

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

WRIT PETITION NO.5833 OF 2024

Gandharva Dhaneshwar Patil	}	
Age-32 years, Occupation-Service,	}	
R/at – At Post Juchandra, Near Girija Mhatre	}	
High School, Naigaon (E), Juchandra,	}	
Thane-401208	}	Petitioner

Versus

1. State of Maharashtra,	}	
Thr. Govt. Pleader, High Court, Mumbai	}	

2. The Authority/Arbitrator	}	
Land Acquisition, Rehabilitation and	}	
Resettlement Authority duly constituted	}	
Under “The Right to Fair Compensation and	}	
Transparency In Land Acquisition,	}	
Rehabilitation and Resettlement Act, 2013”	}	
For Mumbai Ahmedabad High Speed Rail	}	
Project, Vasai	}	
Officer At -Government Building,	}	
Jalna Road, Karanti Chowk,	}	
Aurangabad/Sambhajinagar-431 001	}	

3. The Competent Authority	}	
Deputy Collector (Rehabilitation) Mumbai	}	
Ahmedabad High Speed Rail Project, Vasai	}	
Having Its Office at-District Headquarter,	}	
Palghar, Rehabilitation Department, Palghar-	}	
Boisar Road, Kolgaon, Palghar-401404	}	

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4. Harishchandra Ganpat Bhoir }
 Adults, Occ-Not Known, }
 R/at-Mudhagaon, Bhayandar (W), }
 Thane-401 101. }

5. Anant Ganpat Bhoir }
 (Since deceased, through His Legal heirs) }
 a. Jaywanti Anand Bhoir }
 Age-85 years, Occ: Housewife }
 b. Sanjay Anant Bhoir }
 Age-55 years, Occ: Business }
 c. Prashant Anant Bhoir, }
 Age-51 years, Occ: Business }
 a to c R/at – 211, Bhoir Niwas, Bhayander }
 Uttan Road, Near Murdha Bus Stop, }
 Bhayandar (W), Thane-401 101. }

6. Kisan Ganpat Bhoir }
 Adult, Occ: Not Known, }
 R/at-Mudhagaon, Bhayandar (W), }
 Thane-401 101. }

7. Liladhar Ganpat Bhoir }
 (Since deceased, thr. His legal heirs) }
 a) Smt.Indumati Liladhar Bhoir }
 b) Mrs.Mamata Pramod Mhatre }
 c) Mrs.Nita Anant Patil }
 d) Mrs.Ranjit Santosh Patil }
 e) Mr.Vikrant Liladhar Bhoir }
 All Adults, Occ: Not known }
 All R/at Mudhagaon, Bhayandar (W), }
 Thane-401 101. }

8. Kashibai Narayan Bhoir }
 (Since deceased thr. Her legal heirs viz) }

a. Naresh Narayan Bhoir }
 b. Kishor Narayan Bhoir }
 c. Kunda Narayan Bhoir }
 d. Vasanti Hreshwar Bhoir }
 e. Minal Hareshwar Bhoir }
 f. Dushyant Hareshwar Bhoir }
 All Adults, Occ: Not known }
 All R/at -Mudhagon, Bhayandar (W), }
 Thane-401 101. }

9. Bhimabai Bhaskar Bhoir }

10. Malti Damodar Bhoir }
 (Since deceased, thr. His legal heirs) }
 a. Vinod Damodar Patil }
 b. Jitendra Damodar Patil }
 All Adult, Occ: Business, }
 All R/at – 786, Murdhan Gaon, Near Uttan }
 Bus Stop, Bhayandar (W), Thane-401 101. }
 c. Manisha manohar Vadalkar, }
 Age-50 yers, Occ: Housewife, }
 R/at 301/A Claritage, New Raviraj Jesal }
 Park, Sector-D, Bhayandar (W), Thane- }
 401105. }

11. Kusum Raghunath Patil }
 Adults, Occ: Not known, }
 R/at Mudhagaon, Bhayandar (W), }
 Thane-401 101. }

12. Madhukar Narayan Bhoir }
 (Since deceased, thr. His legal heirs) }
 a. Jay Madhukar Bhoir }
 b. Kinjal Madhukar Bhoir }
 Both Adult, Occ : Not known }
 R/at House No.1331, Uttan Road, Near Ram }

Mandir, Murdha Village, Bhayander (W), }
 Thane-401101. }

13. Liladhar Dadoba Patil }

14. Akshaya Sagar Thakur }

15. Bhalchandra Dadoba Patil }

16. Archana Ashok Patil }

17. Hemant Dadoba Patil }

18. Shakuntala Gangadhar Patil }

19. Dwarkabai Chandrakant Patil }

20. Sushila Chintaman Patil }

21. Jayashree Deepak Patil }

22. Anusaya Dadoba Patil }

23. Kishor jagannath Patil }

24. Devanand Jagannath Patil }

25. Prakash Jagannath Patil }

26. Meghnath Jagannath Patil }

27. Ramchandra Jagannath Patil }

28. Chandrabai Gowardhan Bhoir }

29. Jagdish Ramchandra Patil }

30. Radhabai Jaywant Patil }

31. Kaivalya Jaywant Patil }

32. Jayshree Dhaneshwar Patil }

All Adult, Occ: Agriculture }

Respondent Nos.13 to 32 R/at Juchandra, }

Naigaon (East), Taluka-Vasai, District- }

Palghar-401208. }

33. Narottam Balaram Raut }

Since deceased thr. Legal heirs }

a. Tejkumar Narottam Raut }

Adult, Indian Inhabitant }

Age-38 years, Occ: Service, }

R/at Panju Taluka Vasai, Post Naigaon (W), }

District-Palghar-401207. }

34. Vasudev Balaram Raut }

Adult, Indian Inhabitant }

Age-68 years, Occ: Unemployed }

R/at Panju, Taluka Vasai, Post Naigaon (W), }

District-Palghar-401207. }

35. Vijay Balaram Raut }

Adult, Indian Inhabitant }

Age-55 years, Occ: Service. }

R/at Panju, Taluka Vasai, Post Naigaon (W), }

District-Palghar-401207. }

36. Hareshwar Balaram Raut }

Adult Indian Inhabitant }

Age-54 years, Occ: Service }

R/at Panju, Taluka Vasai, Post Naigaon (W), }

District-Palghar-401207. }

37. Hemakant Balaram Raut }
 Adult, Indian Inhabitant }
 Age-65 years, Occ: Unemployed }
 R/at Panju, Taluka Vasai, Post Naigaon (W), }
 District-Palghar-401207. }**Respondents**

Mr.Kishor Patil a/w Mr.Vinaykumar Khatu and Mr.Amar Gharte,
 for the Petitioner.

Mr.R.S. Pawar, AGP, for the Respondent Nos.1,2 and 3-State.

Mr.Sandesh Patil i/b Mr.Chintan Shah, for Respondent Nos.5/A
 to 5/D, 8A to 8F, 10A to 10C, 11, 12A and 12B.

Mr.Yatin Malvankar, for newly added Respondent Nos.33 to 37.

CORAM : R.M. JOSHI, J.

DATE : 7th AUGUST 2024

JUDGMENT :-

. As per order dated 2nd August 2024 amendment was
 not carried out properly, hence, amendment be carried out, in
 view of order dated 2nd August 2024, forthwith.

2. This Petition takes exception to the order dated 29th
 January 2024 passed by the Deputy Collector (Rehabilitation),
 Palghar (Competent Authority), Mumbai Ahmedabad High
 Speed Rail Project, Vasai, refusing to refer dispute under Section
 64 of the Right to Fair Compensation And Transparency in Land

Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act of 2013') to the Authority under Section 51 of Act.

3. The facts which lead to the filing of the present Petition can be narrated in brief as under:-

The Petitioner and Respondent No.13 and 32 Claim themselves to be the members of the Patil family i.e. heirs of late Pandu Dhondu Patil. Late Pandu was owner of the land bearing Survey No.38/3, 38/6, 51 and 61 situated at Mauje Chandrapada, Taluka-Vasai, District-Palghar. The Petitioner claims that after death of Pandu in the year 1945, the lands were transferred to his legal heirs and Mutation Entry bearing No.1345 was effected in the Revenue Record. Thus properties are claimed to be ancestral properties of Pandu and also that they were never divided since 1934. Pandu had two sons Gajanan Pandurang Patil and Waman Pandurang Patil. Waman was a bachelor. After demise of Waman, Gajanan was only surviving heir of deceased Pandu. The Petitioner and Respondent No.13 to 32 claim to be legal heirs of the Gajanan and also claim that their names are recorded in the Revenue record against the property in

question. The Petitioner claims that he along with concerned Respondents is in exclusive, peaceful and actual possession of the said property. It is further case of the Petitioner that name of the Ganpat Bhoir was recorded in 7/12 extract in Mutation Entry No.1967 dated 7th December 1960 and vide Mutation Entry No.4656 names of Respondent Nos.4 to 12 were recorded in 7/12 extracts as heirs of the Ganpat Govind Bhoir. It is alleged by the Petitioner that these Respondents were never in possession or cultivation of the suit property. When it was realized to the Petitioners that the names of these Respondents are mutated in the Revenue record as against property in question, they filed Appeal being Appeal No.327 of 1951 challenging the Mutation Entry Nos.1967 and 4656 before the Sub Divisional Officer, Vasai. The Sub-Divisional Officer partly allowed the said Appeal and Mutation Entry No.1967 was cancelled and the enquiry was remanded to Tahasildar for fresh consideration. The Respondents appeared before the Sub-Divisional Officer and claimed that Waman Patil has mortgaged his share to L.B. Gonsalves, who had filed a suit bearing No.377/1951 for recovery of the amount.

The said suit was decreed and the Darkhast bearing No. 51 of 1959 was filed for execution of the said decree. In the said execution proceedings predecessor of Respondents i.e. Ganpat Govind Bhoir had purchased share in the said properties. His name was entered into the revenue record as auction purchaser in an auction conducted by the execution Court in execution of decree passed by the Civil Court. The Petitioner also during the search found that in RCS No.377 of 1951 Waman was not added as party defendant and there was no decree passed against him.

4. The Petitioners further claim that being aggrieved by the order dated 13th June 2016 passed by the Sub-Divisional Officer, the contesting Respondents filed Appeal before the Additional Collector, Palghar being R.T.S. Appeal No.127 of 2016. This Authority by order dated 10th July 2017 allowed the Appeal. This order came to be challenged before the Additional Collector, Palghar by the Petitioners and Respondent Nos.13 and 32 in a Revision before the Additional Commissioner, Kokan Division in RTS Revision No.1098 of 2017. The said Revision came to be dismissed on 28th February 2018. The challenge to

the said order before the Hon'ble Minister was unsuccessful. Against that order Writ Petition bearing No.1243 of 2024 has been filed before this Court, which is pending.

5. The Petitioners have also filed Suit bearing No.359 of 2022 seeking declaration that they are heirs of deceased. Gajanan and Waman who were absolute owners of the suit property. The declaration is also sought that judgment and decree passed in RCS No.377 of 1951 is not binding upon Waman and has legal heirs.

6. The Petitioners further claimed that in the meantime award came to be passed in respect of the acquisition of the land for High Speed Rail Project from Ahmedabad to Mumbai. The Petitioner and others filed an Application under Section 64 of the Act of 2013 raising all these contentions and calling upon the Collector to refer the said dispute to the Land Acquisition, Rehabilitation and Resettlement Authority (for short 'Authority'). Since, the Additional Deputy Collector, Palghar has rejected the said Application by order dated 29th January 2024, this Petition.

7. During the pendency of this Petition Civil

Application No.10989 of 2024 came to be filed by Narottam Balaram Raut and Others and they were joined as Respondents to this Petition.

8. The learned counsel for the Petitioners submits that Section 64 of Act of 2013 mandates Collector to refer the dispute raised before him in respect of entitlement of compensation to the Authority. He has drawn attention of this Court to the phraseology used in the said provision which according to him does not leave any option for the Collector but to refer the dispute to the appropriate Authority. It is his submission having regard to the fact that the owner of the said property i.e. Waman was never a party to Regular Civil Suit No.377 of 1951 and hence on the face of it even if any execution of decree passed therein has been done in respect of the said properties, it does not bind the Petitioner and others. It is his further contention that the added party is also not a tenant and in absence of any proceedings being undertaken under the Agricultural Tenancy Act, it was not open for them to raise any claim in respect of the compensation payable. He placed reliance on judgment of Supreme Court in

case of *Vinod Kumar & Ors V/s. District Magistrate, Mau & Ors.*¹, to argue that once dispute arises in respect of apportionment of amount, then the Competent Authority shall refer the dispute to Civil Court, which according to him in the instant case, is Authority under Section 51 of Act. He further relied upon judgment of Division Bench of this Court in case of *Arun S/o. Tirmakrao Lokare V/s. State of Maharashtra & Ors.*², to buttress his submission, challenging impugned order. On these amongst other contentions, it is thus his submission that order passed by Collector is not justified.

9. The learned counsels for the original contesting Respondents and added Respondent supported the impugned order. Though it is sought to be argued on behalf of contesting Respondents that the added Respondents have no right to claim any share in the compensation payable against the acquisition of the land however, admittedly, there is no challenge from these Respondents to the impugned order passed by the Deputy Collector. This Court therefore does not wish to go into the said

1 2023 SCC Online SC 787

2 2017 6 Mah LJ 612

aspect sought to be canvased.

10. It is their further contention that Section 64 has no Application to the present case as there is no challenge to the award passed by the Competent Authority in respect of the acquisition of land in question. It is submitted that this Application at the most can be considered under Section 76 of Act of 2013. It is their further submission that Section 76 does not mandate compulsory reference of the dispute to the Authority under Section 51 of Act. In order to substantiate the said contention he has placed reliance on the judgment of Division Bench of this Court wherein there is reference of judgment of Supreme Court in case of *Sharda Devi V/s. State of Bihar*³. It is his submission that merely because any person raises objection to the payment of compensation, it does not become obligatory for the Collector to refer the said dispute to the Competent Authority. In order to lend support his submissions, reliance is placed on judgment of the Division Bench of this Court (Aurangabad Bench) in Writ Petition No.2813 of 2019, in

³ (2003) 3 SCC 128

case of *Gautam Rangnath Kumbhar & Anr. V/s. State of Maharashtra & Ors.*⁴

11. At the outset, this Court would like to deal with the objections raised by the Petitioner to the impugned order on the ground that it is mandatory for the Collector to refer the dispute to the Competent Authority under Section 64 of the Act. It would be relevant to refer Section 64 which read thus :-

“Section-64 Reference to Authority.-(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested:

Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority:

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made—

(a) person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

⁴ Order dated 5th February 2020 passed in Writ Petition No.2813 of 2019

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 21, or within six months from the date of the Collector's award, whichever period shall first expire:

Provided further that the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso."

12. Perusal of this provision indicates that in case any person interested who has not accepted the award may, by written application to the Collector require that the matter be referred by Collector for determination of the Authority. Thus, in order to invoke this provision it is absolutely necessary for such person to challenge the award. At this stage it would be necessary to consider the Application made before the Collector on behalf of the Petitioners. The said Application is made with following prayer.

21. Considering all the aforesaid facts and circumstances the Patil Family i.e. Notice Nos. 1 to 25 pray to this Hon'ble Forum that, the matter be referred to Authority as Compensation and Transparency per Sec.64 of The Right to Fair Land in Acquisition, Rehabilitation and Resettlement Act, 2013 and/or in alternative to not to release any compensation amount in favour of either of the party towards acquisition of subject property mentioned in present Notice till final adjudication of rights of all the concerned parties by competent Court of law or else same may kindly be deposited in Regular Civil Suit No. 359 of 2022, pending before Hon'ble Civil Judge (S.D.), Vasai, in

the interest of justice.

13. It is thus clear that the Petitioner is not challenging the award passed by the Competent Authority but prayer is made not to release amount of compensation till adjudication of right of parties by Competent Court law or in alternative the amount of compensation was sought to be deposited before Civil Court, in RCS No.359 of 2022.

14. In the light of this if provision of Section 76 is considered then it shows that this provision deals with the dispute sought to be referred by Petitioner. Section 76 read thus :-

76. Dispute as to apportionment.—When the amount of compensation has been settled, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such disputes to the Authority.

15. Needless to say that, it would not be sufficient for Petitioner just to make reference of Section 64 of the Act but the contents of Application must reveal that it is an Application under this provision. The Application and prayer made therein shows that Application is essentially under Section 76 of the Act.

16. At this stage, it would be relevant to take into

consideration the observations made by the Hon'ble Supreme Court in case of *Sharda Devi (Supra)*, which read thus :-

"Under Section 18 the Collector does not have power to withhold a reference. The Collector has no discretion in the matter, whether the dispute has any merit or not is to be left for the determination of the Court. Under Section 30 the Collector may refer such dispute to the decision of the Court. The Collector has discretion in the matter. Looking to the nature of the dispute raised, the person who is raising the dispute, the delay in inviting the attention of the Court, and so on - are such illustrative factors which may enter into the pps 126 of 139 TRIBAL WP ST 1338 - 20.doc consideration of the Collector while exercising the discretion. If the Collector makes the reference it may be decided by the Court subject to its forming an opinion that the dispute was capable of reference and determination under Section 30 of the Act. In case the Collector refuses to make a reference under Section 30 of the Act, the person adversely affected by withholding of the reference or refusal to make a reference shall be at liberty to pursue such other remedy as may be available to him under the law such as filing a writ petition or a civil suit."

17. It is thus held therein that under Section 18 of the Land Acquisition Act, 1894, the Collector does not have power to withhold the reference. However, under Section 30 Collector may refer such dispute to the decision of the Court. In this regard, Collector has discretion and he has to pass order looking to the nature of dispute, the persons who is raising the dispute, the delay in inviting attention of the Court, etc. The provisions

of Section 18 of 1894 Act are *parimateria* to Section 64 of Act of 2013. Similarly, Section 76 Act of 2013 is identical to Section 30 of Act 1890. This Court therefore finds no hesitation to follow the judgment of the Hon'ble Supreme Court in case of *Sharda Devi (Supra)*, to hold that Section 64 would mandate the Collector to refer the dispute to the Authority under Section 51 but there is no compulsion under Section 76 for making the reference.

18. Even otherwise the terminology used in both Sections also indicates so. Proviso to Section 64 states that the Collector shall within 30 days from the date of receipt of the Application make a reference to the appropriate authority. Whereas in Section 76 it is stated that he may refer such dispute to the Authority. In the considered view of this Court the nature of Applications/dispute raised and prayer made therein would be the distinguishing factor for Application of any one of these two provisions. It is therefore held that having regard to the nature of the Application and relief prayed by the Petitioner before the Collector, the said Application is filed under Section 76 though

captioned under Section 64 of the Act of 2013. Thus it was not mandatory for the Collector to refer the dispute to the authority.

19. Hon'ble Supreme Court in case of Vinod Kumar (Supra) has held that under National Highway Act, a reference is to be made to Principal Civil Court for deciding due of apportionment, similarly, Division Bench of this Court in the case of Arun Lokare (Supra) has held so. However, in the instant case Petitioner does not claim that the issue of apportionment can be decided by Authority under Section 51 of the Act but contends that it be decided by Civil Court in suit filed by Petitioner and others.

20. As the Petitioner has not asked for determination of the dispute by Authority under Section 51 of Act but has only asked for non disbursement of compensation till decision is taken by Civil Court. Thus no decision is sought even from Authority under Section 51 of Act, to make reference to it. Even on merits, if the facts of the case are taken into consideration, admittedly, suit RCS No.377 of 1951 came to be decreed and decree passed therein was executed in Regular Darkhast No.51 of 1959.

Admittedly, predecessor of Respondent Nos.4 to 10 is the auction purchaser of the properties in question. The said decree passed in RCS No.377 of 1951 is not set aside nor the auction sale is held to be void till date. Apart from this Mutation Entry of the year 1960 (M.A. No.1967) in favour of Respondents still holds the field. The challenge to the said Mutation entry is unsuccessful at all levels. Pertinently though the Petition has been filed by the Petitioners before this Court taking exception to the said entry by Writ Petition No.1234 of 2024 however, there is no dispute about the fact that the orders in question are not stayed by this Court. Moreover, though the suit has been filed in the year 2022 taking exception to the judgment and decree passed in RCS No.377 of 1951 and challenge is raised to the auction sale effected in 1951 in execution proceeding No.51 of 1959, there is no stay from Civil Court to the said decree. Having regard to these facts, *prima facie* there is inordinate delay caused in taking exception to the said entries as well as to the judgment and decree passed in 377 of 1951, this Court finds that in such a situation Collector was fully justified in not referring the dispute to

Authority. In this regard it would be useful to refer to judgment of Division Bench of this Court in case of *Gautam Kumbhar (Supra)*, wherein it is held that :-

Section 3H (4) provides that 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. The said provision cannot be read in a manner that even if a stranger without any prima facie right, files an objection, the competent authority should blindly refer the same to the principal civil court of original jurisdiction. If bonafide dispute exists, in that case only, the competent authority may, referring to section 3H(4), refer the dispute to the principal civil court of original jurisdiction.

These observations are fully applicable to the present case. No perversity therefore is found in the order passed by the Deputy Collector.

21. As a result of above discussion there is no reason to cause any interference therein in exercise of writ jurisdiction. Hence, Petition stands dismissed.

22. All pending Civil and Interim Applications are disposed of.

(R.M. JOSHI, J.)