

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.8783 OF 2022
WITH
INTERIM APPLICATION (STAMP) NO.1730 OF 2024
IN
WRIT PETITION NO.8783 OF 2022**

Shri. Hareshwar Atmaram Pimple & Ors.Petitioners/Applicants

Vs.

The Competent Authority and

The Sub-Divisional Officer & Anr.Respondents

Ms Babita Pandey a/w. Mr. Dinesh R. Sonawane for the
Petitioners/Applicants.

Mr. A.I. Patel, GP a/w. Ms. M.S. Bane, AGP for State.

Mr. A.Y. Sakhare, Sr.Adv. a/w. Mr. Bhushan Walimbe & Mr. Mayank
Tripathi for Respondent No.2.

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

DATE : 19 SEPTEMBER, 2024

P. C.

1. We have heard learned counsel for the parties.
2. This Petition under Article 226 of the Constitution of India
is filed praying for the following substantive reliefs:

*(a) That this Hon'ble Court may be pleased to issue the Writ of
Mandamus or any other Writ, Order or Direction in the nature of Writ of
Mandamus and be further pleased to hold and declare that the Petitioners
are equally entitled to receive the amount of compensation alongwith
the Respondent No.2;*

(b) That this Hon'ble Court may be pleased to issue the Writ of Mandamus or any other Writ, Order or Direction in the nature of Writ of Mandamus and be further pleased to hold and declare that the impugned communication and Order dt.29.09.2020 passed by the Respondent No.1 viz., the Competent Authority is bad, illegal and therefore liable to be quashed and set aside;

(c) This Hon'ble Court may be pleased to issue Writ of Certiorari or any other appropriate writ or direction in the nature of writ of Certiorari and be pleased to quash and set aside the impugned communication and Order dt.29.09.2020 passed by the Competent Authority and Sub-Divisional Officer, Palghar Division Palghar in a proceeding bearing No.PD/Land Acquisition/ MVHM/SR.05 of 2019;

(d) This Hon'ble Court may be pleased to issue appropriate Writ or direction and be further pleased to direct the Respondent No.1 competent Authority to exercise the powers vested under sub-Section(4) of Section-3H of The National Highways Act, 1956 and refer the dispute to the Principal Civil Court of Original Jurisdiction within whose jurisdiction the land is situated viz. Ld. Civil Judge Senior Division, Palghar for the appropriate decision of the entitlement of share in the compensation amount by the parties;

(e) This Hon'ble Court may be pleased to issue appropriate Writ or direction and be further pleased to direct the Respondent No.2 till the entitlement of the Petitioners will be decided by the Civil Court to redeposit. the entire amount of compensation of Rs.2,00,11,179/- with the office of Respondent No.1 and/or in the Court of Ld. CJJD, Palghar in proceeding bearing PCS No.95 of 2020."

3. It is not in dispute that the land with which the petitioners are concerned i.e. Gat No.19, Village Masvan was subject matter of the acquisition for the Mumbai Vadodara National Highway. The case of the petitioners is that the petitioners have legal rights in respect of the said land, hence they are legally entitled to receive the land acquisition compensation, which according to them has been illegally grabbed by Respondent No.2. It is in these circumstances the petitioners approached the Sub-Divisional Officer/SLAO raising objections as per the provisions of Section 3G of the National Highways Act, 1956 (***"the Act"***). Such objections of

the petitioners came to be rejected by the impugned order dated 29th September, 2020 passed by the Sub-Divisional Officer (*“SDO”*).

4. The petitioners contend that the impugned order passed by the SDO is arbitrary and illegal, as it does not take into consideration the documents which were placed by the petitioners for his consideration, which, according to the petitioners, clearly depicted the petitioners’ legal rights in the land subject matter of acquisition and their entitlement to receive compensation. It is in these circumstances the present petition is filed praying for the reliefs as noted by us hereinabove.

5. This petition was filed on 25th November, 2020. It was heard from time to time by a co-ordinate bench of this Court. Pleadings on the proceedings are also complete. On such backdrop on the earlier occasion (on 16th August, 2024), we had passed the following order:-

“1. At the request of Mr. Sakhare, learned Senior Counsel for the Respondent No.2, we adjourn the proceedings to 22 August, 2024, High on Board.

