

Sayali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12503 OF 2024
WITH
INTERIM APPLICATION NO. 13648 OF 2024
IN
WRIT PETITION NO. 12503 OF 2024

Gramastha Mandal Kundevahal
Through Panchpudhari,

1. Sharad Bama Bhoir,
Age: 51 years, Occ.: Agri.,

2. Suresh Hiranman Bhoir,
Age: 54 years, Occ.: Agri.,

3. Mahesh Madhukar Bhoir,
Age: 43 years, Occ.: Agri.,

4. Sunil Dhanaji Bhoir,
Age: 49 years, Occ.: Agri.,

5. Uday Namdeo Bhoir,
Age: 47 years, Occ.: Agri.,

6 Anil Joma Gangare,
Age: 44 years, Occ.: Agri.,

7. Satish Balaram Patil,
Age: 33 years, Occ.: Agri.,

8. Milind Dhanaji Vaskar,
Age: 43 years, Occ.: Agri.,

9. Subhash Ananta Patil,
Age: 51 years, Occ.: Agri.,

10. Mahesh Namdeo Vaskar,

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DEEPAK
UPASANI

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Age: 35 years, Occ.: Agri.,

11. Sachin Dhanaji Vaskar,
Age: 33 years, Occ.: Agri.,

12. Prakash Ganpat Patil,
Age: 50 years, Occ.: Agri.,

13. Sandip Kisan Vaskar,
Age: 42 years, Occ.: Agri.,

14. Santosh Kanha Mhatre,
Age: 53 years, Occ.: Agri.,

All r/o. Kundevahal, Taluka Panvel,
District Raigad

...PETITIONERS

Versus

1. The State of Maharashtra
(Notice to be served upon AGP, High Court,
Appellate Side, Mumbai.)

2. The Sub-Divisional Officer cum
Competent Authority, Panvel
Virar Alibaug Multipurpose Corridor,
Taluka Panvel, District Raigad.

3. Surendrapal Sinh Bright,
Age: Adult, Occ.: Business,

4. Pritpal Sinh Bright,
Age: Adult, Occ.: Business,
Nos.3 and 4 r/o. 77/10, Anand Villa,
5th Floor, Road No. 5, Kharghar
(W), Navi Mumbai.

5. Karanveer Sinh Bava,
Age: Adult, Occ.: Business,

6. Vikram Sinh Bava,
Age: Adult, Occ.: Business,
Nos.5 and 6 r/o. Plot No.22, Rudra Niwas,

Vitthal CHS, North South Road No.11,
J.V.P.D., Juhu, Mumbai.

...RESPONDENTS

Mr R. D. Suryawanshi *with Mr. Suraj Naik i/b Mr. Rakesh Patil, for Petitioners.*

Mr. Ritvik Joshi, *for Applicant in IA No. 13648 of 2024.*

Dr. Milind Sathe, Senior Advocate *with Mr. Bhushan Deshmukh with Ms. Ravleen Sabharwal with Mr. Gaurav Srivastav with Ms. Aarushi Yadav i/b Ms. Ravleen Sabharwal, for Respondent Nos. 3 to 6.*

Mr Sachit Bhogale, AGP, *for Respondent-State.*

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

RESERVED ON: 04 APRIL 2025

PRONOUNCED ON: 08 APRIL 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 of and with the consent of the learned counsel for the parties.
3. In brief, the petitioners assert their interest in the subject property acquired under the Maharashtra Highways Act of 1955 [MHA]. Even before the acquisition proceedings began in 2022, the petitioners had filed a suit against Respondents 3 to 6 concerning this property. The petitioners submitted their objections regarding the payment of compensation to Respondents 3 to 6 before the Land Acquisition Officer -R2 [LAO] within the specified period.

However, without considering these objections and in violation of all legal procedures and precedents, the LAO hastily apportioned and disbursed the total compensation of Rs 56.26 Crores to Respondents 3 to 6. The LAO even denied the petitioners information regarding these ultra vires actions and subsequently issued an order rejecting the petitioners' objections to the apportionment. Thus, this Petition.

4. The Petitioners have sought the following substantive reliefs in this petition: -

- a) *to call for entire record and proceedings in respect of acquisition of the land bearing Survey No.35, Hissa No.0, lying, being and situate at Village Kundevahal, Taluka Panvel, District Raigad from the file of the Respondent No.2;*
- b) *to issue a writ of mandamus, directing the Respondent No.2 to refer the matter to the Principal Civil Court of original jurisdiction, Panvel, Alibaug under Section 19(C)(4) of the Maharashtra Highways Act, 1955;*
- c) *to issue a writ of mandamus, directing the Respondent No.2 to take forthwith steps to recover the amount of Rs.52 crores from the Respondent Nos.3 to 6;*
- d) *to issue a writ of mandamus, directing the Respondent Nos.3 to 6 to deposit the amount of compensation of Rs.52 crores either in the Court of Ld. Civil Judge, Senior Division, Panvel before whom Special Civil Suit No.13 of 2018 is pending or in the Court of Principal Civil Court, Panvel, Alibaug;*
- e) *to take necessary and suitable action against the Respondent No.2 in respect of his malafide, illegal and arbitrary action in not deciding the*

objection dated 5.9.2023 and without deciding the same disbursing the amount of compensation of Rs.52 crores to the Respondent Nos.3 to 6;

f) to direct the Respondent No. 1 to appoint necessary Committee to conduct the Inquiry against the Respondent No. 2 in respect of his malafide, illegal and arbitrary action in disbursing the amount of compensation of Rs.52 crores to the Respondent Nos. 3 to 6 without deciding the objection of the Petitioners dated 5.9.2023;

5. Mr Suryawanshi learned Counsel for the Petitioners, submitted that there was no justification for the LAO to sit over the objections filed by the Petitioners on 5 September 2023 for almost six months, i.e., up to 18 March 2024. In any event, LAO should have decided on the Petitioner's objections on 18 April 2024 instead of issuing a consent award based on the consent of Respondents 3 to 6 despite the Petitioner's serious objections and pendency of the Civil Suit against such Respondent concerning the subject property. He submitted that on 18 March 2024, LAO not only issued the consent award but executed the agreement and ordered the release of Rs. 56.26 Crores to Respondents 3 to 6. R-2 pursued the matter and sought to ensure that the bank paid this amount to Respondents 3 to 6 by 22 March 2024.

6. Mr Suryavanshi submitted that this action was or in any event vitiated by legal malafides apart from being contrary to the provisions of Section 19C of the MHA and the law laid down by the Hon'ble Supreme Court in the case of **Vinod**

Kumar & Ors Vs District Magistrate, Mau & Ors¹ and Sojar @ Rukminibai W/o Hari Mule Vs Krishnath @ Krishna S/o Gopal Tate and Ors². He submitted that several decisions of this Court took similar views, and still R-2, ignoring all such decisions, adjudicated the apportionment dispute himself and hurriedly disbursed the amount of Rs. 56.25 Crores to Respondents 3 to 6. He, therefore, submitted that the impugned action must be set aside, and Respondents 3 to 6 were directed to bring back this amount of Rs. 56.25 Crores immediately.

7. Mr Suryawanshi submitted that even the denial of RTI information about passing the consent award or disbursement of the amount of Rs.56.25 Crores to Respondents 3 to 6 was malafide so that the Petitioners could not seek recourse to judicial remedies. He submitted that only after the RTI query LAO realised that the Petitioner's objections remained to be disposed of and, therefore, hurriedly, by impugned communication dated 26 April 2024, the Petitioner's objections were rejected. In so rejecting the objections, LAO, without authority of law and ignoring the provisions of the MHA and decisions of the Hon'ble Supreme Court and the High Court has virtually adjudicated the apportionment dispute and decided the same in favour of Respondents 3 to 6. He submitted that this entire exercise, apart from being vitiated from legal and factual malafides is ultra vires, null and void.

¹ (2023) SCC OnLine 787

² (2025) SCC OnLine Bom 307

8. Mr Sachit Bhogale, learned AGP for the Respondent-State, attempted to defend LAO's actions. He first pointed out that this Petition has become infructuous because, by order dated 26 April 2024, LAO has already disposed of Petitioners' objections. Secondly, he pointed out that the Petitioners had not produced any documents supporting their claims. Therefore, LAO was justified in deciding the dispute himself and holding that the entire compensation amount was liable to be paid to Respondents 3 to 6. Thirdly, he submitted that the Petitioners produced no interim orders from the pending suit. In the absence of such interim orders, there was no restraint on LAO to decide in favour of Respondents 3 to 6 and disburse the entire compensation in their favour.

9. Mr. Sachit Bhogale had virtually no answer to the Court's query regarding why the information about the status of the Petitioner's objection dated 5 September 2023 was not disclosed to the Petitioners under the RTI. However, he stated that the Petitioners or their sons had a remedy to appeal such denial before the appellate authorities under the RTI Act. Therefore, this is not a circumstance we should consider when judging the actions of LAO or the PIO. Accordingly, Mr. Sachit Bhogale argued that this Petition may be dismissed.

10. Mr Milind Sathe, the learned Senior Advocate for the Respondent Nos. 3 to 6 submitted that the Respondent Nos. 3 to 6 had purchased the subject property vide registered convenances dated 23 April 2010 and 5 March 2013. He submitted that such purchases were from the Panchayat after

obtaining permission from the Collector. He submitted that such sale deeds were questioned in the suit filed by the Petitioners. Until such sale deeds were set aside, there could be no dispute about entitlement or compensation apportionment. He submitted that in the absence of any dispute about apportionment, LAO was justified in disbursing the entire compensation to Respondents 3 to 6 and not referring the matter to the Principal Civil Court of original jurisdiction.

11. Mr Milind Sathe submitted that the existence of an apportionment dispute was a sine qua non to exercising powers under Section 19C (4) of the MHA. He submitted that since, in this case, there was no dispute about apportionment ever raised by the Petitioners, there was no question of the Petitioners insisting upon a reference to the Principal Civil Court of original jurisdiction or depositing the compensation amount with the Court. He submitted that there was no infirmity in the LAO's action; therefore, this Petition should be dismissed.

12. Mr Milind Sathe, while very fairly, did not defend LAO's action of not disposing of Petitioner's objections on 18 March 2024 when the consent award was made by him, submitted that this was not some case of failure of natural justice. He submitted that the opportunity of hearing was granted to the Petitioners on 15 September 2023. He submitted that even if the objections were to be disposed of on 18 March 2024, when the consent award was made, the outcome could have

been no different. He submitted that no prejudice was caused to the Petitioners, and the LAO's action should not be interfered with on technical grounds.

13. Mr Milind Sathe submitted that the provisions of Section 19C (4) could be invoked only in the case of an apportionment dispute simpliciter. He submitted that if there is a dispute between A, B, C, and D regarding entitlement and the LAO holds that C and D are not entitled to receive any compensation for the acquired land, then a dispute by C and D cannot be regarded as a dispute of apportionment. He submitted that suppose the LAO holds that A, B, C and D are entitled to compensation in the proportion of 25% each, but A claims 40% of the compensation or the parties claim some different shares of the compensation; only then, such a dispute can be called as an apportionment dispute. It is such an apportionment dispute alone that is required to be referred to the decision of the Principal Civil Court of original jurisdiction and not a dispute where the LAO concludes that one of the disputing parties is not even entitled to receive any compensation.

14. Mr Sathe relied on the decisions of this Court in **Pravin Girish Chamaria & Anr Vs The State of Maharashtra & Ors³** and **Rafique Rahemtullah Kabani Vs The Assistant Engineer & Designated Officer & Or⁴** to support the above contentions.

³ Writ Petition No. 15399 of 2024 decided on 18 February 2025

⁴ Writ Petition No. 3616 of 2018 decided on 11 September 2024

15. Mr Ritvik Joshi appeared for the Intervenor, who filed Interim Application No. 13648 of 2024. He was unclear as to whether he supported the Petitioner's or the Respondent's case. Still, he maintained that he was a necessary party in this Petition.

16. Mr Ritvik Joshi submitted that the Intervenor was Bhoodan Samiti, who had allotted the subject property. He submitted that the subject property, in terms of its grant, could never have been transferred and therefore suggested that the transfer favouring Respondents 3 to 6 was void. He also submitted that the Respondents Surendrapal Sinh Bright and Pritpal Sinh Bright have wrongfully claimed ownership based on a fraudulent power of attorney and, by perpetuating fraud, purported to transfer the subject property to Karanveer Sinh Bava and Vikram Sinh Bawa, thereby pocketing compensation of Crores. He submitted that the Intervenor was the rightful owners of the property.

17. The rival contentions now fall for our determination.

18. The Petitioners claim to be interested in the property surveyed under No. 35, Hissa No. 0, measuring 9 Hectares and 99 Ares at village Kundevahal, Taluka - Panvel, District - Raigad ('subject property'). The Petitioners claim that the State Government and the Pancha Committee allotted the subject property to them.

19. The Petitioners have pleaded that based on a Power of Attorney, by conveyances dated 23 April 2010 and 05 March 2013, undivided rights in the subject property were purported

to be transferred to Respondent Nos. 3 to 6. This transfer was challenged before the Revenue Authorities, *inter alia*, because such properties were not even transferable in the terms of their grant. In 2018, Petitioner Nos. 2 to 14 filed Special Civil Suit No. 13 of 2018 against Respondent Nos. 3 to 6 challenging the Power of Attorney based on which the conveyances were executed and the conveyances dated 23 April 2010 and 05 March 2013. The Civil Suit is admittedly pending before the Civil Court.

20. Thus, it is apparent that even before any acquisition proceedings were initiated regarding the subject property, there was a dispute between the Petitioners and Respondent Nos. 3 to 6 concerning the subject property, which was pending before the Civil Court through Special Civil Suit No. 13 of 2018.

21. On 12 August 2022, the State Government issued a Notification under Section 15(2) of the Maharashtra Highways Act, 1955 ('MHA') proposing to acquire the subject land to construct the Virar-Alibag Multipurpose Corridor. This was followed by a Notification dated 10 August 2023 under Section 18 of the MHA.

22. On 23 August 2023, a notice was issued under Section 19-B of the MHA inviting objections and claims regarding the acquisition of the subject land. Such objections had to be filed within 15 days of the notice's publication. The Petitioners filed their objections on 05 September 2023 within the 15 days

prescribed in the notice dated 23 August 2023, about which there is no dispute.

23. The notice dated 23 August 2023 also required the objectors to remain present before the LAO for a personal hearing, should they so wish. The Roznama of the proceedings before LAO on 15 September 2023 initially indicated that the Petitioners were absent. However, the affidavit filed on behalf of R-2 admits that the Petitioners attended the proceedings, though slightly late, and were heard on the said date.

24. Accordingly, even the Roznama placed on record places the word 'absent' in brackets (to suggest deletion and correction of the Roznama). There is no dispute, however, that the Petitioners did attend the personal hearing on 15 September 2023 and were also heard by Respondent No. 2.

25. For about 6 to 7 seven months, the Petitioners heard nothing further in the matter. Records, however, show that on 18 March 2024, LAO [Rahul Mundke] did or caused to be done the following:

[i] After recording consent of Respondent Nos. 3 to 6 made a consent award dated 18 March 2024 under Section 19B (2) of the MHA.

[ii] On the same date, Respondent No. 2 caused an agreement to be executed with Respondent Nos. 3 to 6 for transferring the subject land to the Highway Authorities.

[iii] On the same date, i.e. 18 March 2024, Respondent No. 2 released the amount of Rs.56,26,45,485/- to Respondent Nos. 3 to 6.

26. Significantly, nothing was stated about the disposal of Petitioners' objections dated 09 September 2023. Legal procedure, fairness and justice required that the petitioners' objections were at least considered before LAO Mundke rushed to decide in favour of Respondents 3 to 6. LAO Mundke acted as if there was no objection from any quarter, and therefore, there was nothing wrong in recording the consent of Respondent Nos. 3 to 6, making a consent award and disbursing the amount of Rs.56.26 Crores hurriedly in favour of Respondent Nos. 3 to 6. It does appear that this LAO was almost determined and in a tearing hurry to disburse the amount of Rs 56.26 crores to Respondents 3 to 6 by throwing fair procedure and legal requirements to the winds.

27. On 22 March 2024, the LAO addressed a letter to the HDFC Bank along with the cheques for disbursing Rs.56.26 Crores to Respondent Nos. 3 to 6. This kind of haste and efficiency (?) is rarely seen in matters where compensation is determined, but its payment to the claimants is delayed for one reason or another.

28. We note the above because we have come across an increased number of cases where the Competent Authorities or the LAOs usurp the jurisdiction of deciding apportionment disputes and then hurriedly disburse the compensation amount to one of the parties before the other objectors have some reasonable opportunity to interdict such ultra vires payments and disbursements. This is despite the legal position that they are barred from deciding apportionment disputes, which

must be referred to the courts or specified authorities for determination. This is also despite several precedents on the subject explaining this position time and again.

29. Since there was no clarity on the disposal of Petitioners' objections, the Petitioner No. 2's son Akshay Suresh Bhoir, by Application dated 04 April 2024 applied for information in this regard by invoking the provisions of the Right to Information Act ("RTI"). Most surprisingly, this RTI Application was rejected on 26 April 2024 on the grounds that Respondent Nos. 3 to 6 "have objected to the disclosure of such information".

30. The affidavit filed on behalf of the present LAO [R-2] now discloses that, through a communication now styled as an order dated 26 April 2024, Rahul Mundke (R-2) rejected the Petitioner's objections by adjudicating himself on the entitlement and apportionment disputes between the parties. LAO Mundke has grossly violated the entire procedure under Section 19-C of the MHA. The mandate against the LAO, which prohibits adjudicating apportionment disputes or referring such disputes to the Principal Civil Court of Original jurisdiction, has also been breached by LAO Mundke, who, in haste and without resolving the Petitioners' objections, disbursed the amount of Rs. 56.26 Crores to Respondent Nos. 3 to 6.

31. The information about the status of the proceedings before the LAO was arbitrarily denied to Petitioner No. 2's son on the specious plea that disclosure of such information was

objected to by Respondent Nos.3 to 6, who, by then, had pocketed this amount of Rs. 56.26 Crores. Records show that disbursement was made to Respondent Nos.3 to 6 even before the Petitioners' objections could be considered and disposed of vide communication/order dated 26 April 2024.

32. Given the above state of facts, which is entirely borne out of the record and not even seriously disputed in the affidavit filed by Mr. Pawan Chandak, the LAO/SDO, who took over the charge from Rahul Mundke on 30 August 2024, we are, after evaluating the rival contentions, satisfied the action of LAO Mundke was entirely ultra vires the provisions and scheme of Section 19-C of the MHA, as interpreted by the Hon'ble Supreme Court and several decisions of this Court on the subject.

33. To appreciate the rival contentions, reference is necessary to the provisions of Section 19-C of the MHA, which read as follows:-

“19C. Deposit and payment of amount. (1) The amount determined under section 19B shall be deposited by the State Government, in the prescribed manner, with the Land Acquisition Officer before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the Land Acquisition Officer shall on behalf of the State 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 Land Acquisition Officer shall determine the persons who in his 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 Land Acquisition Officer 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 sub-section (8) of section 19B by the arbitrator is in excess of the amount determined by the Land Acquisition Officer, the arbitrator may award interest at nine per cent. per annum on such excess amount from the date of taking possession under section 19 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 Land Acquisition Officer, the excess amount together with an interest, if any, awarded under sub-section (5), shall be deposited by the State Government in the prescribed manner, with land Acquisition Officer and the provisions of sub-sections (2) to (4) shall apply to such deposit.”*

34. The provisions of Section 19-C of the MHA are pari materia with the provisions of Section 3-H of the National Highways Act, 1956. In the context of the provisions of Section 3-H of the National Highways Act, the Hon’ble Supreme Court, in the case of *Vinod Kumar* (supra), held that Section 3-H (4) of the National Highways Act, which is pari materia with 19C(4) of the MHA talks about apportionment of the compensation amount. The language of sub-clause (4) of Section 3-H is plain and simple. It provides that if any disputes arise regarding 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.” The Court 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 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.

35. Paragraphs 27, 28, and 29 of *Vinod Kumar* (supra) reiterate 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. They 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. P.M. 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.”

36. One of the submissions canvassed before the Hon’ble Supreme Court was that the shares in the land acquired should be determined based on the outcome of the inter se litigation between the parties pending before the Civil Court. The Hon’ble Supreme Court rejected this contention by holding that if the private Respondents wish to rely upon any orders 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 powers or jurisdiction regarding apportioning the compensation amount.

37. The Hon'ble Supreme Court also held that when it comes to resolving the dispute relating to apportionment of the amount determined towards compensation, only the Principal Civil Court of original jurisdiction 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.*

38. The Court explained that 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 3-H 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.

39. In the case of **Arun S/o Trimbakrao Lokare Vs State of Maharashtra & Ors**⁵, the Coordinate Bench of this Court comprising SC Dharmadhikari and Mangesh S Patil, JJ analysed threadbare the scheme of Section 3-H of the NH Act held that the competent authority may determine the persons,

⁵ 2017 (6) M.L.J.

who in its opinion, are entitled to receive the amount payable to each of them. However, suppose any dispute arises regarding 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 the apportionment of the compensation amount. The Principal Civil Court of original jurisdiction would have to decide such apportionment dispute.

40. In paragraphs 14 to 18 of ***Arun Lokare*** (Supra), the Division Bench rejected arguments almost identical to those raised by Dr Milind Sathe on behalf of Respondent Nos. 3 to 6, regarding what would constitute an apportionment dispute by harmonising the provisions of Sections 3-H (3) and 3-H (4) of the National Highways Act (“NHA”). These provisions are *pari materia*, with the provisions in 19-C (3) and 19-C (4) of the MHA. Therefore, the interpretation would squarely apply to this case and effectively answer Mr. Sathe’s argument.

41. The Division Bench harmoniously construed the provisions of Sections 3-H(3) and 3-H(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 the power and jurisdiction to record an opinion and determine the persons who are entitled to receive share/s and the apportionment of 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 a 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.*

42. 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.”

43. *In case of Rajaram Rane V/s. Ramkrushna Mahadev Rane*⁶, another Coordinate Division Bench comprising A.A. Sayed and Sandeep K. Shinde, JJ was concerned with the question of whether one could read the provisions of Sections 3-H (3) and 3-H (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 3-H (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 regarding apportionment, the competent authority has no option but to refer the dispute to the Principal Civil Court.

44. In other words, if the claimant's entitlement is rejected, it would still be an issue referable to a Civil Court, as it falls within the expression “issue as to any person to whom the same is payable” under sub-section (4) of Section 3-H. Given this, the court held that the order passed by the Competent Authority, among other things, refusing to refer the dispute regarding entitlement to claim interest in the compensation, contradicts the provisions outlined in sub-sections (3) and (4) of Section 3-H of the National Highways Act.

⁶ (2018) SCC OnLine Bombay 6437

45. Accordingly, in **Arun Lokare** and **Rajaram Rane** (supra), the orders of the competent authority regarding the apportionment were quashed and set aside on the grounds of lacking jurisdiction. The competent authority was directed to promptly refer the apportionment dispute to the Principal Civil Court of original jurisdiction. These decisions of the Coordinate Bench provide complete answers to Mr. Sathe's argument that, in this case, there was no apportionment dispute once the LAO determined that the Petitioners were not entitled to any rights in the subject property. Accepting such a contention would, in contradiction to the legislative interdict and numerous decided cases on the subject, encourage the LAOs or competent authorities to adjudicate on complex issues of title and apportionment and to disburse compensation amounts.

46. In the case of **Shriram R. Deshpurabhu** (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.**⁷ and **Bambolim Vs. Maximo Mergulhao and Ors.**⁸ in which it was held that apportionment disputes should not be decided by the land acquisition officers and such disputes had

⁷ WP No. 261/1986 decided on 12.08.1987

⁸ WP No. 2/1988 decided on 07.06.1988

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

47. In *Sojar V/s. Krishna* (Supra), the law of the subject, was discussed, and in the circumstances very similar to those in the present matter, the Competent Authority's order determining the apportionment dispute was set aside. Directions were issued to the private Respondents to deposit the entire compensation amount under ultra vires orders in case the private Respondents failed to honour their statement that they would themselves bring back the compensation amount claimed by the Petitioner in the said Petition.

48. Taking cognisance of the increasing number of cases where LAOs and Competent Authorities were themselves deciding apportionment disputes and hurriedly disbursing crores of compensation amounts to private parties, the Revenue Secretary, Government of Maharashtra, was directed to circulate copies of the Judgments of the Hon'ble Supreme Court in *Vinod Kumar* (Supra) and this Court in *Arun Lokare* (Supra) so that such instances are arrested and do not increase.

49. In the present case, it is futile to urge that there was no apportionment dispute between the parties. Dr Sathe's

contention about the interpretation of Section 19-C (3) and 19-C (4) or about the determination of an apportionment dispute has been answered against him by at least two co-ordinate benches of this Court in the case of ***Arun Lokare*** and ***Rajaram Rane*** (supra).

50. Significantly, in this case, the civil suit was filed in 2018 when the acquisition of the subject property was nowhere near the horizon. The acquisition notification was issued for the first time on 12 August 2022, i.e., four and a half years after the institution of the suit. Still, we fail to understand how Dr Sathe insists that this was not a case of apportionment dispute at all, and, therefore, R-2 was not obliged to refer such dispute for the determination by the Principal Court of original civil jurisdiction.

51. Even the impugned communication or order dated 26 April 2024 by LAO Mundke does not appear to subscribe to Dr Sathe's line of argument. LAO Mundke and his communication/order dated 26 April 2024 nowhere state that this was not an apportionment dispute, and therefore, he is not referring such dispute to the Principal Court of original civil jurisdiction. LAO Mundke, almost brazenly, proceeds to adjudicate the disputes between the Petitioners and Respondent Nos.3 to 6 and holds that the Petitioners are not entitled to any compensation because the revenue records are not in their name, the sale deeds are in the names of Respondent Nos.3 to 6, and there was no interim order from the Civil Court in the pending civil suits. The private

respondents cannot read something which finds no place in the reasoning of the LAO. Even the LAO cannot supplement the reasons in his order by filing an affidavit or otherwise.

52. Based mainly on the above three factors, LAO Mundke took it upon himself to determine not only the issues of entitlement but also the issues of apportionment. Such a determination was made after LAO Mundke issued a consent award and even disbursed the entire amount to Respondent Nos.3 to 6. Such a post-event determination grossly violates principles of natural justice.

53. The law, in these types of matters, does not even contemplate a post-decisional hearing. LAO Mundke may have formally heard the petitioners earlier. Still, it was only after he, in breach of all legal principles and precedents, decided in favour of Respondents 3 to 6 that he realised that he had not even dealt with the Petitioners' objections to the apportionment. As reflected in the impugned order /communication, his decision was thus a foregone conclusion. Apart from gross violation of principles of natural justice, it is apparent that R-2 has acted ultra vires and legal malafides vitiate his action.

54. Regarding actual malafides, we refrain from making any observations because Mr Rahul Mundke was not impleaded in his personal capacity. Still, legal malafides are writ large if one evaluates the sequence of events and they are sufficient to vitiate the impugned actions. LAO Mundke sat tight on the Petitioners' objections lodged on 05 September 2023 until 18

March 2024. On this date also, LAO Mundke did not decide Petitioners' objections but without deciding such objections, issued a consent award favouring Respondent Nos.3 to 6. On the same date, LAO Mundke caused the execution of an agreement between the Highway Authorities and Respondent Nos.3 to 6 and ordered the payment of compensation of Rs.56.26 Crores to Respondent Nos. 3 to 6. LAO Mundke followed this with the bank and ensured that this vast amount was disbursed to Respondent Nos.3 to 6 on 22 March 2024.

55. After that, when Petitioner No. 2's son sought information on the status of the Petitioner's objections, such information was denied under the RTI on the specious plea that Respondents Nos.3 to 6 objected to giving such information. At least prima facie, this shows the extent to which the officials were bent upon disbursing this compensation of Rs. 56.26 Crores to Respondent Nos.3 to 6 and preventing the Petitioners from even accessing the Courts of law immediately to interdict such ultra vires disbursement.

56. Only on 26 April 2024, after deciding in favour of Respondent Nos.3 to 6 and disbursing the compensation of Rs.56.25 Crores to Respondent Nos.3 to 6, the LAO Mundke rejected the Petitioners' objections. To justify or ex-post facto validate the ultra vires acts of 18 March 2024, LAO Mundke had no option other than to reject the petitioners' objections formally. Such rejection is also quite perverse because LAO Mundke lacked the jurisdiction to decide on apportionment disputes and was obliged to refer such appropriation disputes

to the Principal Court of original civil jurisdiction.

57. Whether all this involves actual malafides or not may have to be examined in disciplinary proceedings if initiated against LAO Mundke. But we are satisfied that the impugned actions are in breach of the law and are vitiated due to legal malafides or malice in law.

58. In **HMT Ltd. V/s. Mudappa**⁹, the Hon'ble Supreme Court has explained that the legal meaning of malice is 'ill will or spite towards a party and any indirect or improper motive in taking an action'. This is sometimes described as 'malice in fact. 'Legal malice' or 'malice in law means 'some-thing done without lawful excuse. In other words, 'it is an act done wrongfully and wilfully without reasonable or probable cause and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others.' It was observed that where malice was attributed to the State, it could not be a case of malice in fact or personal ill-will or spite on the part of the State. It could only be malice in law i.e. legal malafide.

59. Similarly, in **Ravi Yashwant Bhoir V/s. Collector**¹⁰, and **Kalabharati Advertising V/s. Hemant Vimalnath Narichania**¹¹, the Hon'ble Supreme Court has held that the State is under an obligation to act fairly without ill will or malice in fact or in law. Where malice is attributed to the State, it can never be a

⁹ (2007) 9 SCC 768

¹⁰ (2012) 4 SCC 407

¹¹ (2010) 9 SCC 437

case of personal ill will or spite on the part of the State. “Legal malice” or “malice in law” means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and wilfully without reasonable or probable cause and not necessarily an act done from ill feeling and spite. Passing an order for unauthorised purpose constitutes malice in law. Malafide exercise of power does not imply any moral turpitude. It means exercise of statutory power for “purposes foreign to those for which it is in law intended”. It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts.

60. Applying the above principles, we are satisfied that acts of LAO are vitiated by legal malafides or malice in law. This is apart from the fact that such acts were ultra vires the provisions of the MHA and the precedents of the Hon’ble Supreme Court and this Court on the subject.

61. Pravin Chamaria (Supra) relied upon by Dr Sathe, assists the Petitioners' case and not Respondent Nos.3 to 6. In that case, there was a dispute about whether the entire compensation amount should be paid to the partnership firm or to individual partners. The LAO, purporting to exercise powers under Section 19C of the MHA, ruled that the compensation must be paid to the partners individually, not to the firm. Thus, the LAO determined that the firm was not entitled to the compensation, but only the individual partners

were entitled to the compensation. The facts are not significantly different here, where the LAO determined that the Petitioners were not entitled to any compensation. Still, only Respondents Nos.3 to 6 were entitled to the entire compensation of Rs.56.25 Crores.

62. This Court voided the orders of the LAO and directed that this was nothing but an apportionment dispute, which the LAO had no jurisdiction to decide. The LAO order was set aside, and the matter was directed to be referred to the Principal Court of Original Civil Jurisdiction. The entire compensation amount was then directed to be deposited with the Principal Court of Original Civil Jurisdiction so that it could abide by the determination by the said Court. This decision is far from assisting Respondent Nos. 3 to 6, furthers the case of the Petitioners.

63. Dr Sathe cited Rafique Kabani (supra) to urge that an action violating principles of natural justice may not be interfered with unless prejudice is demonstrated. In the present case, prejudice against the Petitioners is extensive. The Respondent Nos. 3 to 6, based upon an ultra vires order vitiated by legal malafides, have pocketed compensation of Rs. 56.26 Crores. Therefore, the decision in **Rafique Kabani** (supra) cannot even remotely assist the Petitioners. Besides, this case had nothing to do with the provisions of MHA or the resolution of apportionment disputes.

64. The actions of R-2 in this matter are contrary to the law laid down not only in **Vinod Kumar** (supra) and **Sojar Vs.**

Krishnath (supra) but also **Ganesh Sonawane Vs. Sub-Divisional Office, Panvel**, WP No. 13497 of 2024, decided on 04 October 2024 and **Arun Lokare** (supra), **Rajaram Rane** (supra), **Pandurang Balu Pujare and Anr Vs The Competent Authority and Sub-Divisional Officer and Ors**¹², **Shriram R. Deshprabhu Vs State of Goa and Ors and connected matters**¹³ as well as **Ashok More Vs. Union of India & Ors**¹⁴. Despite all these authoritative decisions, we are surprised at how LAO Mundke issued the impugned order dated 26 April 2024, or the consent award dated 18 March 2024 in this matter.

65. Still, we refrain from commenting on the conduct of Mr. Rahul Mundke, who we are now informed is designated as Deputy Inspector General of Registration in the Revenue Department, as we intend to grant the Petitioners' request for an examination of LAO Mundke's conduct by his disciplinary authority. This examination is to determine whether there is more in his actions than meets the eye.

66. At least, *prima facie*, we find that there was no justification for making the consent award on 18 March 2024 and ordering the payment of Rs. 56. 26 Crores to Respondent Nos. 3 to 6. Mr. Rahul Mundke followed this matter and ensured that within five days, i.e. on 22 March 2024, this huge amount of Rs. 56.26 Crores was disbursed to Respondent Nos. 3 to 6. By this date, in terms of the affidavit filed on behalf of Respondent No. 2, the Petitioners' objections

¹² WP/10577/2024 decided on 10 January 2025

¹³ 2023(2) ALL MR 72

¹⁴ 2017(2) ALL MR 792

were not even considered and disposed of. Clear attempts were made to withhold information from the Petitioners, preventing them from seeking immediate judicial redress. It was only on 26 April 2024 that the Petitioners' objections were addressed, and that was done by engaging with the merits of the dispute as if he were a Civil Court with the authority to resolve such apportionment conflicts.

67. For all the above prima facie reasons, we direct the Revenue Secretary to examine the records and Mr Rahul Mudke's conduct and decide to initiate disciplinary proceedings against him immediately. As noted earlier, there are several cases which come before us where LAOs and Competent Authorities take upon themselves to decide apportionment disputes and hurriedly disburse crores of rupees to some of the disputing parties regardless of the legal position being clarified by several decisions of this Court and finally by the Hon'ble Supreme Court.

68. The Respondent Nos. 3 to 6 cannot retain the compensation amount of Rs.56,26,45,485/- based upon the patently illegal ultra vires determination by LAO Mundke. This determination and the apportioning of the entire compensation favouring Respondent Nos. 3 to 6 is liable to be set aside, and Respondent Nos. 3 to 6 must bring back this compensation amount of Rs.56,26,45,485/- within four weeks from today. This amount must be deposited in this Court so that it can be transferred to the Principal Court of Original Civil Jurisdiction, to which reference will have to be made in

terms of Section 19 (C) 4 of the MHA. Such directions are consistent with the law laid down in **Shriram R. Deshpabhu** (supra), **Shri Vajrajit S Dubhaxi and Ors. vs. Special Land Acquisition Officer (North) & Ors.**¹⁵ and **Bambolim vs. Maximo Mergulhao and Ors.**¹⁶.

69. Accordingly, this Petition is allowed by making the following order: -

ORDER

- i. The impugned apportionment of compensation of Rs.56,26,45,485/- in favour of Respondent Nos. 3 to 6 is set aside.
- ii. Respondent No.2 is directed to refer the apportionment dispute to the Principal Court of Original Civil Jurisdiction within the limits of whose jurisdiction the subject land or the acquired land is situated within six weeks from today.
- iii. The Respondent Nos. 3 to 6 are directed to bring back and deposit the sum of Rs.56,26,45,485/- in this court within four weeks from today. If the amount is not deposited within four weeks from today, then the same shall carry interest at the rate of 7% per annum from the date of receipt of this amount by Respondent Nos. 3 to 6 until the date of deposit in this Court.
- iv. Upon such deposit being made, the Registry should ensure that it is transferred to the Principal Court of

¹⁵ WP No. 261/1986 decided on 12.08.1987

¹⁶ WP No. 2/1988 decided on 07.06.1988

Original Civil Jurisdiction at Raigad to the account of the reference regarding the apportionment dispute between the Petitioners and Respondent Nos. 3 to 6.

- v. The Reference Court must ensure that this amount is invested in a Nationalized bank so that the parties ultimately obtain this compensation and the interest that has accrued on it.
- vi. This order, along with the case papers, must be placed before the Revenue Secretary or the appropriate Disciplinary Authority concerning Mr Rahul Mundke, the then LAO. The Revenue Secretary or the Disciplinary Authority must, within four weeks, decide on the issue of initiating disciplinary proceedings. If a decision is taken to initiate disciplinary proceedings, such disciplinary proceedings must be concluded within six months of its initiation. The disciplinary proceedings must be held consistent with the principles of natural justice and fair play and must adhere to the applicable rules and regulations.
- vii. The Revenue Secretary or Disciplinary Authority and LAO must file a compliance report by 06 May 2025 after serving an advance copy to the learned counsel for the Petitioner.
- viii. Similarly, Respondent Nos.3 to 6 must also file a compliance report by 06 May 2025 regarding the refund of the compensation amount of Rs. 56,26,45,485/—

they received. An advance copy must be furnished to the learned counsel for the Petitioner.

- ix. Since the learned counsel for the Intervener was heard in the matter, the Interim Application stands worked out and is hereby disposed of.
- x. The Respondent Nos.3 to 6 are directed to pay costs of Rs.50,000/- to the Petitioners within four weeks from today and include this aspect in the compliance report which they are directed to file by 06 May 2025, by furnishing an advance copy to the learned counsel for the Petitioner.
- xi. The rule is made absolute in the above terms.

70. All concerned to act on an authenticated copy of this judgment and order.

(Jitendra Jain, J)

(M.S. Sonak, J)

After Pronouncement:-

At this stage, learned counsel for Respondent Nos.3 to 6 seeks eight weeks time to refund the compensation amount. He clarifies that this request is without prejudice to further remedies that the Respondent Nos.3 to 6 wish to resort in the matter. Since we have already granted Respondent Nos.3 to 6 four weeks time to deposit this amount, we decline this request. Besides, it is not as if this amount is being paid to the

Petitioner or to any other parties. The direction is only to refund the amount so that it can remain deposited and invested until the Reference Court decides the apportionment issue.

(Jitendra Jain, J)

(M.S. Sonak, J)