

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.7449 OF 2024**

1. Mr. Yuvraj Shivdas Londhe Sutar
Age-47 years, Occ. Agri.
R/at Tembhurni, Taluka -Madha,
District - Solapur, Maharashtra.
 2. Vandana Gajanan Kale
Age - 53 years, Occu. Agri.
R/at Tembhurni, Taluka - Madha,
District - Solapur, Maharashtra
- ..Petitioners

Versus

1. Devidas Mahadev Shilwant
Age-60 years, Occu. Agri.
R/at Tembhurni, Taluka - Madha,
District - Solapur, Maharashtra
2. Mr. Shivdas Anatas Sutar
deceased
3. Ms. Kesar Shivas Sutar,
deceased
4. Ms. Gangubai Shivaji Mane
Age - 51 years, Occu. Agri.
R/at Tembhurni, Taluka - Madha,
District - Solapur, Maharashtra
5. Mr. Dattatray Eknath Mane
Age-51 years, Occu. Agri.
R/at Tembhurni, Taluka - Madha,
District - Solapur, Maharashtra
6. Ms. Sujata Dattatray Mane
Age-45 years, Occu. Agri.
R/at Tembhurni, Taluka - Madha,
District - Solapur, Maharashtra
7. Mr Siddheshwar Dyandeo Deshmukh
Age-30 years, Occu. Agri.
R/at Tembhurni, Taluka - Madha,
District - Solapur, Maharashtra
8. Mr. Jhunjar Devrao Solankar
Deceased
9. Mr. Baban Pandurang Patil
Deceased

10. Sarpanch,
Grampanchayat Tembhurni
Through Gram Sevak
R/at Tembhurni, Taluka Madha,
District - Solapur, Maharashtra
11. Ms. Rukminibai Eknath Mane
Deceased
12. Mr. Ranjitsingh Mohite Patil
Non Agriculture Credit Society.
R/at Tembhurni, Taluka-Madha,
District Solapur, Maharashtra
13. Competent Authority and Dy Collector Land
Acquisition No. 11,
Krishna Khore, Solapur.
14. Sub Divisional Officer,
Solapur Divisional Solapur.
15. The State of Maharashtra. ..Respondents

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Mr. A. B. Tajane a/w Yuvraj A. Tajane, Advocate for Petitioners.

Mr. S. D. Rayrikar, AGP for Respondent Nos.13 to 15.

Mr. Rupesh Bobade, Advocate for Respondent No.1.

Mr. Anvil S. Kalekar, Advocate for Respondent Nos.4 to 6.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 04th SEPTEMBER, 2025.

PRONOUNCED ON : 09th SEPTEMBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The petitioners impugn order dated 19.03.2024 passed in L.A.R. No.34/2023 (Old L.A.R. No.9/2015 at Barshi) by Civil Judge Senior Division, Madha in Reference under Section 3-H (4) of National Highways Act, 1956 (for the sake of brevity hereinafter referred as 'N.H. Act, 1956'), thereby holding entitlement of respondent nos.4 to 6

to receive compensation amount deposited in pursuance to acquisition of land Gut No.574 (Old Gut No.733).

3. Brief facts giving rise to present Writ Petition can be stated as under:

The land Gut No.733 situated at Tembhurni, Tal. Madha was originally owned by Ananta Bajrang Londhe (Sutar). He had three sons and two daughters. The son namely Shivdas married to one Kesarbai. Shivdas and Kesarbai have two sons namely Prakash and Yuvraj and two daughters namely Vandana and Sangita. The son Prakash expired in the year 1978. Prior to his death, his mother Kesarbai being guardian of Prakash transferred 1H 60R land under registered sale deed dated 19.11.1977 in favour of one Rukminibai, whereas transferred 1H land vide registered sale deed dated 20.12.1985 in favour of Devidas Shilwant. Eventually, Rukminibai and Devidas acquired ownership of land to the extent of area mentioned in sale deeds.

On 13.10.2012, Central Government issued Notification under Section 3-A(1) of N.H. Act, 1956 proposing to acquire few parcels of land situated in District Solapur for widening of National Highway No.9. The Notification includes land bearing Gut No.574. On 04.06.2013, Notification under Section 3-D of N.H. Act, 1956 came to be issued showing name of interested persons.

In wake of aforesaid Notifications, petitioners, who are sons and daughters of Shivdas and Kesarbai, so also brothers of late Prakash filed Regular Civil Suit No.295/2013 seeking decree of partition and separate possession in respect of suit property i.e. land Gut No.574 claiming that it is their ancestral property and sale deeds of years 1977 and 1985 executed by Kesarbai being guardian of Prakash are without consideration and fraudulent. Hence, it is not binding upon them. Similarly, those sale deeds were executed without legal necessity. According to them, title to the suit property has not been validly passed in favour of respondent nos.4 and 6 i.e. Rukminibai and Devidas. The petitioners thereafter filed objections before Competent Authority claiming exclusive rights to receive compensation of acquired land and sought Reference under Section 3-H(4) of N.H. Act, 1956 to the Principal Civil Court of original jurisdiction. In deference to aforesaid objections, Competent Authority made Reference for decision as to the apportionment of compensation amongst petitioners and respondent nos.4 to 7 and 12. The learned Civil Judge Senior Division, Madha decided Reference in L.A.R. No.34/2023 (Old L.A.R. No.9/2015 at Barshi) vide impugned order dated 19.03.2024 and directed that respondent nos.4 to 6 are entitled for compensation amount as per apportionment shown in operative part of order. The respondent nos.4 to 6 are further directed to furnish an indemnity bond and security for release of amount and also furnish an undertaking to redeposit amount alongwith interest, in case such directions by Court. Apparently,

learned Reference Court issued direction to furnish security and undertaking to redeposit amount in wake of pendency of Regular Civil Suit No.295/2013 instituted by petitioners.

4. Mr. Tajane, learned Advocate appearing for petitioners/objectors submits that undisputedly suit property is ancestral property of objectors. The respondent nos.4 to 7 acquired title on the basis of registered sale deeds executed in the years 1977 and 1985 by Kesarbai i.e. mother of petitioners. The petitioners have already instituted Regular Civil Suit No.295/2013 seeking partition and separate possession of suit land, wherein sale deeds of the year 1977 and 1985 are challenged. The suit is pending adjudication before learned Civil Judge Senior Division at Madha. During pendency of suit, Competent Authority had made Reference under Section 3-H (4) of N.H. Act, 1956, which was initially registered as L.A.R. No.9/2015. Later on, re-numbered as L.A.R. No.34/2023 before Court at Madha. In this background, it was necessary to club Reference alongwith Regular Civil Suit No.295/2013 and decide the same simultaneously. According to Mr. Tajane, crucial issue as to title of property is subjudice in suit. Hence, Reference Court could not have independently delve into rights of parties or without decision on crucial issue as to the title could not have permitted release of amount in favour of respondents. In support of his contentions he heavily relies upon Division Bench judgment of this Court in case of *Rushikesh S/o. Kashirao Deshmukh Vs. The State*

of Maharashtra and Ors. (Writ Petition No.1454/2018 dated *12.03.2018*), so also observations of this Court in case of *Bhanudas Bhagwan Gote and Others Vs. Vitthal Haribhau Gote and Others*¹, wherein this Court issued directions to club proceeding of suit and Reference or direct simultaneous hearing of both proceedings pending before one and same Court.

5. Per contra, Mr. Kalekar, learned Advocate appearing for respondent nos.4 to 6 supports impugned order. According to him, respondents have acquired title of suit property in pursuance to sale deeds executed in the years 1977 and 1985 by Kesarbai i.e. mother of petitioners. Those sale deeds are first time questioned by filing Regular Civil Suit No.295/2013 only when Notification for acquisition of land for expansion of National Highway was issued on 13.10.2012 or Notification dated 04.06.2013 issued under Section 3-D of N.H. Act, 1956. He would endeavour to point out that Reference Court has rightly considered claim of respondent nos.4 to 6 to receive compensation based on title and directed release of compensation amount subject to furnishing of security and undertaking for refund of amount subject to final decision in suit. As such, no prejudice is likely to be caused to petitioners.

6. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that relevant

¹ 2020 (5) All M.R. 455.

provisions of N.H. Act, 1956, particularly Section 3-A vests powers with Central Government to acquire land for public purpose by issuing Official Gazette declaring its intention to acquire such land. Sub-section (2) of Section 3-A requires to provide brief description of land in Notification and publish such Notification in two newspapers. Section 3-H deals with deposit and payment of amount. Sub-section (4) of Section 3-H deals with apportionment of amount and provides that if any dispute arises as to the apportionment of the amount or any part thereof, Competent Authority is obliged to refer dispute to the decision of Principal Civil Court of original jurisdiction within limits of whose jurisdiction land is situated. In present case, looking to the objections raised by petitioners, Competent Authority exercised powers under Section 3-H (4) of N.H. Act, 1956 and made Reference to Principal Civil Court of original jurisdiction for decision on the point of apportionment of compensation.

