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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 10337 OF 2018

Kaluram Dharmaji Mahar alias Jadhav & Ors. ... Petitioners

V/s.

Mahendra Bhikaji Mahar alias Jadhav & Ors. ... Respondents

Mr. Shriniwas S. Patwardhan for the Petitioners

Mr. S.H. Kankal, AGP for the Respondent Nos. 17 and 18

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

DATE : 02 JANUARY 2024

P.C. :-

Heard the learned Counsel for the parties. Notice is issued to the Respondents.

2. The Petitioners have challenged the order passed by the Respondent – Competent Authority and Sub-Divisional Officer, Mahad, dated 28 November 2017 under Section 3H of the National Highways Act, 1956.

3. The subject matter of the Petition is land Survey No. 64/7A situated at Mouje Chandhave Budruk, Taluka Mahad,

District – Raigad. This property along with the others was acquired for the purpose of national highways. When the compensation was to be disbursed, the Petitioners lodged an objection stating that the lands including the subject lands are the property of the joint family of the Petitioners' father and paternal uncle. When called upon the Competent Authority to make a reference to the Competent Court for adjudication, the Competent Authority declined to do so observing that the Petitioners have not established any connection with the subject land.

4. The learned Counsel for the Petitioners sought to contend that the subject land was initially in the name of the Petitioners' grand father and thereafter, uncle Bhikaji, as a Karta, being the eldest in the family and certificate under Section 32M was issued in his favour and therefore, the observation of the Competent Authority that the Petitioners have no connection whatsoever with the subject land is not correct. The learned AGP supported the impugned order stating that the Petitioners have not placed any material to show how they are connected with the subject land.

5. In the Petitioners' application before the Competent Authority the Petitioners have not specifically stated, what is orally argued before us, that is Bhikaji was a Karta of a joint family and that the Petitioners are entitled to the share in the compensation. In view of this position, this material not being placed before the Competent

Authority specifically a Competent Authority cannot be faulted for observing that the Petitioners have not demonstrated any connection to the property.

6. We are informed that the Petitioners have thereafter filed a suit for partition of the property. Affidavit-in-reply indicates that the amount of compensation has already been disbursed on 16 May 2018. We are also informed that the subject property is the subject matter of the suit filed by Petitioners for partition which is now acquired and therefore, it would be compensation that would be part of the suit.

7. This being the position and that the parties have already before the Civil Court and the amount has already been disbursed, there is no purpose served in keeping the Petition pending. The relief that the Petitioners seek in respect of the subject land is already part of the suit which is pending, if so required, the Petitioners can also apply for amendment. The Petitioners can also avail such legal remedy as may be permissible in law in respect of the compensation of the amount.

8. With these observations and keeping all contentions of the parties open, the Writ Petition is disposed of.

M.M. SATHAYE, J.

NITIN JAMDAR, J.