

Amol

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2679 OF 2024

Sojar @ Rukminibai W/o Hari Mule	]	
Age – 66 Yrs. Occu. - House Hold	]	
& Agriculture	]	
R/o. - Bavi, Tal – Osmanabad	]	
District – Osmanabad	]	...Petitioner

Versus

- | | | | |
|----|-------------------------------------|---|--|
| 1] | Krishnath @ Krishna S/o Gopal Tate |] | |
| | Age – 75 Yrs. Occu – Agri |] | |
| | |] | |
| 2] | Santosh S/o Bharat Tate |] | |
| | Age – 25 Yrs. Occu. - Agri. |] | |
| | |] | |
| 3] | Bharat S/o Krishna Tate |] | |
| | Age – 50 Yrs. Occu. - Agri. |] | |
| | |] | |
| | All R/o. - Manegaon (Da) |] | |
| | Tal.-Barshi, Dist.-Solapur |] | |
| | |] | |
| 4] | Competent Authority |] | |
| | Land Acquisition Officer, |] | |
| | Deputy Collector No.11, |] | |
| | Krishna Khore, Solapur |] | |
| | Tal. & Dist.-Solapur |] | |
| | |] | |
| 5] | Project Director, |] | |
| | National Highway Authority of India |] | |

**AMOL
PREMNATH
JADHAV**

Digitally signed by
AMOL PREMNATH
JADHAV

Date: 2025.02.13
11:10:55 +0530

Office – Plot No.80, Jule Solapur,]
Solapur – 413 004]...Respondents

Mr Sachinkumar Rajepandhare, for the Petitioner.
Mr Ashutosh M. Kulkarni a/w Mr. Siddharth Shitole, for
Respondent Nos. 1 to 3.
Mr. A. R Deolekar, AGP, for the Respondent – State.
Mr. Bharat K. Tate – Respondent No.3 present.

**CORAM M.S. Sonak &
 Jitendra Jain, JJ.**
Reserved on :- 07 February 2025
Pronounced on :- 13 February 2025

JUDGMENT : (Per M. S. Sonak, J.)

1. Heard learned Counsel for the parties.
2. Rule. The rule is made returnable immediately at the request and with the consent of the learned Counsel for the parties.
3. The Petitioner seeks the following substantive reliefs by instituting this Petition.

“(A.) This Hon’ble Court be pleased to issue a writ of certiorari or a writ in nature of certiorari or any other appropriate writ, order or direction calling the impugned Order dt. 21/12/2023 passed by Respondent No. 4 i.e. Competent Authority, Land Acquisition Authority cum Deputy Collector No. 11, Solapur in Land Acquisition Case No. 11/Kavi/RR/1281/2023.

(B.) This Hon’ble Court be please to issue writ of mandamus or writ in nature of mandamus or issue any appropriate writ or order directing Respondent No.4 to refer the dispute together with the amount determined by the

competent authority to the Principal Civil Court of original jurisdiction of District Solapur i.e. District Court, Solapur”

4. Mr Rajepandhare, the learned Counsel for the Petitioner submitted that under the scheme of the National Highways Act, 1956 (the NH Act), the competent authority has no right or jurisdiction as to the apportionment of compensation or any part thereof or to any person to whom the same or any part thereof is payable. The competent authority is obliged to refer such dispute to the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the acquired land is situated. He submitted that this position is settled by a series of decisions of this Court and now, by the Hon’ble Supreme Court in **Vinod Kumar and Others Vs District Magistrate, Mau and Others**¹.

5. Mr Rajepandhare submitted that despite the clear legal position as stated above and the binding precedents on the subject, the competent authority, by the impugned order dated 21 December 2023 has not only rejected the Petitioner’s claim for apportionment of compensation but, in high-handed manner, proceeded to disburse the compensation for the acquired land in which the Petitioner had an interest as co-owner, in favour of the Petitioner’s brothers. He submitted that the impugned order dated 21 December 2023 is ex-facie without jurisdiction, null and void. He submitted that even the payments made by the competent authority, based on the impugned order, were without the authority of law. Therefore, he submitted that the impugned order dated 21 December 2023 must be set aside, and the compensation amount disbursed to the Respondents 1 to 3 must be recalled and

¹ 2023 LiveLaw SC 511

directed to be deposited in the Principal Civil Court of original jurisdiction so that the Civil Court can decide the issues of apportionment, etc.

6. Mr Rajepandhare referred to the family tree/genealogy. He submitted that the Petitioner was a sister of Respondents 1 to 3. He submitted that these Respondents are illegally denying the Petitioner her compensation share. He submitted that the competent authority was not justified in deciding issues of title and apportionment. Accordingly, Mr Rajepandhare submitted that the Rule in this Petition be made absolute. He relied on **Arun s/o Trimbakrao Lokare Vs State of Maharashtra and others²**, **Rajaram Waman Rane and Others Vs Ramkrishna Mahadev Rane and Others³**, **Pandurang Balu Pujare and Anr Vs The Competent Authority and Sub-Divisional Officer and Ors⁴**, **Shriram R. Deshprabhu Vs State of Goa and Ors and connected matters⁵** and **Ashok More Vs Union of India & Ors⁶**.