7. Admittedly, petitioners have instituted Regular Civil Suit No.295/2013 before Civil Judge Senior Division at Madha and same is pending for adjudication for more than 12 years. It is informed that yet trial is not commenced in suit and same is lingering at preliminary stage. Pertinently, petitioners while seeking relief of partition and separate possession in respect of suit land assailed sale deeds executed by their mother in the year 1977 and 1985 firstly on the ground that sale deeds are without consideration and secondly, those are fraudulent

and does not bind rights of petitioners. As rightly pointed out by learned Advocate appearing for respondents, suit for partition and separate possession is filed only when Notification dated 13.10.2012 under Section 3-A(1) of N. H. Act, 1956 was issued followed by Notification under Section 3-D dated 04.06.2013. The date of institution of suit appears to be 20.11.2013. Admittedly, no interim orders have been passed in suit. In this background, learned Reference Court found it fit to release compensation amount in favour of respondent nos.4 to 6 in terms of apportionment shown in operative part subject to furnishing of an undertaking alongwith security for refund of amount subject to final decision in suit.

8. In aforesaid background, submissions advanced on behalf of petitioners that Reference Court could not have directed release of compensation amount without waiting for decision in suit or could have simultaneously heard Reference alongwith suit, requires consideration. In case of *Rushikesh S/o. Kashirao Deshmukh* (supra), Division Bench of this Court noted that when suit claiming declaration in respect of acquired property and entitlement to receive compensation amount is subjudice, it is desirable that objection raised by petitioners before Competent Authority shall be referred under provisions of Section 3-H (4) of N. H. Act, 1956 to Principal Civil Court of original jurisdiction with further direction of 'clubbing of Regular Civil Suit filed by petitioners alongwith Reference forwarded by

Competent Authority for decision and allot both matters to one and same judicial officer. In yet another judgment in case of *Bhanudas Bhagwan Gote and Others* (supra), Single Bench of this Court relying upon observations of Division Bench in case of *Rushikesh S/o. Kashirao Deshmukh* (supra) observed that when suit was already pending before Civil Court, issue can be appropriately decided only by Civil Court and directions were issued to refer dispute raised by petitioners to competent Civil Court with further direction to Principal District Judge to allot Reference to the same Court before whom trial in the suit is pending with further direction to decide both proceedings simultaneously.

9. The impugned order shows that there were no directions by Principal Civil Court for clubbing of proceedings or simultaneous decision of both proceedings in Civil Suit as well as Reference. The Reference Court observed that Kesarbai was Karta of the family. The petitioners were minor and she had every right to sale property. Although petitioners are raising grounds of fraud or sale deed being bad in law for want of consideration, both contentions are rejected for want of adequate pleadings and material. The learned Reference Court has further observed that Kesarbai i.e. mother of petitioners did not step into witness box or furnish any explanation in support of petitioners. The challenge to sale deeds after a period of more than 20 years, particularly in the wake of the Notification of acquisition, was

found to be without foundation. It appears that, Reference Court has not completely decided, but has half-heartedly adjudicated upon Reference, and has directed release of compensation while leaving final decision to be taken in suit. The impugned order do not show that Reference Court exercised its jurisdiction in tune with provisions of Section 3-H(4) of N. H. Act, 1956. However, directed release of compensation amount in favour of respondent nos.4 to 6 in terms of apportionment mentioned in paragraph no.33 subject to furnishing of security and undertaking for redeposit the amount.

10. The questions as to whether sale deeds executed by Kesarbai were for legal necessity, whether challenge to sale deeds is within period of limitation, whether respondents have acquired valid title under aforesaid sale deeds and whether sale deeds binds right of petitioners are still subjudice in this suit. The entitlement of parties to receive compensation would also be subject to decision in suit. In this background, Reference Court could not have directed release of compensation amount, particularly without deciding issue as to entitlement of parties as expected under Section 3-H(4) of N.H. Act, 1956. The Reference Court is expected to decide *interse* rights of parties and depending upon such decision direct disbursement of compensation. The impugned order shows that Reference Court failed to render decision on rights of parties and passed compromised order. In this background and in light of exposition of law in cases of

Rushikesh S/o. Kashirao Deshmukh (supra) and *Bhanudas Bhagwan Gote and Others* (supra), this Court finds it just and desirable to quash and set aside impugned order. It is made clear that respondents shall be at liberty to move appropriate application to Trial Court for interim relief for release of compensation amount pending suit, which can be considered by Trial Court on its merit. Hence, following order:

ORDER

- a. Writ Petition is partly allowed.
- b. The impugned order dated 19.03.2024 passed in L.A.R. No.34/2023 (Old L.A.R. No.9/2025) by Civil Judge Senior Division, Madha, is hereby quashed and set aside with direction to decide proceeding in L.A.R. No.34/2023 (Old L.A.R. No.9/2025) alongwith Regular Civil Suit No.295/2013.
- c. The learned Civil Judge Senior Division, Madha shall endeavour to decide suit expeditiously and in any case within period of one year from the date of this order.
- d. Parties to co-operate.
- e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE