

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7072 OF 2022

Maruti Vishwambhar Gawali And Ors. ...Petitioners

Versus

The State Of Maharashtra And Ors. ...Respondents

Mr. Purshottam Chavan a/w Sachin Padaye for the Petitioners.

Mr. B.V. Samant, Addl. GP a/w Ms. R.A. Salunkhe, AGP for the Respondent/State.

Mr. Suhas Inamdar for Respondent Nos. 6 to 8.

Mr. Ashutosh Mishra i/b Mr. Rui Rodrigues for Respondent No.5 (UOI).

**CORAM : NITIN JAMDAR AND
M.M. SATHAYE, JJ.**

DATE : 4 APRIL 2024

P.C. :

. Heard learned counsel for the parties.

2. The Petitioners have challenged the order dated 3 June 2022 and have also sought a direction to the Respondent/Competent Authority to refer the matter to the Civil Court.

3. The learned counsel for the Petitioners has restricted the challenge in this petition to the reference to be made to the Civil Court.

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4. The Petitioners were some of the objectors in respect of compensation amount which was deposited with the Competent Authority pursuant to the acquisition proceedings under the National Highways Act, 1956. By the impugned order, the Competent Authority has declined to make a reference and has directed, not only that the amount should be distributed but has also directed the Petitioners to return certain amount.

5. Section 3 of the National Highways Act, 1956 provides a machinery as regards acquisition and deposit of the compensation. Section 3-H thereof deals with deposit and payment of amount. Section 3-H reads 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) 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 of land is situated.

(5) Where the amount determined under section 3-G

by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest of nine per cent per annum on such excess amount from the date of taking possession under section 3-D 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 sub-sections (2) to (4) shall apply to such deposit.”

Therefore, under Section 3-H(4), if any dispute arises as to the apportionment of the amount or any part thereof, the Competent Authority has to refer the dispute to the decision of the Principal Civil Court of original jurisdiction and the money has to accordingly be deposited.

6. The question therefore in this case is whether there is any dispute. Considering the fact that the Competent Authority is not a judicial authority, the dispute cannot be of such nature which requires adjudication. Only if there is no dispute or the dispute is artificially raised which fact can be easily decided, that the Competent Authority may consider it as no dispute.

7. In that context of this limited jurisdiction of the Competent Authority, we have examined the impugned order. The impugned order runs into 8 pages. It records that the hearing took place on 8

dates and on 9 May 2022, the Competent Authority reserved the matter for orders. Then the Competent Authority has recorded the submissions of the Applicants/the objectors in detail running into 3 pages. Thereafter, the Competent Authority has devoted as many as 4 pages for examining the documents and has given findings of fact on various aspects which were put into issue and argued before the Competent Authority and has passed an order akin to a Judgment.

8. By perusal of the impugned order, a dispute as envisaged under Section 3-H had arisen. It cannot be that by lengthy arguments before us, it is tried to be shown that dispute does not exist. Once the threshold under Section 3-H(4) is crossed, which we find it has crossed, the Competent Authority had no jurisdiction to decide the same and had to refer the matter to the competent Court.

9. The learned counsel for the Respondent sought to contend that there is no dispute and sought to rely upon the affidavit-in-reply. The affidavit-in-reply itself adds to the complexity of the matter. Bare perusal of the impugned order and a manner in which the Competent Authority approached the matter would show that the Competent Authority has acted as Court which is impermissible under the scope of Section 3-H.

10. In fact, we are coming across series of such orders, where the Competent Authority had usurped the powers of Competent Court deciding various complicated issues by themselves and proceeding to

distribute the compensation amount. So much so that the State Government had to come out with the instructions by Government Resolution dated 18 November 2022, not to disburse the amount for a period of 4 weeks after the decision is taken, so that parties have time to challenge such order.

11. In light thereof, the impugned order dated 3 June 2022 is set aside. We direct that the Competent Authority shall refer the dispute to the Court of competent Jurisdiction.

12. We are informed that some part of the amount is already disbursed to the Respondents/ Applicants and some part is disbursed to the Petitioners/ objectors as well. At this stage, we do not intend to disturb this position. It is open to the parties to apply in the proceedings, which would be referred by the Competent Authority to the Competent Civil Court or any other civil proceedings, as regards the amounts which have already been disbursed. All contentions of both sides are kept open.

13. The Writ Petition is disposed of in above terms.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)