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wp 3883.23F.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3883 OF 2023

Tamlinbegum w/o. Nisar Ahmed siddiqui
Age 52 years, Occ. Household,
R/o. Phulambri, Tal Phulambri, Dist. Aurangabad.

.. Petitioner.

VERSUS

1. The Sub-Divisional Officer and Land Acquisition Officer,
Paithan-Phulambri, Dist. Aurangabad.
2. Syed Zameer Hussain S/o. Sadiq Hussain,
Age 35 years, Occ. Agri.
R/o. Gut No. 469, Phulambri, Aurangabad Road,
Tal. Phulambri, Dist. Aurangabad.
3. Syed Zafar Hussain S/o. Syed Sadiq Hussain,
Age 48 years, Occ. Agri.
4. Syed Zaheer Hussain S/o. Syed Sadiq Hussain,
Age 45 years, Occ. Agri.
5. Syed Siddiq Hussain S/o. Syed Sadiq Hussain,
Age 38 years, Occ. Agri.

All above R/o. Gut No. 469, Phulambri, Aurangabad Road,
Tal. Phulambri, Dist. Aurangabad.

.. Respondents.

Mr. Shaikh Tarek Mohin H., Advocate for petitioner,
Mr. V.M. Jaware, AGP for respondent No.1
Mr. R.V. Gore, Advocate for respondent Nos. 2 to 4.
Mr. Mohd Sharif Advocate for respondent No.5

**CORAM : S.G. CHAPALGAONKAR, J.
DATE : 11th JULY, 2024.**

JUDGMENT :-

1. Heard. Rule. Rule made returnable forthwith.

The petitioner impugns the order dated 28.2.2023 passed by respondent No.1 Land Acquisition Officer, Paithan-Phulambri, rejecting the objection raised by the petitioner in respect of the apportionment of compensation awarded towards acquisition of land Gat No. 469 for construction of National Highway.

2. The petitioner claims that Land Gat NO. 469 was originally owned by Syed Amjad Hussain. He had two sons and 5 daughter. By now, only 4 are alive. The portion of the land Gat No. 469 has been acquired for expansion of Aurangabad-Jalgaon Highway. The notices for release of compensation were issued. According to petitioner, she holds right by inheritance in the said compensation amount. She has already instituted a partition suit bearing R.C.S. No. 64 of 2022 in the Court of Civil Judge (Junior Division), Fulambri and same is pending.

3. The petitioner further contends that in view of Section 3(H)3) and (4) of the National Highways Act, when a dispute as regards to the apportionment of compensation is raised, it was for the competent authority to refer the same to the Civil Court. However, respondent No.1 under the impugned order dated 28.2.2023 rejected the objection on erroneous reasons.

4. Per contra, it is the contention of the respondent Nos. 2 to 4 that as per the Muslim Personal Law, the petitioner is not entitled for compensation and the competent authority has rightly rejected the

objection.

5. Having considered the submissions advanced and perusal of record, it can be gathered that the petitioner has already filed a civil suit claiming relief of partition and separate possession against the private respondents and same is pending adjudication. Land Gat No. 469 is part and parcel of the suit property. The petitioner had raised objection dated 2.5.2023 before respondent No.1 claiming her right in the compensation amount in respect of Gat NO. 469. The petitioner has specifically contended that since the petitioner's mother Kamrunnisa Begum is daughter of original owner Amjad Hussain, she has a right by way of succession. The only issue that was raised by the respondents is that, petitioner's mother died in the year 1965 i.e. prior to death of original owner, namely, Sayyad Amjad Hussain . The petitioner cannot claim any right over the property. On the other hand, petitioner claims that her mother expired in the year 1973 i.e. after the death of her grandfather. Pertinently, the Civil Court while dealing with the application for injunction, observed that the dispute as regards to the actual date of death of Kamrunnisa Begum requires to be adjudicated, after recording evidence of the parties.

6. Perusal of the impugned order shows that competent authority had gone into the issue as regards to correct date of death of Kamrunnisa Begam and recorded its own finding against the claim of the petitioner and consequently rejected her objection. At this stage, reference can be given to the provision of Section 3H of the National Highways Act, which reads thus :-

“3H. Deposit and payment of amount.—(1) The amount determined under section 3G 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) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(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.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent, per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) 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 and the provisions of subsections (2) to (4) shall apply to such deposit.”

7. The aforesaid provision has been recently considered by the Supreme Court of India in the matter of ***Vinod Kumar vs. District***

Magistrate, Mau reported in **AIR 2023 Supreme Court 3337** and observed on para.34 as under :-

“34. Our final conclusion is as under: 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, then, 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. The competent authority possesses certain powers of the Civil Court, but in the event of a dispute of the above nature, the summary power, vesting in the competent authority of rendering an opinion in terms of sub-section (3) of [Section 3H](#), will not serve the purpose. The dispute being of the nature triable by the Civil Court that the law steps in to provide for that to be referred to the decision of the Principal Civil Court of original jurisdiction. The dispute regarding apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, would then have to be decided by that Court.”

8. The Division Bench of this Court in the case of **Arun Trimbakrao Lokare vs. State of Maharashtra, reported in 2017(6) Mh.L.J. 612**, had also an occasion to deal with the aforesaid provision, wherein, it has observed in para.16 as under :-

“16. It is a settled principle of interpretation of statute that the provisions of any statute are to be so interpreted as to give effect to each of them to the extent possible without giving rise to any conflict or overlapping. This principle of harmonious

construction needs to be applied in the matter before hand vis a vis Sub-Section (3) of Section 3-H, while interpreting Sub-Section (3). Such application would lead us to interpret these provisions in harmonious manner putting neither of them otiose. A careful reading of these provisions would reveal that when several persons are entitled to claim compensation, the competent authority has power and jurisdiction to record an opinion and determine the persons who are entitled to receive share/s and only enables him to apportion the amount of compensation amongst them according to the share they are entitled to. As against this, Sub-Section (4) contemplates a situation where the dispute is raised as to the entitlement of the compensation by several persons and the jurisdiction to decide such dispute is conferred upon the Principal Civil Court of original jurisdiction. In other words, whenever there is dispute raised by any person as to the right to receive either the whole or portion of the compensation, the competent authority is obliged to refer the matter to the Principal Civil Court of original jurisdiction.”

9. Looking to the law as espoused by the Supreme Court of India as well as Division Bench of this Court, it was obligatory on the part of the competent authority to refer the dispute to the Court of principal civil jurisdiction. The competent authority was not empowered to delve into the triable issues those are required to be adjudicated by the civil court. However, instead of making reference of the matter to the principal civil court of original jurisdiction, the authority transgressed its powers and fell into jurisdictional error. Hence, the impugned order is not sustainable in law.

10. Hence, the following order :-

ORDER

[a] The Writ petition is allowed;

[b] The impugned order dated 28.2.2023, passed by respondent No.1 is hereby quashed and set aside.

[c] The respondent No.1 is directed to refer the matter to the principal court of original civil jurisdiction as contemplated under Section 3(H)(4) of the National Highways Act, 1966 within a period of two weeks on receiving copy of this order and shall pass further orders, in accordance with law.

[d] Rule made absolute in above terms. No costs.

**[S.G. CHAPALGAONKAR]
JUDGE**

grt/-