7. Mr Deolekar the learned AGP for the 4th Respondent defended the impugned order by submitting that the competent authority had the jurisdiction to determine the issue of entitlement of compensation or shares of compensation under Section 3H(4) of the NH Act. He submitted that the Petitioner's belated claim lacked prima facie merit. He submitted that the impugned order discusses the issue of allotment and basis of the apportionment or

² 2017(6) Mh.L.J.

³ 2018 SCC OnLine Bom 6437

⁴ WP/10577/2024 decided on 10 January 2025

⁵ 2023(2) ALL MR 72

⁶ 2017(2) ALL MR 792

entitlement. He also referred to the affidavit of Shri Pramod Gaikwad, Deputy Collector (Land Acquisition Officer-11 Solapur), and submitted that it explains how the impugned order dated 21 December 2023 was legal and valid. Accordingly, he submitted that this Petition may be dismissed.

8. Mr Ashutosh Kulkarni learned Counsel for Respondents 1 to 3 also defended the impugned order dated 21 December 2023. He submitted that the Petitioner, though a sister, has no rights in the acquired property and the competent authority correctly declined any apportionment in her favour. He submitted that the impugned order is consistent with the provisions of the NH Act and there was no error in the competent authority apportioning the compensation exclusively to Respondents 1 to 3. Accordingly, he submitted that this Petition may be dismissed.

9. The rival contentions now fall our determination.

10. This Petition concerns the 2022 acquisition of property bearing Gat Nos. 360, 361, 362, and 363 at Manegaon, Taluka Barshi, district Solapur, in which the Petitioner and Respondents 1 to 3 claimed an interest. This acquisition is under the NH Act 1956. Therefore, a reference to basic facts, the provisions, and the scheme of the NH Act would be in order.

11. The competent authority (R 4) defined under Section 3(a) of the NH Act determined the amount payable as compensation under Section 3G by order dated 20 October 2022 (Exhibit 'A' pages 15 to 24).

12. In the order dated 20 October 2022, there was no reference to the Petitioner, and the compensation amount was determined against the names of Respondents 1 to 3. It is the Petitioner's case that this was because the survey records did not reflect the Petitioner's name, though the property acquired was a part of the ancestral property in which even the Petitioner had an interest, i.e., one-sixth share.

13. Therefore, the Petitioner, on 12 December 2022 filed an objection before the competent authority under Section 3-H(4) of the NH Act which was numbered as Land Acquisition Case No. 11/Kavi/RR/1281/2023 pointing out that she was also the co-owner in respect of the acquired land and sought a reference regards apportionment of the compensation amount to the decision of the Principal Civil Court of original jurisdiction i.e. the District Court at Solapur. The Petitioner also requested that in the meantime, the compensation amount should not be disbursed to Respondents 1 to 3.

14. The Petitioner also demanded her share of compensation from Respondents 1 to 3 via communication/notice dated 25 December 2022. As a matter of abundant caution, in February 2023, the Petitioner also filed Regular Civil Suit No. 306 of 2023, seeking partition and separate possession to the extent of her share in the common ancestral property, i.e., share to the extent of one-sixth. Respondents 1 to 3 opposed the Petitioner's claim to compensation or entitlement in the suit and the application seeking reference before the competent authority.

15. The competent authority by the impugned order dated 21 December 2023 partly allowed the Petitioner's application.

The competent authority held that Respondent Nos. 1 to 3 were exclusive owners of the properties Gat Nos. 360, 362 and 363 and directed the apportionment of compensation for these Gat numbers exclusively favouring Respondents 1 to 3. However, regarding the property bearing Gat No. 361, the competent authority directed that the payment of the compensation amount be kept in abeyance until the disposal of Regular Civil Suit No. 306 of 2023 instituted by the Petitioner.

16. Though there is no clarity, soon after making the impugned order dated 21 December 2023, the competent authority proceeded to disburse compensation of Rs.79,80,000/- to Respondents 1 to 3. The argument that the Petitioner raised a belated claim is misconceived, and the state should not have raised this. The petitioner lodged her objection before the amounts could be disbursed to Respondents 1 to 3. Without any jurisdiction, the competent authority decided the dispute regarding apportionment and hurriedly proceeded to disburse the amount.

17. To appreciate the rival contentions, it is necessary to refer to some of the relevant provisions of the NH Act concerning the acquisition of lands for the building, maintenance, management, or operation of national highways.

18. Section 3-A deals with the power of the Central Government to acquire land, etc. Sub-Section (1) provides that where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway

or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land. Sub-section (2) provides that every notification under sub-section (1) shall give a brief description of the land. Sub-section (3) provides that the “competent authority” [as defined under Section 3(a)] shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.

19. Section 3B deals with the power to enter for surveys, etc. It provides that on the issue of a notification under Section 3A(1), it shall be lawful for any person authorised by the Central Government to undertake the works of survey, etc.

20. Section 3C provides for hearing of objections. Sub-section (1) provides that any person interested in the land may, within twenty-one days from the date of publication of notification under Section 3A(1), object to the use of land for the purpose or purposes mentioned in that sub-section. Sub-section (2) provides that every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections. Sub-section (3) provides that any order made by the competent authority under sub-section (2) shall be final.

21. Section 3D provides for declaration of acquisition. Sub-section (1) provides that where no objection under sub-

section (1) of Section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that Section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of Section 3A. Sub-section (2) provides that on the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances. Sub-section (3) deals with circumstances in which the notification under Section 3A(1) shall cease to have any effect. Sub-section (4) provides that the declaration made by the Central Government under Section 3D(1) shall not be called in question in any court or by any other authority.

22. Section 3E deals with the power to take possession. Sub-section (1) provides that where any land has vested in the Central Government under sub-section (2) of section 3D and the amount determined by the competent authority under Section 3G with respect to such land has been deposited under sub-section (1) of section 3H, with the competent authority by the Central Government, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice. Sub-section (2) provides that if any person refuses or fails to comply with the direction made

under sub-section (1), the competent authority shall apply to the Commissioner of Police (in case of any land situated in any area falling within the metropolitan area) or to the Collector of District where the land is outside the metropolitan area, and such Commissioner or Collector, as the case may be, shall enforce the surrender of the land, to the competent authority or to the person duly authorised by it.

23. Section 3F deals with the right to enter into the land where the land has vested in the Central Government. It provides that where the land has vested in the Central Government under section 3D, it shall be lawful for any person authorised by the Central Government in this behalf, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith.

24. Section 3G is concerned with determination of the amount payable as compensation. Sub-section (1) provides that where any land is acquired under the NH Act, there shall be paid an amount which shall be determined by the order of the competent authority. Sub-section (2) deals with compensation where the right of user or any right in the nature of easement on, any land is acquired under the NH Act. Sub-section (3) requires that the competent authority shall give public notice inviting claims from all persons interested in the land to be acquired. Sub-section (4) provides that such notice shall state particulars of the land and shall require all persons interested in such land to appear in person or by an agent or legal practitioner referred to in Section 3C(2), before the competent authority, at a time and place

and to state the nature of their respective interest in such land. Sub-section (5) provides that if the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on application by either of the parties, be determined by the arbitrator to be appointed by the Central Government. Sub-section (6) provides that subject to the provisions of the NH Act, the provisions of the Arbitration and Conciliation Act, 1996 shall apply to every arbitration under the NH Act. Sub-section (7) refers to the parameters which the competent authority or the arbitrator must consider while determining the compensation under sub-section (1) or sub-section (5), as the case may be.

25. Section 3H is the most crucial section in terms of the issues raised in this Petition. Therefore, Section 3H is transcribed below for the convenience of reference: -

“3-H. Deposit and payment of amount.—(1) The amount determined under section 3-G 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 3-G 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 3-D 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-section (2) to (4) shall apply to such deposit.]”

26. Section 3-I provides that the competent authority shall have certain powers of the civil court. Section 3J provides that nothing in the Land Acquisition Act, 1894, shall apply to an acquisition under the NH Act.

27. In *Vinod Kumar* (supra) the Hon’ble Supreme Court has discussed the scheme of the NH Act with special emphasis on Sections 3G and 3H in paragraph 23, which reads as follows: -

“23 The scheme of the Act 1956 and the statutory provisions referred to above makes it very clear that once any land is acquired under the Act 1956, the competent authority is obliged to pay an amount by way of compensation. There is a procedure which has been prescribed under Section 3G of the Act 1956. Sub-clause (5) of Section 3G makes it abundantly clear that if the amount determined by the competent authority under sub-section (1) or sub-section (2) of Section 3G is not acceptable to either of the parties, the amount will have to be determined by the arbitrator who may be appointed by the Central Government on the strength of an application by either of the parties. Section 3H provides that the amount determined towards compensation under Section 3G will have to be deposited by the Central Government in accordance with the rules. It is only after such amount is deposited by the competent authority that the possession of the land can be taken. **Sub-clause (4) of Section 3H talks about apportionment of the amount. The language of sub-clause (4) of Section 3H is plain and simple. It provides that if any disputes arises 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.”

28. In *Vinod Kumar* (supra) the Hon’ble Supreme Court, rejecting arguments very similar to those advanced by Mr Deolekar, the learned AGP and Mr Kulkarni the learned Counsel for the Respondents 1 to 3 explained that *there is a fine distinction between determining the amount to be paid towards compensation and the apportionment of the amount.* The Court held that the legislature has thought fit to confer powers upon the Principal Civil Court of original jurisdiction to determine the dispute regarding the apportionment of the amount. The Court held that there was a reason why the legislature has thought it fit to confer such power on the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated. This reasoning is explained in paragraphs 27, 28 and 29.

29. Paragraphs 27, 28 and 29, which reiterated that disputes regarding apportionment of compensation must be referred to and left for the determination by the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the acquired land is situated, are transcribed below for the convenience of reference.

“27. The question of apportionment of compensation is not free from difficulties. In apportioning the compensation, the Court has to give to each claimant the value of the interest which he has lost by compulsory acquisition. So stated, the proposition may appear simple, but in its practical application numerous complicated problems arise in apportioning the compensation awarded. The difficulty experienced is due to the nature of a variety of interests, rights and claims to land which have to be valued in terms of money. The compensation awarded for compulsory acquisition is the value of all the

interests which are extinguished and that compensation has to be distributed equitably amongst persons having interest therein and the Court must proceed to apportion the compensation so that the aggregate value of all interests is equal to the amount of compensation awarded. But in the valuation of competing interests, which from its very nature is dependent upon indefinite factors and uncertain data, considerable difficulty is encountered. Indisputably, in apportioning compensation the Court cannot proceed upon hypothetical considerations but must proceed as far as possible to make an accurate determination of the value of the respective interests which are lost. The Court must, in each case, having regard to the circumstances and the possibility of a precise determination of the value having regard to the materials available, adopt that method of valuation which equitably distributes the compensation between the persons entitled thereto [See : *Dossibai Nanabhoy Jeejeebhoy v. RM. Bharucha*, (1956) 60 Bom LR 1208]

28. Thus, the only general principle one could state is that apportionment under sub-clause (4) of Section 3H of the Act 1956 is not a revaluation but a distribution of the value already fixed among the several persons interested in the land acquired in accordance with the nature and quantum of the respective interests, In ascertainment of those interests, the determination of their relative importance and the manner in which they can be said to have contributed to the total value fixed are questions to be decided in the light of the circumstances of each case and the relevant provisions of law governing the rights of the parties. The actual rule for apportionment has to be formulated in each case so as to ensure a just and equitable distribution of the total value or compensation among the persons interested in the land.

29. In the circumstances referred to above, the legislature thought fit to assign such function to none other than the Principal Civil Court of original jurisdiction.”

30. One of the submissions canvassed before the Hon’ble Supreme Court was that the shares in the land acquired should be determined based on some order passed by the Civil Court in the inter se litigation between the parties who claim the compensation determined. The Hon’ble Supreme Court rejected such contention in paragraph 30 by holding that it

was not impressed with such a submission. If the private Respondents wanted to rely upon the order passed by the Civil Court, they could do so before the Court of Principal Judge of original jurisdiction. The Court held that the District Magistrate had no power or jurisdiction regarding apportioning the amount.

31. The Hon'ble Supreme Court also held that when it comes to resolving the dispute relating to apportionment of the amount determined towards compensation, it is only the Principal Civil Court of original jurisdiction which can do so. *The Court concluded by holding 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, then, 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.* The competent authority possesses certain powers of the Civil Court. Still, in the event of a dispute of the above nature, the summary power, vested in the competent authority of rendering an opinion in terms of sub-section (3) of Section 3H, will not serve the purpose. The dispute being of nature triable by the Civil Court that the law steps in to provide for that to be referred to the decision of the Principal Civil Court of original jurisdiction. The dispute regarding apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable would then have to be decided by that Court.

32. Thus, it is clear that under the scheme of Section 3H of the NH Act, the competent authority may go as far as determining the persons who, in its opinion, are entitled to

receive the amount payable to each of them [See Section 3H(3)]. Still, suppose after such determination, 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. In that case, competent authority is duty bound to refer the dispute to the Principal Civil Court of original jurisdiction within the limits in whose jurisdiction the land is situated. In other words, even the competent authority should not take upon itself to determine the dispute of apportionment of compensation. The reasons for this fine distinction between deciding the amount to be paid towards compensation and apportionment of the compensation amount have been succinctly explained by the Hon'ble Supreme Court in *Vinod Kumar* (supra).

33. Based therefore, on the plain reading or construction of the provisions in Section 3H of the NH Act and the law laid down by the Hon'ble Supreme Court in *Vinod Kumar* (supra), we are satisfied that the competent authority's impugned order dated 21 December 2023, was in excess of the jurisdiction vested in the competent authority. Accordingly, the impugned order warrants interference.

34. The impugned order in breach of the scheme of Section 3H of the NH Act and the law laid down by the Hon'ble Supreme Court in *Vinod Kumar* (supra) deals with the merits and demerits of the claims of the Petitioner and Respondents 1 to 3. The competent authority, based mainly on Gat Nos, Survey entries and his understanding of the law of inheritance, has determined that the Petitioner can have no claim qua lands bearing Gat Nos. 360, 362 and 363 and determining compensation for these lands in favour of

Respondents 1 to 3 is appropriate and proper. Even regarding the property bearing Gat No. 361, the competent authority has not referred the apportionment dispute to the Principal Civil Court of original jurisdiction but only directed the disbursement of compensation regarding Gat Nos. 361 should be kept in abeyance until the disposal of the Regular Civil Suit No. 306 of 2023 instituted by the Petitioner. Even this direction is not consistent with the scheme of Section 3H of the NH Act or the decision in *Vinod Kumar (Supra)*.

35. Mr Abhijit Patil, the competent authority who made the impugned order dated 21 December 2023, cannot claim ignorance of the legal position that he was not entitled to decide on the dispute regarding the apportionment of the compensation amount. This is because *Vinod Kumar (supra)* was decided by the Hon'ble Supreme Court on 7 July 2023, i.e. almost five to six months before Mr Abhijit Patil passed the impugned order dated 21 December 2023 and almost hurriedly proceeded to disburse the compensation amount to Respondents 1 to 3. Besides, the Division Benches of this Court, in the case of *Arun Lokare (supra)* and in *Rajaram Rane (supra)* had also held that the competent authority under the NH Act lacked jurisdiction to decide disputes of apportionment of compensation and was obliged to refer such disputes to the Principal Court of original jurisdiction for resolution.

36. Apart from Mr Abhijit Patil, the competent authority who made the impugned order, we were most surprised to peruse the affidavit by Mr Pramod Rahul Gaikwad, Deputy Collector (Land Acquisition Officer-11 Solapur), defending Mr

Patil's impugned order dated 21 December 2023. The reasons for our surprise and anguish were two-fold.

37. Firstly, statutory orders or orders made by quasi-judicial authorities must speak for themselves. Ordinarily, such orders should not be defended either by the authority which made the order or his successor in office by filing affidavits. Secondly, the vehemence with which Mr Pramod Gaikwad has justified the order and the disbursal of the compensation amount in favour of Respondents 1 to 3 cannot be appreciated. The defence is contrary to the law and binding precedents on the subject.

38. In terms of the scheme under Section 3H of the NH Act and the decisions of the Hon'ble Supreme Court and this Court, the competent authority had no business to go into the issue of apportionment of compensation and the competent authority was duty bound to refer such dispute to the decision of the Principal Civil Court of original jurisdiction. Mr Gaikwad's affidavit takes no cognisance of the provisions of Section 3H (4) of the NH Act or the decisions of the Hon'ble Supreme Court and this Court on the subject.

39. Similarly, while we appreciate the defence put forth by Mr Deolekar and Mr Kulkarni, we are convinced that the impugned order and the hurried disbursal of the compensation amount to respondents 1 to 3 are indefensible given the facts of the present case and the relevant law. The defence entirely overlooks the legal provisions outlined in Section 3H of the NH Act and the decisions of the Hon'ble Supreme Court and this Court, which are binding on the competent authority and the officers serving in that capacity

under the NH Act. Moreover, the role of the AGP should resemble that of an Amicus, as the resolution of the apportionment dispute between private parties does not affect the State. Consequently, the AGP must aid the Court in discerning the truth and the correct legal position on the matter. If truth and law prevail, the State, which must be committed to the rule of law, triumphs. This is not to suggest that the AGP conducted otherwise.

40. In *Arun Lokare* (supra), the Coordinate Bench of this Court comprising SC Dharmadhikari and Mangesh S Patil, JJ analysed threadbare the scheme of Section 3H of the NH Act held that the competent authority may determine the persons, who in its opinion, are entitled to receive the amount payable to each of them. However, suppose any dispute arises as to the apportionment of the amount or any part thereof to any person to whom the same or any part thereof is payable. In that case, 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. This is despite the competent authority possessing certain powers of the Civil Court or having the power to determine the issue of compensation entitlement. The Court held that *the summary powers possessed by the competent authority would not entitle the competent authority to resolve the disputes regarding apportionment of the compensation amount. Such disputes would have to be decided by the Principal Civil Court of original jurisdiction.*

41. The Hon'ble Supreme Court in *Vinod Kumar* (supra) and the Coordinate Division Bench in *Arun Lokare* (supra) drew analogy from the provisions of Section 30 of the Land

Acquisition Act 1894. They referred to the decision in **Sharda Devi Vs State of Bihar**⁷ in the context of Sections 18 and 30 of the Land Acquisition Act, 1894. Therein, the Hon'ble Supreme Court held that no finality is attached to the Collector's determination on the issue of apportionment. If there is a dispute, the Collector must refer such dispute to the adjudication by the Principal Civil Court of original jurisdiction. The Court explained that the award of the Collector is not the source of right to the compensation; it is the pre-existing right which is recognised by the Collector and guided by the findings arrived at in determining the objections, if any, the Collector quantifies the amount of communication to be placed as an offer of the appropriate government to the owner recognised by the State.

42. The Court held that the award made by the Collector may be conclusive as between the Collector and the "persons interested" whether they have appeared before the Collector or not on two issues: i) as to area, i.e. measurement of the land acquired and ii) as to value of the land, i.e. the amount of compensation. *However, when it comes to the apportionment of compensation among the persons interested, the award may be final and conclusive as between the Collector and the persons interested but the award is not final amongst the "persons interested" inter se.* In the event of reference having been sought for under Section 18, the Collector's award on these issues, if varied by the Civil Court, shall stand superseded to that extent. The scheme of the Act does not attach a similar finality to the award of the Collector on the issue as to the person to whom the compensation is

⁷ AIR 2003 SC 942

payable; despite the award by the Collector and even on a failure to seek a reference, such issue has been left available to be adjudicated upon by any competent forum.

43. In paragraphs 14 to 18 of *Arun Lokare* (supra), the Division Bench rejected arguments similar to those raised by Mr Deolekar and Mr Kulkarni in support of the impugned order and the impugned action of the competent authority. The Division Bench harmoniously construed the provisions of Sections 3H(3) and 3H(4) and held that a careful reading of these provisions would reveal that when several persons are entitled to claim compensation, the competent authority has power and jurisdiction to record an opinion and determine the persons who are entitled to receive share/s and only enables him to apportion the amount of compensation amongst them according to the share they are entitled to. *As against this, sub-section (4) contemplates a situation where the dispute is raised as to the entitlement of the compensation by several persons and the jurisdiction to decide such dispute is conferred upon the Principal Civil Court of original jurisdiction. In other words, whenever there is dispute raised by any person as to the right to receive either the whole or portion of the compensation, the competent authority is obliged to refer the matter to the Principal Civil Court of original jurisdiction.*

44. The Division Bench recorded its conclusion in paragraphs 17 and 18, which are transcribed below for the convenience of reference: -

“17] In view of such legal position, when Sub-Section (4) of Section 3-H specifically requires the dispute as to entitlement to receive compensation determined under

Section 3-G of the Act to be referred to and decided by the Principal Civil Court of original jurisdiction, it by implication necessarily excludes jurisdiction of the competent Authority which is entitled to merely decide the point of apportionment of the compensation amongst several persons under Sub-Section (3) of Section 3-H. Such interpretation, in our view, strikes a balance between Sub-section (3) and Sub-section (4) of Section 3-H of the Act and make them operative in separate spheres. The submission of the learned Advocate for the petitioner, on these lines therefore deserves to be accepted.

18] Under the circumstances the writ petition deserves to be allowed and is accordingly allowed. The impugned order dated 05.01.2017 passed by respondent No.3 is quashed and set aside and he is directed to refer the matter to the Principal Court of original jurisdiction, as contemplated under Section 3-H (4) of the National Highways Act, 1956 within two weeks of receiving a copy of this order.”

45. In *Rajaram Rane* (supra) another Coordinate Division Bench comprising A.A. Sayed and Sandeep K. Shinde, JJ was concerned with the question whether one could read the provisions of Sections 3H (3) and 3H (4) disjunctively. The Division Bench answered this question in the negative since both the provisions had to be read and construed harmoniously, keeping in mind the object and purpose for which these provisions were enacted. *The Bench held that under Section 3H (3) the competent authority has to determine the entitlement of the person who claims interest in the compensation. Once entitlement is decided, the next step is the apportionment of compensation. If a dispute arises as to apportionment, the competent authority has no option but to refer the dispute to the Principal Civil Court.*

46. The Division Bench explained that the scheme of Section 3H of the said Act consists of two steps divided into two sub-sections, i.e. sub-section (3) and sub-section (4), which

cannot be read disjunctively. One cannot argue that only dispute as to apportionment of the amount is referable to Civil Court and not the dispute as to entitlement. If such an argument is accepted, then a person whose entitlement is negated by the Competent Authority may have to approach the Civil Court and only thereafter lay the claim in the compensation. It may be stated that such an interpretation would defeat the rights of legitimate claimants whose names were not recorded in the Revenue records. If such a claimant asserts his rights in the land that is under acquisition, based on some evidence that prima facie discloses his interest, his claim cannot be brushed aside. **Therefore, even if competent authority rejects his “entitlement”, such a finding recorded by the authority is inconclusive and would not attain finality.** It is to be noted that, under sub-section (4), the nature of disputes referable to Civil Court also includes a dispute as “to any person to whom the same or any part thereof is payable” (emphasis supplied).

47. In other words, if entitlement of claimant is rejected, still it would be an issue referable to a Civil Court as it would be covered by the expression “issue as to any person to whom the same is payable” within the meaning of sub-section (4) of Section 3H. Given this, the court held that the order passed by the Competent Authority, inter-alia, refusing to refer the dispute as to entitlement to claim interest in the compensation, runs contrary to the scheme of provisions of sub-section (3) and (4) of Section 3H of the National Highways Act.

48. Accordingly, in *Arun Lokare and Rajaram Rane* (supra), the orders of the competent authority deciding the

apportionment were quashed and set aside as being without jurisdiction. The competent authority was directed to immediately refer the apportionment dispute to the Principal Civil Court of original jurisdiction.

49. In *Pandurang Balu Pujare* (supra), by following the Vinod Kumar (supra) decision, we set aside the Competent Authority's order to determine the dispute of compensation apportionment. We also distinguished the unreported decision of the Aurangabad Bench in **Sahebrao S/o. Ganpati Pandharkhade and Anr. Vs. The Competent Authority and Ors.**⁸ and noted that the Co-ordinate Division Bench at Aurangabad did not have the benefit of the decision in *Vinod Kumar* (supra).

50. The decision of the learned Single Judge in **Pandurang Manga Bhil Vs. The Learned Collector, Dhule**⁹, was perhaps delivered in the peculiar facts in which the claimant was found to have given his rights, title and interest in the acquired land by executing registered relinquishment deed in 2010. The Competent Authority's order was not interfered with, but the learned Single Judge remarked that the Petitioner was "left with no option but to approach the Civil Court to get his right established". This was before the clear ruling of the Hon'ble Supreme Court in *Vinod Kumar* (supra) and perhaps in the peculiar fact situation. Based on *Pandurang Bhil* (supra), therefore, we cannot hold that the Competent Authority has the jurisdiction to decide the issue of apportionment of compensation or that the Competent

⁸ Writ Petition No. 10931 of 2016 decided on 27.04.2018

⁹ WP 12729/2018 decided on 09 September 2019

Authority has an option not to refer such dispute to the decision of the Principal Civil Court of Original Jurisdiction.

51. Apart from Competent Authority exceeding its jurisdiction in deciding the issue of apportionment, we find that even the reasoning of Shri Abhijit Patil, Competent Authority who made the impugned order dated 21 December 2023 or the reasoning of Shri Pramod Gaikwad, Deputy Collector (Land Acquisition Officer-11 Solapur) who filed an affidavit supporting the impugned order, leaves a lot to be desired. Both the authorities failed to appreciate that Gopal Tate and his wife Indrabai upon their demise, left behind four sons - Krishnath, Navnath, Somnath and Annasaheb and two daughters - Sarojinee and Sojar-Rukmini (Petitioner). Admittedly, there is no relinquishment deed, or any document based upon which the Competent Authority or Mr Gaikwad could have concluded that the Petitioner had no rights to the ancestral property left behind by her deceased parents. In any event, this was a contentious issue, and the Competent Authority was not justified in deciding this issue even though it lacked the jurisdiction or authority to determine it.

52. The impugned order or the action of hurried disbursal of compensation cannot be justified based on the decisions in *Pandurang Bhil* (supra) or *Sahebrao Phandarkhade* (supra). The facts in these cases were different. In any event, the reasoning in the two decisions must now yield to the reasoning in *Vinod Kumar* (supra).

53. Based upon the impugned order, which was without jurisdiction, the Competent Authority hurriedly proceeded to disburse compensation of approximately Rs.79,80,000/- to

Respondents 1 to 3. This, again, was grossly improper. We have encountered several instances where the Competent Authorities not only decide the issues of apportionment despite having no jurisdiction to decide the same but then hurriedly proceed to disburse the compensation amount to some of the parties. Therefore, we clarify that such actions by the Competent Authority are and would be without the authority of law and *ultra vires* the jurisdiction vested in the Competent Authorities.

54. Mr Rajepandhare, learned counsel for the Petitioner, hinted that resolving apportionment disputes followed by hurried disbursement is often for extraneous considerations. As a Court of Law, obviously, we cannot subscribe to this viewpoint without any concrete material before us, but we do hope this is not true. This is because, in this roster assignment, we are also alarmed to encounter several cases in which the Competent Authorities took it upon themselves to determine the apportionment disputes and hurriedly disbursed the compensation amount. This must stop. Otherwise, the allegations of extraneous considerations may have to be seriously investigated.

55. The Competent Authorities are aware and, in any event, should be aware that once the amounts are disbursed to the parties, it becomes complicated to recover the same. Therefore, if in future, the Competent Authorities, despite explicit provisions of Section 3H of the NH Act and decisions of the Hon'ble Supreme Court and this Court on the subject, proceed to disburse the compensation amounts by themselves deciding the disputes of apportionment, then, some disciplinary action may have to be considered against such

officials. Directions may also have to be issued to recover such amounts from the Competent Authorities if the circumstances are gross. Because unless such orders or directions are issued, we have our doubts whether the officials will restrain themselves from determining the apportionment disputes and disbursing the compensation amounts in breach of the provisions of the NH Act and the law laid down by the Hon'ble Supreme Court and this Court on the subject.

56. Therefore, we direct the Revenue Secretary to circulate copies of the judgment and order of the Hon'ble Supreme Court in *Vinod Kumar* (supra), judgment and order in *Arun Lokare* (supra) and copies of the present judgment and order to the Competent Authorities appointed under the NH Act so that this this feigned excuse of ignorance of the law is not available to the officials. Bonafide actions or bonafide views on legal issues by quasi-judicial or statutory authorities can be protected even if ultimately such actions or viewpoints are not accepted by the Courts. However, extending such benevolent immunity to matters where bonafide is suspect or gross and perhaps deliberate deviation from the legal provisions or binding precedents would be counterproductive. This would only encourage errant officials from breaching the law with impunity for reasons that are not far to seek.

57. Therefore, we suggest that the Revenue Secretary conduct a workshop to apprise the Competent Authorities of the provisions of the NH Act and the relevant judgments on the subject so that they can effectively administer the provisions of the NH Act or discharge the functions assigned to them within the four corners of the law. While we appreciate the submission that there may be only a few errant

officials who give the remaining officials a bad name, still going by the number of such cases we are encountering, we sincerely hope that this is not a situation where ninety percent of the officials are giving the rest ten percent a bad name.

58. Upon setting aside the impugned order, the consequential benefits received by Respondents 1 to 3 would have to be recalled. The Petitioner, in this case, had made out a case for recall of the compensation amount received by Respondents 1 to 3 so that the same could be deposited in the Principal Civil Court of Original Jurisdiction until the resolution of the apportionment dispute by the Court.

59. In the case of **Shriram R Deshprabhu (supra)**, the Division Bench of this Court of which one of us (M S Sonak, J.) was a party, held that the Land Acquisition Officer had no authority or jurisdiction to decide the disputes of apportionment of compensation and disburse the amounts based upon such ultra vires determination. The Division Bench at Goa referred to the earlier decisions in **Shri Vajrajit S Dubhaxi and Ors. Vs. Special Land Acquisition Officer (North) & Ors.**¹⁰ and **Bambolim Vs. Maximo Mergulhao and Ors.**¹¹ in which it was held that apportionment disputes should not be decided by the land acquisition officers and such disputes had to be necessarily referred to the Principal Civil Court of Original Jurisdiction, i.e. the District Court, for determination. The Division Benches also held that the amounts disbursed by land acquisition officers could be recalled by the Writ Courts exercising jurisdiction under Articles 226 and/or 227 of the

¹⁰ WP No. 261/1986 decided on 12.08.1987

¹¹ WP No. 2/1988 decided on 07.06.1988

Constitution of India from the beneficiaries of such ultra vires determination followed by determination.

60. However, Mr Ashutosh Kulkarni, learned Counsel for the Respondents 1 to 3, based on instructions from Respondents 1 to 3, out of whom, Respondent No.3 was present in the Court, stated that Respondent 1 to 3 would deposit an amount of Rs.13,30,000/- in this Court within 2 months of the uploading of this judgment and order on the website. He submitted that the Petitioner had claimed only one-sixth right/share in the acquired property and, therefore, her share of compensation, [should her claim be upheld], would come to Rs.13,30,000/- only. He pointed out that compensation of Rs.5,07,001/-, which was retained by the Competent Authority, could always be directed to be forwarded to the Principal Civil Court of Original Jurisdiction, and such amount could abide by the final orders in the reference of the dispute about apportionment qua Gat No. 361. He submitted that since the Petitioner was not disputing the rights of Respondents 1 to 3 as co-owners, there was no point in requiring Respondents 1 to 3 to bring back the entire amount received by them based upon the Competent Authority's impugned order dated 21 December 2023.

61. Mr Kulkarni's submission appears reasonable in the peculiar facts and circumstances of the present case. However, since Respondents 1 to 3 are being permitted to retain a significant portion of the amounts illegally disbursed to them, it is only equitable that the amount of Rs.13,30,000/- which the Respondents 1 to 3 have agreed to deposit in the Court be paid to the Petitioner without prejudice to the rights and contentions of Respondents 1 to 3. Such payment shall also

abide by the final orders to be made by the Principal Civil Court of Original Jurisdiction, to which the apportionment dispute will have to be referred by the Competent Authority. On instructions, learned counsel for the Petitioner has offered to give an undertaking that the Petitioner would refund this amount together with interest if and when called upon to do so based upon the determination of the apportionment dispute.

62. Accordingly, we dispose of this petition by making the following order: -

(a) The impugned order dated 21 December 2023 is quashed and set aside.

(b) Instead of directing Respondents 1 to 3 to deposit the entire compensation received by them under the impugned order dated 21 December 2023, said Respondents 1 to 3, consistent with their statement, are directed to deposit the amount of Rs.13,30,000/- in the Court of District Judge, Solapur within two months from today and file a compliance report in this Court on or before 22 April 2025. A copy of this must be furnished to the Petitioner in advance.

(c) If Respondents 1 to 3 fail to deposit the above amount before the District Court, Solapur and fail to file the compliance report with proof of such deposit, Respondents 1 to 3 are directed to deposit the entire amount of compensation approximating to Rs.80,00,000/- received by them under the impugned order dated 21 December 2023, latest by 09 May 2025 in this Court together with interest thereon at the rate of 7 percent per annum. This would be without prejudice to initiating contempt proceedings against Respondents

1 to 3 for breaching the undertaking given to this Court, based upon which this Court has permitted Respondents 1 to 3 to deposit only the amount of Rs.13,30,000/- instead of the entire amount received under the order dated 21 December 2023.

(d) The Competent Authority is directed to refer the apportionment dispute between the Petitioner and Respondents 1 to 3 regarding the compensation for the entire acquired property, to the Principal Civil Court of Original Jurisdiction, i.e. District Court at Solapur, within two months from today and file a compliance report in this Court at the latest by 22 April 2025. Along with this reference, the Competent Authority must also deposit an amount of Rs.5,07,001/-, being compensation towards Gat No. 361, in the District Court at Solapur.

(e) Upon deposit of the above amount of Rs. 13,30,000/- by Respondents 1 to 3, the District Court, Solapur, must allow the Petitioner to withdraw such amount upon furnishing an undertaking that such withdrawal would abide by the final orders in reference of the apportionment dispute. The undertaking should state that the Petitioner would bring back this amount together with interest as shall be determined by the District Court should the District Court decide that the Petitioner is not entitled to this amount.

(f) The District Court at Solapur must dispose of the apportionment dispute relating to the acquired properties, i.e. bearing Gat Nos. 360, 361, 362 and 363 at Manegaon, Barshi, Solapur, as expeditiously as possible after giving all parties full opportunity in support of their respective versions.

(g) This Court has not decided on the merits of the rival claims for apportionment. Any observations in this judgment and order are only prima facie or tentative. Therefore, the District Court, Solapur, should decide the apportionment reference uninfluenced by such observations but strictly following law and the evidence that the parties would render before it;

(h) The Revenue Secretary, the Government of Maharashtra and the National Highways Authorities must circulate copies of the judgment of the Hon'ble Supreme Court in Vinod Kumar (supra) and of this Court in Ashok Lokare (supra) and this judgment and order to the competent authorities, so that at least in future, the Competent Authorities act consistent with the provisions of the NH Act and law laid down in these decisions. If possible, a workshop should be held to apprise the Competent Authorities and other functionaries under the NH Act of the legal position relating to resolving apportionment disputes followed by disbursement of the compensation amount.

(i) The Revenue Secretary and responsible officer from the National Highways Authorities must file a compliance report in this Court by 22 April 2025.

(j) No cost orders, considering the reasonable approach adopted by Respondents 1 to 3 in offering to deposit the sum of Rs.13,30,000/- within two months.

(k) The District Court is requested to ascertain from the parties whether some settlement is possible by referring the matter to mediation or otherwise. In short, the District Court to which the reference is made must explore the possibility of the parties settling the matter without a long-drawn contest.

(l) All concerned are to act on the authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)