

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO. 6770 OF 2022**

Rajeshkumar Babulal Jejani,
Aged about 57 years, Occupation: Business,
R/o Near Digambar Jain Mandir, Bapuca
Galli, New Itwari Road, Itwari, Nagpur 440
002

...Petitioner

// VERSUS //

1. Rishabkumar Babulal Jejani,
Occupation – Business,m
R/o 548, Plot No.3, New Cotton Market
Road, Ghat Road, Nagpur 440 018
2. National Highway Authority of India,
through its Project Director, Project
Implementation unit Pandhurna (Madhya
Pradesh), Having its Registered Office at –
Banglow No.2, Shubhankar Apartment,
Plot No. 159, Ambazari, Hill Road, Ram
Nagar, Nagpur 440 033
3. The Deputy Collector Land Acquisition
(General), Nagpur and the Competent
Authority for Acquisition of Land for
National Highways, Collectorate Building,
Civil Lines, Nagpur 440 001.

... Respondents

Shri M.G.Bhangde, Senior Advocate assisted by Shri C.B.Dharmadhikari,
Advocate for the petitioner.

Shri R.L.Khapre, Senior Advocate assisted by Shri R.P.Joshi, Advocate for the
respondent no.1.

Shri Anish A. Kathane, Advocate for the respondent no.2.

Shri K.L.Dharmadhikari, Additional Government Pleader for the respondent
no.3.

CORAM : ANIL S. KILOR, J.

DATED : 28th MARCH, 2023.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The petitioner by seeking apportionment of compensation granted for the land in question, acquired for National Highway, made an application under Section 3-H (3) of National Highway Act, 1956 (hereinafter referred as 'Act, 1956') which came to be rejected by the Deputy Collector, Land Acquisition (General) and Competent Authority, NHAI, Nagpur, vide order dated 21st October, 2022, the same is impugned in the present writ petition.

3. The brief facts of the present case are as under:

It is the case of the petitioner that, the petitioner and respondent no.1 are son of Babulal S/o Basidhar Jejani who started business at Nagpur in the name and style of "Jejani Store" with the help of petitioner and respondent no.1. During his life time he had purchased various movable as well as immovable property in the name of his two sons and other members of his family. After the death of Babulal, the petitioner and respondent no.1 entered into a Memorandum of Understanding (MoU) on 21st September, 2010 and thereby partitioned the various properties and some of the properties were decided to hold jointly by the petitioner and respondent no.1. Accordingly, acting upon the said MoU, the petitioner and respondent no.1 executed a

relinquishment deeds relinquishing their rights in favour of each other as mentioned in the respective relinquishment deed.

4. One of the land jointly held namely the land bearing Khasra No.52/2, admeasuring 0.64 HR situated at Mouza Gawasi Manapur, Tahsil, Nagpur (Rural), Dist. Nagpur has been acquired by the National Highway Authority of India (NHAI).

5. The respondent no.3 determined compensation of said land at Rs.24,96,000/-. This amount was enhanced by the Arbitrator to the tune of Rs.8,61,74,500/- along with interest, by award dated 20th March, 2014.

6. This award was quashed and set aside by the Principal District Judge, nagpur by order dated 29th August, 2015 passed in Civil M.A. No.421/2014, which in turn was quashed and set aside by the Division Bench of this Hon'ble Court by judgment dated 26th November, 2021.

7. Accordingly, the award of the Arbitrator dated 20th March, 2014 was restored. The judgment of this Court has been affirmed by the Hon'ble Supreme Court of India by order dated 11th July, 2022.

8. The petitioner claims that he has one-fourth share in the land which has been acquired. It is stated that, accordingly, after the award was passed by the Land Acquisition Officer, 25% share which comes to Rs.6,24,000/- was paid by the respondent no.1, who is the real brother of petitioner, to the petitioner on 24th February, 2012 under a voucher.

9. I have heard the learned counsel for the respective parties.

10. Shri Bhangde, learned Senior Advocate for the petitioner submits that the MoU whereby, some of the properties were partitioned between the petitioner and respondent no.1 and some of the properties agreed to be held by them jointly, is a family arrangement as far as it relates to the properties decided to be held by them jointly. It is pointed out that so far as other properties are concerned, separate relinquishment deeds were executed by both the petitioner and respondent no.1 and thereby they transferred their respective title in favour of each other. He therefore submits that, the properties jointly held, the said MoU is nothing but a family arrangement, which therefore, does not require registration. For this purchase he has placed reliance of Hon'ble Supreme Court in the case of Ravinder Kaur Grewal and others Vs. Manjit Kaur and others¹

11. Shri Bhangde, learned Senior Advocate for the petitioner submits that, so far as the properties jointly held and referred in the MoU, the MoU does not create any title in respect of such properties in favour of either petitioner or respondent no.1, but the title is in existence. It is submitted that, in absence of transfer of title under the MoU, the registration is not necessary.

12. He further submits that after the decision of Hon'ble Supreme Court in the present matter on 11th July, 2022, the application under Section 3-H(3) was filed before the competent authority within

¹ (2020) 9 SCC 706

reasonable time and therefore it cannot be said that the application was filed at a belated stage.

13. Shri Bhangde, learned Senior Advocate for the petitioner further submits that Section 3-H(3)(4) of Act of 1956 does not preclude or create any bar from raising a dispute about the apportionment of enhancement amount of compensation. It is submitted that the petitioner initially did not file application under Section 3-H(3) for the reason that he was paid 25% of his share by the respondent no.1, in the amount of compensation. However, on denial of payment of his 25% share in the enhanced amount of compensation, he got the cause of action to apply under Section 3-H(3) of Act, 1956. He therefore submits that application under 3-H(3) at the instance of petitioner is maintainable.

14. On the other hand, Shri Khapre, learned Senior Advocate for the respondent no.1 argues that land in question stands in the name of respondent no.1, accordingly, the award was passed in favour of respondent no.1. It is submitted that even in the arbitration proceeding, the petitioner was not party and he never participated in the same. It is pointed out the same was the position till the decision before the Hon'ble Apex Court. It is submitted that as the petitioner was nowhere in the picture since beginning, the application under Section 3-H(3) of the Act of 1956 at the instance of petitioner is not maintainable.

15. It is submitted that while passing the award and paying the compensation the authorities have to consider the documents namely,

sale-deed, mutation entries etc. He submits that as the land in question stands in the name of respondent no.1, the award was rightly passed in favour of the respondent no.1 and the amount was also rightly paid to the respondent no.1. He therefore submits that the petitioner has no right in the amount.

14. Shri Khapre, learned Senior Advocate for the respondent no.1 further submits that the Deputy Collector, Land Acquisition (General) and Competent Authority, NHAI, Nagpur, has rightly rejected the application by holding that the petitioner has no right to claim the amount.

15. Shri Khapre, learned Senior Advocate for the respondent submits that the alleged MoU dated 21.09.2010 (Batwara as mentioned,) is compulsorily registrable under Section 17 of the Registration Act. The MoU deed not being registered, cannot be read for any purpose whatsoever as per section 49 of the Registration Act. In support of his contention, learned Senior Advocate has placed reliance of the judgments of Hon'ble Supreme Court of India in the case of Sahu Madho Das Vs. Mukund Ram² Tek Bahadur Bhujil Vs. Debi Singh Bhujil and others³, Kale and others Vs. Deputy Director of Consolidation and others⁴ and Subraya M.N. Vs. Vittala M.N. and others⁵

2 AIR 1955 SC 481

3 AIR 1966 SC 292

4 AIR 1996 SC 196

5 AIR 2016 SC 3236

16. Learned Senior Advocate further submits that the initial wordings of the said deed dated 21.09.2010 read along with the entire deed will clearly go to show that the rights of the parties were being created or extinguished in the properties mentioned therein, for the first time. The deed is not a deed for recording of something happened in the past.

17. Learned Senior Advocate further submits that Rukminidevi Girdharilal Jejani, the wife of elder brother of petitioner's father, expired in 2010 and during the 13th day rituals of the deceased, the elders of the family had gathered and because of guidance of elders and as per everyone's wishes, the MoU dated 21.09.2010 came to be executed.

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

20. Before examining the matter on merit, as the controversy revolves around the disputes as regards the amount deposited under Section 3-H(1) of the Act, 1956, it would be appropriate to refer to Section 3-H(1)(3)(4) of the Act, 1956 which read thus:

“3-H. Deposit and payment of amount.-(1) The amount determined under section 3-G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2)....

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(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.”

21. Sub-section 1 of Section 3-H says that the amount determined under section 3-G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

22. Sub-section 3 of section 3-H says that where several persons claim to be interested in the amount deposited under sub-section(1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

23. Sub-section 4 of Section 3-H speaks about about reference to the Civil Court in case of 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.

24. In this case, a short question arises “whether the petitioner succeeded in establishing that, there is a dispute as to apportionment of

part of amount to the petitioner, to refer it to the Civil Court under Section 3-H(4) of the Act, 1956 ?”

25. The whole case of the petitioner is based on Memorandum of Understanding (MoU) dated 21st September, 2010 between the petitioner and the respondent no.1.

26. The said document undisputably bears the signature of the petitioner as well as respondent no.1.

27. It is further evident from the respective relinquishment deeds executed by the petitioner and respondent no.1 on 13th April, 2021 that, they both acted upon the MoU dated 21st September, 2010 by relinquishing their respective rights against each other.

28. It is further evident from record that Rs.24,96,000/- was allegedly paid by respondent no.1 to the petitioner towards amount of compensation received to the respondent no.1, prior to grant of enhancement towards 25% share of the petitioner as per MoU dated 21st September, 2010. Though the respondent no.1 disputes the said fact, however, nothing has been brought on record to show against what the said payment was made to the petitioner by the respondent no.1. It is pertinent to note that Rs.24,96,000/- is the exact and precise 25% amount of the total compensation received by the respondent no.1.

29. Thus, in my opinion all the above factors surrounded by the fact of execution of MoU are sufficient to show that there is a dispute of

entitlement of amount of compensation and such dispute may be referred to and resolved by Civil Court under Section 3-H(4) of Act, 1956.

30. However, a serious question is raised to the admissibility of the MoU as the same is not registered one.

31. In the circumstances, it is necessary to ponder upon to the issue whether the MoU in question needs registration under Section 17 of the Registration Act, as argued by the respondent no.1.

32. The Hon'ble Supreme Court of India in the case of *Ravinder Kaur Grewal and others Vs. Manjit Kaur and others* (supra) and after considering numerous judgments of Privy Council, the Hon'ble Apex Court and various High Courts, right from 1911 to 2019 carved out the exception to Section 17 of the Registration Act and has held thus:

25. Be that as it may, the High Court has clearly misapplied the dictum in the relied upon decisions. The settled legal position is that when by virtue of a family settlement or arrangement, members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family, such arrangement ought to be governed by a special equity peculiar to them and would be enforced if honestly made. The object of such arrangement is to protect the family from long-drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family, as observed in Kale (supra). In the said reported decision, a three- Judge Bench of this Court had observed thus: (Kale case, SCC pp.125-26, para 9) -

“9. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term “family” has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits.”

(emphasis supplied)

26. In para 10 of the said decision, the Court has delineated the contours of essentials of a family settlement as follows: (Kale case, SCC pp.126-27)

“10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

“(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made * under the document * and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.” (emphasis supplied)

27. Again, in para 24, this Court restated that a family arrangement being binding on the parties, clearly operates as an estoppel, so as to preclude any of the parties who have taken advantage under the agreement from revoking or challenging the same. In para 35, the Court noted as follows: (Kale case, SCC p.136)

“35. ... We have already pointed out that this Court has widened the concept of an antecedent title by holding that an antecedent title would be assumed in a person who may not have any title but who has been allotted a particular property by other party to the family arrangement by relinquishing his claim in favour of such a donee. In such a case the party in whose favour the relinquishment is made would be assumed to have an antecedent title.”

And again, in paragraph 36, the Court noted as follows: (Kale case, SCC p.137)

“36. ... Yet having regard to the near relationship which the brother and the son-in-law bore to the widow the Privy Council held that the family settlement by which the properties were divided between these three parties was a valid one. In the instant case also putting the case of Respondents Nos. 4 and 5 at the highest, the position is that Lachman died leaving a grandson and two daughters. Assuming that the grandson had no legal title, so long as the daughters were there, still as the settlement was made to end the disputes and to benefit all the near relations of the family, it would be sustained as a valid and binding family settlement. ...”

28. While rejecting the argument regarding inapplicability of principle of estoppel, the Court observed as follows: (Kale case, SCC p.138, para 38)

“38. ... Assuming, however, that the said document was compulsorily registrable the courts have generally held that a family arrangement being binding on the parties to it would operate as an estoppel by preventing the parties after having taken advantage under the arrangement to resile from the same or try to revoke it.” (emphasis supplied)

And in paragraph 42, the Court observed as follows: (Kale case, SCC p.140)

42. In these circumstances there can be no doubt that even if the family settlement was not registered it would operate as a complete estoppel against Respondents Nos. 4 and 5. Respondent No. 1 as also the High Court, therefore, committed substantial error of law in not giving effect to the doctrine of estoppel as spelt out by this Court in so many cases. ...” (emphasis supplied)

29. The view so taken is backed by the consistent exposition in previous decisions referred to and duly analysed in the reported judgment in Kale case. The question formulated by the High Court, in our opinion, stands answered in favour of the appellants (plaintiff), in light of exposition of this Court in Kale (supra).

33. From the above referred observations it is evident that when by virtue of a family settlement or arrangement, members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family, such arrangement ought to be governed by a special equity peculiar to them and would be enforced if honestly made. The object of such arrangement is to protect the family from long-drawn litigation or perpetual strives which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family.

34. It is further held that it is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the

document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable.

35. It is further held that the members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same.

36. In the teeth of above referred well settled principle of law, now I will move to examine whether the MoU in this matter needs registration.

37. The MoU dated 21st September, 2010 is in three parts. First part in respect of the property received by Rushabhkumar i.e. respondent no.1. Second part deals with the property received by petitioner and third

part deals with the properties to be jointly held by the petitioner and the respondent no.1.

38. As far as the first part and second part are concerned, the petitioner and the respondent no.1 executed relinquishment deeds as per the properties received and given by them in favour of each other as per the terms of the MoU.

39. The said facts makes it clear that the property in which the title is created, the relinquishment deeds were executed.

40. However, the properties in which no title or interest is transferred but the properties were decided to be held jointly, such properties are not the part of the relinquishment deeds.

41. Therefore, as no right or title is conveyed as regards the properties jointly held by the petitioner and the respondent no.1, the MoU cannot be termed as conveyance.

42. It is the case of the petitioner as well as the respondent no.1 and as they have mentioned in the respective relinquishment deed that, late Babulal S/o Basidhar Jejani started business at Nagpur in the name and style of "Jejani Store" with the help of his two sons respectively Shri Rishab Babulal Jejani and Late Shri Babulal Jejani during his life time had purchased various immovable as well as moveable property in the name of his two sons and other members of his family. Secondly, late Shri Babulal S/o Bansidhar Jejani and Smt. Meerabai W/o Shri Babulal Jejani and their

two sons respectively Shri Rishab Babulal Jejani and Shri Rajeshkumar Babulal Jejani were living together with their respective family members and were carrying on business initially in partnership under the name and style of “Jejani Stores” at Itwari Nagpur, and thereafter in the proprietary name of Shri Rishab and Shri Rajeshkumar and in the name of their family members various immovable and movable property had been purchased by late Shri Babulal S/o Bansidhar Jejani and hence they are owning various immovable and moveable properties in different names and in different combinations.

43. Thus, it sufficiently shows that parties to MoU have antecedents in the title, claim or interest in the properties jointly held. Resultantly, the MoU is not required to be registered and keeping in mind the settled legal position as reiterated in the case of *Ravinder Kaur Grewal and others Vs. Manjit Kaur and others* (supra), the respondent no.1 is estopped from resiling from the stated arrangement in the subject memorandum, which had recorded the settlement terms arrived at and acted upon.

44. Shri Khapre, learned Senior Advocate for the respondent no.1 has relied upon the judgments in the case of *Sahu Madho Das Vs. Mukand Ram* (supra), *Tek Bahadur Bhujil Vs. Debi Singh Bhujil and others* (supra) and *Kale and others Vs. Deputy Director of Consolidation and others* (supra) which have already been relied and discussed by the Hon'ble Supreme Court in the case of *Ravinder Kaur Grewal and others Vs. Manjit Kaur and others* (supra).

45. As far as the arguments made by the learned counsel for the respondent no.1 on the point of delay is concerned, the same needs to be rejected on the ground that the application was moved before the Deputy Collector on 29th September, 2022 within a reasonable time after the Hon'ble Supreme Court of India decided the Special Leave Petition (SLP) on 11th July, 2022.

46. In the present case, it cannot be ignored that earlier as the petitioner received his 25% share in the compensation, there was no reason for the petitioner to raise any dispute under Section 3-H of the Act of 1956, for his entitlement in the compensation. For the petitioner, first time the cause of action arose when the respondent no.1 denied his entitlement in the enhanced amount of compensation.

47. The language of provisions of Act of 1956 does not preclude to raise the dispute as regards enhanced compensation if the dispute was not earlier raised. Thus, in the peculiar fact of the present case the scope of Section 3-H(3)(4) of the Act of 1956, cannot be restricted to deny the rights of the petitioner to claim his share in the enhanced amount.

48. In the circumstances, I have no hesitation to hold that the Deputy Collector committed an error in not referring the matter to the Civil Court for adjudication and determined the entitlement of the petitioner in the amount of enhanced compensation. Accordingly, I pass the following order.

i. Writ petition is allowed.

ii. Order dated 21st October, 2022, passed by the Deputy Collector, Land Acquisition (General) and Competent Authority, NHAI, Nagpur, is hereby quashed and set aside.

iii. The application filed by the petitioner under Section 3-H(3) of Act of 1956, is hereby allowed.

Rule is hereby made absolute.

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

Digitally signed
by
SACHINDANAND
K NAIR
Date: 2023.04.06
13:22:02 +0530