2018 is bad in law. Per contra, learned Counsel for private Respondent has supported the order of referral made by Respondent No.39.

7. We have heard learned Counsel for the Petitioner and the Respondents. We are of the view that in the light of provision of Section 20-H(4), no fault can be found in Respondent No.39 referring the dispute to the Civil Court on the issue of apportionment of the land acquisition compensation.

8. Section 20-H(4) of the Railways Act, 1989 reads thus:-

“20-H. Deposit and payment of amount.-

(4) 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.”

9. The Authority/Respondent No.39 has observed that there is a dispute with respect to the apportionment and, therefore, the apportionment is referred to the Principal Civil Court of Original Jurisdiction. This Court in the present proceedings under Article 226 of the Constitution of India cannot dwell on the question of apportionment and the disputed questions of fact in that regard, and more particularly as to what would be the effect of consent decree passed between the parties. Certainly, the parties can rely on the said consent decree and assert their contentions in the proceedings of the Reference under Section 20-H of the Railways Act.

10. We are, therefore, of the considered view that the parties are required to be relegated to the Civil Court, wherein they are free to plead all their contentions, including the effect of the consent decree and entitlement of each Petitioner and that of the private Respondent, to the compensation as awarded.

11. In view of above, we pass the following order:-

ORDER

- (a) The reference made by Respondent No.39 under Section 20-H(4) is valid;
- (b) The parties to raise all their contentions before the Principal

Civil Court of Original Jurisdiction, including contention on the effect of the consent decree on the apportionment of the compensation;

- (c) Since most of the Respondents and the Petitioner are senior citizens, the Civil Court would make an endeavour to adjudicate upon the reference under Section 20-H(4) as expeditiously as possible within a period of one year from the date of uploading of the present order;
- (d) All the contentions of the Petitioner and the Respondents are kept open to be raised before the Civil Court;
- (e) Both petitions disposed of in terms of above;
- (f) In view of the disposal of the writ petition (Writ Petition No.7901 of 2021), nothing survives in the interim application taken out therein, which stands disposed of.
- (g) No costs.

(JITENDRA JAIN, J.)

(G.S. KULKARNI, J.)

Corrected as per the order of speaking to minutes dated 21 December, 2023.