



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5859 OF 2022

Muktabai Babasaheb Pathare & another .. Petitioners

versus

The State of Maharashtra & others .. Respondents

Mr. S. S. Rathi, Advocate for the Petitioners.

Mr. S. K. Tambe, AGP for Respondent Nos. 1 and 2.

Mr. B. B. Kulkarni, Advocate for Respondent No. 3.

Mr. V. P. Latange, Advocate for Respondent No. 4.

**CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.**

DATE : 7th MARCH, 2024.

ORDER (Per R M Joshi, J) :

1. The Petitioner takes exception to the order dated 27th May, 2022 passed by the authority under the National Highways Authority Act, 1956 (for short 'the Act'), whereby the apportionment of the compensation liable to be paid in respect of the acquisition of Gat No. 246 situated at Banpimpri, Tq. Shrigonda, District Ahmednagar, is determined.

2. The Petitioners are the co-sisters of Respondent No. 4. It is their case that a portion of land bearing Gat No. 246 is purchased jointly by them under the sale-deed dated 3rd June, 2002 and that

they are having equal share in the said property. Undisputedly, a portion of Gat No. 246 came to be acquired for the purpose of extension of Highway under the Act. It is claimed by the Petitioners that the land acquisition proceeding bearing No. LAQ/SR 3/2017 came to be decided by passing a final award dated 30th June, 2020 whereby the compensation amount is determined.

3. The Petitioners claim that there is no clarity about the exact area of each of the co-owners from Gat No. 246 and hence, the appropriate authority was called upon to measure the property and submit a report. It is contended that the concerned authority submitted report in favour of Respondent No. 4, wherein it is observed that Respondent No. 4 is in possession and occupation of the said portion of the acquired land. The Petitioners claim that there was no partition between the co-owners in respect of the property purchased and that the Petitioners have also raised a loan from the financial institution and a charge has been created on their behalf in respect of the said land.

4. The Petitioners are aggrieved by the direction of the concerned authority to pay an amount of Rs. 74,34,204/- to

Respondent No. 4. The said order is under challenge *inter alia* on the ground that Respondent No. 3 has no right to decide the civil rights / disputes between the parties and that the said dispute ought to have been referred for adjudication to the Civil Court under the provisions of Section 3H(4) of the Act. With these averments, a restraining order is sought against the disbursement of the said amount to Respondent No. 4, apart from setting aside the impugned order.

5. Respondent No. 4 filed an affidavit-in-reply contending that though the portion of the land bearing Gat No. 246 was acquired jointly by the Petitioners and Respondent No. 4, there is partition effected in respect of the said property and the name of each co-owners is reflected in the revenue record to the extent of the areas held in possession by them. It is contended that the acquisition of the portion of the land which is owned and possessed by Respondent No. 4 has been done and as such, this respondent is entitled for getting entire compensation for acquisition of portion of this land. It is also contended that on one hand the Petitioners have filed this petition seeking restraining order against Respondent No. 4 for withdrawal of the amount of compensation, however, the husband of Petitioner No. 2 has withdrawn the amount within two days of the

order of injunction came to be passed by this Court against Respondent No. 4.

6. Respondent No. 3 filed reply contending that it was within the jurisdiction of the competent authority to direct apportionment of the compensation and the same has been done in accordance with the provisions of the Act. It is however specifically contended in Paragraph No. 12 of the reply that if parties have any civil dispute it is open for them to file civil suit.

7. From the contention of the Petitioners as well as the affidavit-in-reply filed by Respondent No. 4, it is clear that there is dispute with regard to the ownership and separate possession of the respective portion of Gat No. 246. Dispute also exists about partition of the suit properties or its jointness. In order to ascertain the scope of enquiry by the competent authority under Section 3H(4) of the Act to decide the issue of apportionment, it would be relevant to consider the said provision which reads thus :-

“3H. Deposit and payment of amount :-

(4) If any dispute arises as to the apportionment of the amount of 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.”

8. At this stage, it would be apposite to make reference to the judgment of the Hon'ble Supreme Court in case of Vinod Kumar and others vs. District Magistrate Mhau and others, **2023 LiveLaw (SC) 511**. The issue before the Supreme Court was about the scope of the competent authority under this provision to determine the apportionment and while deciding the said issue, it is observed in Paragraph No. 34 of the judgment as under :-

“34. Our final conclusion is as under :- If any dispute arises as to the apportionment of the amount 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.

9. The above dictum clearly shows that if any dispute arises with regard to the apportionment of the amount or any part thereof, payable to any person, which in its nature, requires adjudication by Civil Court, 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. As observed hereinabove, in the instant case dispute pertains to the ownership and possession of the particular portion of the land as well as its partition or jointness. Having regard to the nature of these issues, undoubtedly they require adjudication, which cannot be decided in summary proceeding like under Section 3H(4) of the act. The appropriate adjudication is contemplated for the purpose of deciding the said issues which can be done by the Civil Court.

10. In such circumstances, the Writ Petition is partly allowed. The impugned order dated 27th May, 2022 is hereby set aside. In view of the provisions of the act as well as law settled by the

judgment of the Hon'ble Supreme Court, the competent authority is directed to refer the dispute between the parties to the competent Civil Court for its adjudication.

11. During the course of hearing, it is brought to our notice that the husband of Petitioner No. 2 has withdrawn the amount of compensation arising from Gat No. 246. Once the issues are referred for adjudication to the Civil Court, it would not be appropriate to permit one of the parties to withdraw any amount of compensation. The competent authority, therefore, to call upon the husband of Petitioner No. 2 to deposit the amount withdrawn by him before it. In order to safeguard the interest of all concerned parties, till the adjudication is done and the issue of apportionment is decided by the Civil Court, the amount of compensation be kept in Fixed Deposit with any Nationalised Bank. The parties would be entitled to receive the amount along with interest as per the apportionment done by the Civil Court.

(R. M. JOSHI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE