

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11897 OF 2024

Sandeep Shivram Gharat

..Petitioner

Vs.

The Competent Authority and
Sub-Divisional Officer & Ors.

...Respondents

Mr. Bharatkumar Nukte with Mr. Devdas More for Petitioner.

Mr. Y. D. Patil, AGP for State.

Mr. Prakash Sankpal, SDO, Karjat present.

CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

DATED: 29 August, 2024

P.C.

1. We have heard Mr. Nukte, learned counsel for the petitioner and Mr. Patil, learned AGP for respondent nos.1 to 8.

2. Leave to amend to incorporate additional respondent namely respondent no.8. Amendment be carried out during the course of the day.

3. As a short issue arises for consideration in the present proceedings, we have heard learned counsel for the parties. Although respondent nos.2 to 7 are not before the Court, in the facts of the case considering the nature of the order we intend to pass, which would not cause a prejudice to the private parties and keeping open all their rights and contentions, we are

inclined to dispose of the petition by considering prayer clause (b) which reads thus:-

“(b) This Honourable Court may be pleased to issue an appropriate writ/mandamus, order or direction to the Respondent no.1/ Competent Authority/SDO, Karjat, Taluka Karjat, Dist. Raigad in view of Section 20H(4) of the Railways Act, 1989 to refer the dispute bearing Objection no.1 in respect of acquisition of Land bearing Survey no. 44, Hissa No. 3/A1 adm. About 20 R. 7P situated at Diksal, Taluka Karjat, Dist. Raigad acquired by railways to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.”

4. The case of the petitioner is that there are ancestral lands, the description of which is set out in paragraph 3 of the petition, which were subject matter of the acquisition by the railways for Special Railway Project, namely “EMU Maintenance Facilities i.e. Bhivpuri Karjat EMU Carshed and POH facilities in Tahasil Karjat, Dist. Raigad”, under a notification dated 18 November 2024 issued under Section 20A(1) of the Railways Act, 1989 (for short, “Railways Act”). Copy of the said notification is annexed at Exhibit “A” to the petition.

5. The petitioner contends that apart from the petitioner, respondent nos.2 to 7 are making a claim for compensation. Thus the dispute, as contended by the petitioner, is in regard to the apportionment of the compensation. There is also a partition suit which is pending before the Civil Court and unless the partition suit is decided, it is urged that it would not be appropriate that the respondents are granted benefit of the award

amount, as the petitioner also would have a share in the distribution of the compensation, the determination of such share being the subject matter of the proceedings before the Civil Court.

6. It is submitted that in the aforesaid circumstances, the petitioner intends that respondent no.1 exercises its authority to refer the dispute for adjudication of the Civil Court in terms of the provisions of Section 20A(4) of the Railways Act as the impugned decision as rendered by the competent authority being not acceptable to the petitioner, there exists a valid dispute on the apportionment of the compensation. It is submitted that in this regard already an application was made to the SLAO on 27 July 2024. The submission of the petitioner is that the same has been decided in terms of the communication dated 31 July 2024. It would be appropriate to note the said communication which reads thus:-

“(Translation of a photocopy of a LETTER, typewritten in Marathi)

Outward No. Land acquisition/Ka.Ta.-1/Village Diksal/3661/2024/1653

Date : 31.07.2024.

To,
Shri Sandip Shivram Gharat,
Son-Heir of late Satyabhama Shivram Gharat (Deceased),
residing at and Post Shivshankar Niwas,
Dahivali Tarfe Need, Patil Aali,
Tal. Karjat, District Raigad.

Subject:- Regarding depositing in the Hon'ble Court, the entire amount of consideration of the acquired area of the land property bearing Survey No. 44/3/A/1, situated at Village Diksal, Tal. Karjat, acquired for the Bhivpuri Railway (EMU) Carshed.

Reference:-Your Application dated 02.07.2024.

This Office has received your above-referred application on the above-mentioned subject, raising objection to pay the amount of consideration of the acquired area from out of the land bearing S.No. 44/3/A/1 situated at village Diksal, Tal. Karjat.

In pursuance thereof, on perusing the Record of rights in respect of the land bearing S. No. 44/3/A/1 situated at village Diksal, Tal. Karjat, being acquired for the Karjat-Bhivpuri Car-shed Project, the entry of your name is not found therein. It is further seen that you have not submitted any Stay Order passed by the Hon'ble Civil Court, in the Suit pending before the said Hon'ble Court, staying the payment of the consideration amount. Therefore, your above-referred application raising objection, is disposed of.

(Signature Illegible)
Sub-Divisional Officer,

(Signature Illegible)
31-07-2024
Revenue Assistant,
Office of the Sub Divisional Officer,
(Illegible) Karjat.”

7. We are of the opinion that the Land Acquisition Officer namely the SDO would not have a jurisdiction to come to any final conclusion on the share the petitioner would have in such ancestral property, by interpreting any revenue document, which is subject matter of dispute qua the rights/ shares of the members of the family. As there was a dispute regarding apportionment of the compensation which on one hand is claimed by the petitioner and on the other hand, by respondent nos.2 to 7, the only course of action as available to the competent authority, was to refer the dispute for apportionment of the compensation to the Civil Court in terms of provisions of Section 20(H)(4).

8. We are thus of the opinion that respondent no.1 needs to make a reference of the dispute between the petitioner and respondent nos.2 to 7 to the Civil Court in terms of the provisions of Section 20(H)(4) of the Railways Act. Reference be made within a period of four weeks from the date a copy of this order is made available to the parties. **Ordered accordingly.**

9. All contentions of the private respondents are expressly kept open.

10. At this stage, Mr. Patil, learned AGP for the State informs the Court that in view of the dispute between the petitioner and respondent nos.2 to 7, the compensation amount has not been disbursed in favour of respondent nos.2 to 7. He is also instructed to further state that the compensation would be disbursed considering outcome of the civil suit which is pending between the parties. We keep open all contentions of the parties to be urged before the Civil Court as the compensation amount would now be required to be deposited by the competent authority with the Civil Court.

11. We accordingly allow this petition in the aforesaid terms. No costs.

(SOMASEKHAR SUNDARESAN, J.)

(G. S. KULKARNI, J.)