2. Till the adjourned date of hearing, Respondent No.2 shall not part and/or create any third party rights with respect to any of the movable and immovable properties.”

6. Today, we have heard learned counsel for the parties at length.

7. Learned counsel for the petitioners has drawn our attention to several documents which are placed on record, including the documents which according to the petitioners would indicate the rights of the petitioners in respect of the land in question which is the subject matter of acquisition. Our attention is also drawn to a civil suit filed by the petitioners being Regular Civil Suit No.RAE/95/2020 praying for partition of the joint family properties between the petitioners and Respondent No.2 and other members of the family. From the averments as made in Paragraphs 20, 21 and 22 of the plaint, it appears that the land subject matter of acquisition is also one of the properties in regard to which relief is sought in prayer clause (आ) of the partition suit. Our attention is also drawn to the reply affidavit of Respondent No.2, in which a copy of the interim application in the said suit filed below Ex.15 praying for an interim injunction is annexed, as also the order dated 18th December, 2020 rejecting the said application.

8. A rejoinder affidavit has been filed by the petitioners to the reply affidavit filed by Respondent No.2 disposing the case of the respondents.

9. The aforesaid facts would clearly indicate that the case is of

apportionment of the compensation being awarded in regard to the land which is subject matter of acquisition in question. On one hand, the petitioners are claiming a share in the compensation and on the other hand, Respondent No.2 has already made his claim and the compensation amount has been disbursed in his favour. In our opinion, it may not be possible for this Court to ascertain the respective shares of the parties in the present proceedings and decide any issue of apportionment and more particularly in the peculiar facts which we have noted hereinabove. It is in such context, prayer clause (d) of the petition, in our opinion, is relevant in which the petitioners have prayed that the dispute in regard to the apportionment of the compensation be referred by the competent authority-Respondent No.2 to the Civil Court as per the provisions of Section 3H(4) of the Act.

10. The dispute on apportionment necessarily is required to be referred by the Competent Authority to the Civil Court where the parties would be at liberty to assert their respective contentions, and the Civil Court would be required to take the same into consideration and pass appropriate orders within its jurisdiction.

11. Needless to observe, the Civil Court would also have

jurisdiction to pass appropriate orders in regard on any issue touching the disbursement/entitlement of the amount of compensation stated to be already disbursed in favour of Respondent No.2.

12. In the aforesaid circumstances, we dispose of this petition keeping open all contentions of the parties to be raised before the Civil Court. Hence the following order: -

ORDER

i) Respondent No.1/Competent Authority shall refer the dispute in regard to the apportionment of the compensation, which is subject matter of Award dated 15th October, 2018, to the relevant Principal Civil Court of original jurisdiction within a period of three weeks from today; which be decided by the Civil Court without an objection as to limitation, for the reason that the petitioners were bonafide pursuing the present proceedings.

ii) All contentions of the parties on such proceedings are expressly kept open;

iii) Needless to observe that the Civil Court would within its jurisdiction to pass appropriate orders on any interim application in regard to redeposit of the compensation etc.;

iv) The petitioners are at liberty to make such interim application within a period of four weeks from today and if such application is made, let the same be decided as expeditiously as possible and preferably within a period of eight weeks from the date of such application;

v) As it is informed that the parties are Senior Citizens, the Civil Court shall make an endeavour to dispose of the reference as expeditiously as possible; and

vi) Our order dated 16th August, 2024, passed on the present proceedings shall continue to operate until appropriate orders are passed by the Civil Court on the interim application proposed to be filed by the Petitioners. Needless to observe that if such interim application is not filed by the petitioners as contained in paragraph (iv) above, this protection shall not be

available after the expiry of such petition.

13. The Petition stands disposed of in the aforesaid terms. No costs.

14. In view of disposal of the petition, nothing survives in the interim application. The same is disposed of.

[SOMASEKHAR SUNDARESAN, J.]

[G. S. KULKARNI, J.]