



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 1040 of 2020

Babarao S/o Laxman Wanole

Versus

Sub Divisional Officer and Competent Authority (Land Acquisition Officer) for National highways Umerkhed, Dist. Nagpur and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.B.Naksane, Advocate for the petitioner.

Shri U.R.Phasate, AGP for the respondent no.1/State.

Shri R.D.Wakode, Advocate for the respondent no.3.

CORAM : ANIL S. KILOR, J.

DATED : 25th OCTOBER, 2023.

Heard.

2. The order dated 27th January, 2020 passed by the Sub Divisional Officer, the competent authority under the National Highway Act, 1956 (hereinafter referred as "Act, 1956"), rejecting the objection raised by the petitioner under Section 3-H(3) of the Act 1956, is under challenge in this writ petition.

3. The petitioner is a joint owner of the land survey nos. 182 and 181. It is the case of the petitioner that he filed the suit for partition and in the said suit temporary injunction was granted in favour of the petitioner restraining the respondent no.2 Deorao

Laxman Wanole to create third party in relation to the suit property.

4. It is submitted that despite injunction, the respondent no.2 created third party interest by executing a sale-deed in favour of one Shri Govind Pandurang Thakare who has subsequently alienated the land in favour of the respondent no.3.

5. It is submitted that since the objection was raised under Section 3-H (3) of the Act, 1956, the competent authority ought to have referred the matter to the learned Civil Court to decide the dispute about the apportionment of the amount of compensation. For this purpose he has placed reliance of Division Bench of this Court in the case of *Rajaram Waman Rane and others Vs. Ramkrishna Mahadeo Rane and others*¹.

6. On the other hand, Shri Wakode, learned counsel for the respondent no.3 submits that, he has purchased the land from Govind Pandurang Thakare to the extent of 1.81 HR from land survey no. 181. It is pointed out that the said land was purchased after obtaining permission from the Additional Collector.

7. He points out that the injunction granted by the trial Court in favour of the petitioner was not in

¹ 2018 SCC Online Bom 6437

respect of land purchased by him i.e. land survey no. 181 but it was in relation to survey no.182.

8. Learned Additional Government Pleader supports the impugned order and submits that there is no illegality committed by the Sub Divisional Officer. Accordingly, he prays for dismissal of the present writ petition.

9. In the light of rival contentions of the parties, I have perused the record and the impugned order.

10. From the record, it is evident that the petitioner has filed a suit for partition thereby claiming one-tenth share in the land survey no. 181 and 182.

11. Admittedly, the injunction granted by the trial Court in the suit was not in relation to the land purchased by the respondent no. 3 i.e. survey no. 181.

12. In the circumstances, even if the case of the petitioner is accepted that in the suit for partition he is claiming one-tenth share in both the land i.e. survey nos. 181 and 182, considering the fact that out of survey no. 181, the land acquired was to the extent of 0.85 R out of total land 1.81 HR. Whereas, the land acquired from survey no. 182 is 0.1300 R out of 3.95 HR.

13. Thus, considering the total area acquired land survey nos. 181 and 182, it is clear that one-tenth

share of the petitioner is intact and it has not been acquired by the Highway Authority. Therefore, still the decree can be passed in favour of the petitioner granting one-tenth share in the land was not acquired from survey nos. 181 and 182, if the petitioner succeeded in establishing his entitlement under the law.

14. In that view of the matter though there is no doubt that in case of such objection raised under Section 3-H(3) of the Act, 1956, the matter shall be referred to the Civil Court as held in the case of *Rajaram Rane and others Vs. Ramkrishna Rane and others* (supra), in the peculiar facts and circumstances of this case, no case is made out by the petitioner for referring such dispute to the Civil Court

15. In the circumstances, I do not find any merit in the present writ petition. Accordingly, it is dismissed.

[ANIL S. KILOR, J.]