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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 805 OF 2022

Rekha Manohar Babar

...Petitioner

Versus

Union of India and Ors.

...Respondents

Mr Rahul S Kadam, for the Petitioner.

Mr Ashok R Varma, a/w Mr Vinit Jain, for Respondent No.1
(UOI).

Mr R S Pawar, AGP, for the Respondent-State.

Mr Chandan Athani, (through V.C.) i/b Hinge and Deshmukh,
for Respondent No.6 (NHAI).

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

DATED: 14 February 2025

PC:-

1. Heard learned counsel for the parties.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of learned counsel for the parties.
3. Learned counsel for the Petitioner states that the Respondents are duly served in this matter.
4. The Petitioner claims that her properties bearing survey Nos. 97/1/A/3, 97/1/A/1 and 97/1/A/2 were acquired by the National Highway Authorities for the purposes of National

Highway. The compensation amount was determined by an award made on 09 January 2019. The Petitioner has no objection to the compensation determined. However, the Petitioner was surprised that at the stage of disbursement of compensation, she was offered compensation of Rs.17,78,686/- in respect of her property measuring 502 sq. mtrs. surveyed under No. 97/1/A/3. The compensation for the lands bearing survey No. 97/1/A/1 and 97/1/A/2 admeasuring 861 and 687 sq. mtrs. respectively was deposited in the government treasury by apportioning the same favouring Public Works Department (PWD), Government of Maharashtra and Gram Panchayat of Wakhari.

5. The Petitioner disputed the apportionment favouring PWD and Gram Panchayat of Wakhari. The Petitioner pointed out that when applying for non-agricultural permission, a condition was imposed that the Petitioner shall transfer these portions to the public authorities at a nominal price of Rs.1/-. Learned counsel for the Petitioner submitted that such a condition was arbitrary, unconstitutional and unenforceable. Therefore, based upon such conditions, no compensation amount would have been apportioned in favour of PWD or Gram Panchayat. Learned counsel for the Petitioner also relied on an order dated 27 November 2018 in Writ Petition No.9143 of 2016 (Pravin Vishwanath Khalatkar Vs. The Union of India and Ors.) to support this contention.

6. Mr Kadam also referred to the formal representation on Page 150 of the paper book (Exhibit 'M') by which the Petitioner demanded compensation in respect of the area of 861 and 687 sq. mtrs, which are apportioned to the PWD and Gram Panchayat.

7. Though the Petitioner has prayed to award this compensation in her favour in this proceeding itself, we think this would not be appropriate. Section 3H (3) of the National Highways Act, 1956 (“NH Act”), provides that 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. This is what the award has, more or less, done.

8. Section 3H (4) of the NH Act, however, 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.

9. Here, there is an apportionment dispute between the Petitioner, PWD and the Panchayat. The Competent Authority cannot resolve such a dispute, and the same must be referred to the decision of the principal civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated.

10. Now that the apportionment dispute has arisen, we direct the Competent Authority, i.e. Respondent No.3, to refer the dispute to the appropriate District Court in Pandharpur for resolution. The amount of compensation, which is in terms of Exhibit ‘K’ deposited in the government treasury, must also be forwarded to the concerned Court. This exercise must be completed within 2 months from today.

11. Upon receipt of the reference, the concerned District Court must determine the apportionment issue and apportion the compensation amount accordingly.

12. All contentions of all parties, including the contentions now raised by Mr Kadam on behalf of the Petitioner, are kept open for the decision of the reference Court.

13. The reference Court must try to dispose of the reference as expeditiously as possible.

14. The Rule is disposed of in the above terms without any cost orders. All concerned are to act on the authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)