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wp 11217.23.odt

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

WRIT PETITION NO. 11217 OF 2023

1. Shaikh Fazal Sikandar Patel,
Age 40 years, Occ. Agriculture,
R/o. House No.608, In front of Jama Masjid,
Harsul, Dist. Aurangabad.
2. Shaikh Suleman Yasim Patel,
Age 38 years, Occ. Business,
R/o. 15-2-181, Autade Galli,
Patel Nagar, Harsul, Dist. Aurangabad.

.. Petitioners.

VERSUS

1. The State of Maharashtra
through its Secretary,
PWD Department, Mantralaya,
Mumbai.
2. The Competent Authority for N.H. No. 753-F
Under National Highway Act, 1956,
@ Sub Divisional Officer, Aurangabad
Tal. and Dist. Aurangabad.
3. Deputy Superintendent of Land Records,
Aurangabad, Tal. and Dist. Aurangabad.
4. Shaikh Kalandar Shaikh Magan Patel,
Age 70 years, Occ. Agriculture,
R/o. Patel Nagar, Harsul,
Dist. Aurangabad.

.. Respondents.

Mr. A.S. Kulkarni, Advocate for petitioners.
Mr. S.B. Jadhav, AGP for respondent Nos. 1 and 3,
Mr. S.S. Deve, Advocate for respondent No.2.
Mrs. K.S. Bhale, Advocate for respondent No.4

CORAM : S.G. CHAPALGAONKAR, J.

DATE :- 20th AUGUST, 2024.

FINAL ORDER :-

1. The petitioners impugn order dated 20.7.2023 passed by respondent No.2 – Competent Authority/S.D.O, Aurangabad in proceeding No. 2023/LA/MH 753-F/Harsul/CR-3/2020, thereby deciding the objection of the petitioners, instead referring it to the principal civil court of original jurisdiction in terms of section 3 (H)(4) of National Highways Act.

2. Mr. A.S. Kulkarni, learned advocate for the petitioners submits that the lands CTS No. 130 to 136 were originally owned by Shaikh Magan Vazir Patel, who was common ancestor of petitioners and respondent NO.4. A portion of aforesaid lands has been acquired for construction of National Highway i.e 753F – Aurangabad-Jalgaon Highway. The Land Acquisition Officer assessed compensation of Rs. 21,34,958/- towards acquired portion of land CTS No. 132 situated at Harsul. Respondent No.4 claimed right to received entire compensation of land to which the petitioners raised objection Under Section 3(H)(4) of National Highways Act before respondent No.2 and sought reference of dispute to principal civil court of original jurisdiction. The respondent No.2 without making reference of dispute to the civil court himself passed order of apportionment of compensation and directed release of compensation as prescribed by him to the legal heirs of original owner – Shaikh Magan Vazir Patel.

3. Mr. Kulkarni, learned advocate for petitioners submits that

respondent No.2 has no jurisdiction to adjudicate disputes of claimants or delve in to question of rights of the stake holders in the acquired land. Once objection is filed, it was obligatory on his part to refer the matter to the Principal Civil Court of original jurisdiction for adjudication of rights of respective claimants to receive compensation. He would therefore urge that the impugned order being ultra-virus, liable to be quashed and set aside.

4. On the other hand, Mr. S.S. Deve, learned advocate for respondent No.2 and Mrs. K.S. Bhale, learned advocate for respondent No.4 supports the impugned order.

5. The issue raised in this petition is no more *res-integra*. The Division Bench of this Court in the matter of ***Anand Vs. State of Maharashtra reported in 2017(6) Mh.L.J. 612***, observed in para Nos. 16 and 17 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.

17] In view of such legal position, when Sub-Section (4) of Section 3-H specifically requires the dispute as to entitlement to receive compensation determined under [Section 3-G](#) of the Act to be referred to and decided by the Principal Civil Court of original jurisdiction, it by implication necessarily excludes jurisdiction of the competent Authority which is entitled to merely decide the point of apportionment of the compensation amongst several persons under Sub-Section (3) of Section 3-H. Such interpretation, in our view, strikes a balance between Sub-section (3) and Sub-section (4) of [Section 3-H](#) of the Act and make them operative in separate spheres. The submission of the learned Advocate for the petitioner, on these lines therefore deserves to be accepted.”

6. Applying principle of law as espoused by Division bench of this court, it is evident that when several persons are entitled to claim compensation, the competent authority is vested with jurisdiction under Section 3(H) to opine as to apportionment of compensation amongst them, however, situation is different where a dispute is raised as to the entitlement to receive compensation by one or several persons. In such a situation, the competent authority cannot adjudicate upon dispute and foist his opinion with reference to apportionment on the parties. Such a job is entrusted to the Principal Court of original civil jurisdiction. In the present case, apparently, petitioners have raised dispute as regards to the apportionment of compensation. Respondent No.2 appears to have erroneously assumed jurisdiction to adjudicate upon dispute and render decision, instead of following path prescribed under Clause (4) of Section 3H of the National Highways Act. The corollary of discussion above leads this court to hold that competent authority exceeded jurisdiction and

passed ultra virus order which cannot be sustained in law.

7. During the course of hearing, it is informed by the learned advocates for the respective parties that Special Civil Suit No. 572 of 2023 is already instituted and pending before the Civil Judge (Senior Division) Aurangabad between the parties in relation to the disputed properties. The rights of respective parties are *sub-judice* in said suit

8. In that view of the matter, the writ petition deserves to be allowed.

O R D E R

- [I] Writ petition stands allowed in terms of prayer clauses (B) and (C).
- [II] Respondent No.2 shall refer the dispute to the decision of principal civil court of original jurisdiction in terms of Section 3H(4) of the National Highways Act.
- [III] On reference of said dispute, the amount of compensation shall also be transmitted for disbursement in terms of the decision of the Civil Court.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-