



Darshan Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10577 OF 2024

Pandurang Balu Pujare and Anr. ...Petitioners

Versus

The Competent Authority and
Sub-Divisional Officer and Ors. ...Respondents

Mr R D Suryawanshi, for the Petitioners.

Mr P D Dalvi, for Respondents 3 to 5.

Mr A P Shinde, 'B' Panel Counsel, for the Respondent-State.

CORAM: M.S. Sonak &
Jitendra Jain, JJ.

DATED: 10 January 2025

Oral Judgment (per M S Sonak, J):-

1. Heard learned counsel for the parties.
2. Rule. The Rule is made returnable immediately with the request of and at the consent of learned counsel for the parties.
3. The petitioners question the order dated 19 October 2022 made by the competent authority and sub-divisional officer rejecting their objection dated 12 April 2022 to the payment of compensation to respondents 3 to 5 and insisting that such compensation be paid to them. The competent authority has purported to exercise the powers under Section 3H (3) of the National Highways Act, 1956 ("**Said Act**").

4. Section 3H of the Said Act reads as follows: -

“3H. Deposit and payment of amount.—(1) The amount determined under section 3G 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 the land is situated.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent, per annum on such excess amount from the date of taking possession under section 3D 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.”

5. In the case of **Vinod Kumar and Ors. Vs. District Magistrate Mau and Ors.**¹, the Hon’ble Supreme Court has discussed the scheme of Section 3H of the Said Act. In

¹ AIR 2023 SC 3337

paragraph No.22, Section 3H has been quoted, and in paragraphs 23 and 24, the Hon'ble Supreme Court has held that the language of Section 3H(4) is plain and simple. It provides that if any disputes arise as to the apportionment of the amount or any part thereof, the competent authority is obliged to refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated.

6. Mr Dalvi, learned counsel for respondents 3 to 5, however, submitted that the petitioners have not established that they were persons interested in the acquired land and, in any event, their application dated 12 April 2022 raised no dispute about apportionment. The records show that even before the acquisition proceedings commenced, the petitioners instituted a civil suit against respondents 3 to 5, objecting to certain conveyances and claiming rights in the property. From the reading of the application dated 12 April 2022 in its entirety, we cannot accept Mr Dalvi's contention that the application does not raise any dispute about the apportionment of the compensation.

7. Therefore, in terms of Section 3H (4) as explained by the Hon'ble Supreme Court in *Vinod Kumar (supra)*, the competent authority was obliged to refer the dispute to the decision of the Principal Civil Court of original jurisdiction instead of itself going into the merits of the said dispute and deciding the same one way or the other.

8. Mr Dalvi states that there is an unreported decision of the Aurangabad Bench, which takes the view that once the

suit is pending, no reference is competent under Section 3H(4) of the Said Act.

9. At least in Section 3H (4) of the Said Act, we see no such prohibition. Even the Hon'ble Supreme Court in *Vinod Kumar (supra)* has not spelt any such prohibition. In any event, even the unreported decision of the Aurangabad Bench in **Sahebrao S/o. Ganpati Pandharkhade and Anr. Vs. The Competent Authority and Ors.**² merely states that the disputes could be decided after the civil suit is disposed of. There is no discussion in the said judgment about the scope of making a reference under section 3(H). Neither is there any statement of law to the effect that a reference can never be made under Section 3H (4) because the suit is pending between the parties. The Court did not have the benefit of the precedent in **Vinod Kumar (Supra)**.

10. Accordingly, following the decision of the Hon'ble Supreme Court in **Vinod Kumar (supra)**, we quash and set aside the impugned order dated 19 October 2022 and direct the competent authority to refer the dispute of apportionment between the petitioners and respondents 3 to 5 to the Principal Civil Court, i.e., the District Judge of the concerned district (Ratnagiri). The compensation amount will also have to be forwarded to the Principal Civil Court, i.e., the District Judge, Ratnagiri, as the same shall abide by the decision in the reference. This exercise must be carried out within 2 months from today. The reference must be disposed of in accordance with law and on its own merits.

² Writ Petition No. 10931 of 2016 decided on 27.04.2018

11. We clarify that we have not examined the rival contentions on merits because these are the matters for the reference Court to determine in the first instance. Accordingly, all parties' contentions are left open to be decided by the reference Court in the first instance.

12. The Rule is made absolute in the above terms without any cost order. All concerned to act on the authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)