



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.4563 OF 2024

PETITIONER : Vitthal S/o. Harishchandra Paraskar,
aged about 73 years, Occupation:
Agriculturist, R/o. Bhota, Tah.
Nandura, Dist. Buldhana

...VERSUS...

RESPONDENTS 1. The Deputy Collector/Land
Acquisition Officer (Medium Project),
Buldhana

2. Chunnilal Shivratan Kothari Trust
through its Managing Trustee and
Power of Attorney Holder Shri Vitthal
S/o. Surajratan Kothari, Aged about
52 Years, Occupation : Business, R/o.
Marwadi Galli, Nadura, Tah. Nandura,
Dist. Buldhana

Mr. N.B. Kalwaghe, Advocate for petitioner
Mr. A.G. Mate, AGP for respondent No.1/State
Mr. C.S. Kaptan (Senior Counsel) a/b. Mr. M.G. Sarda, Advocate for
respondent No.2

CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 09/10/2025

JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith. The petition
is heard finally with the consent of the learned Counsels at the stage of
admission.

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2. By way of the present writ petition, the petitioner is challenging the order dated 16.02.2024 passed by the respondent No.1 i.e. Deputy Collector/Land Acquisition Officer (Medium Project), Buldhana, whereby, the learned authority has refused to refer the dispute under Section 76 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "Act of 2013").

3. Learned counsel for the petitioner submits that before the authority, the petitioner has filed an application and specifically stated that being the tenant, he is in possession of the property. He further relied on the record of the cultivation column/perapatrak statement to show that he is in possession of the suit property and therefore, as the properties are under acquisition, the petitioner is entitled to receive the compensation which is payable in respect thereof.

4. The learned counsel for the petitioner prayed that in view of Section 76 of the Act of 2013, once the amount is payable, the learned authority is required to refer the same to the Authority under Section 64 of the Act of 2013, to decide the apportionment between the parties. Therefore, he prayed to set-aside the order and to refer the same.

5. Per contra, Mr. C.S. Kaptan, learned Senior Advocate, assisted by Mr. M.G. Sarda, has vehemently opposed the prayer of the petitioner. He strenuously submitted that the petitioner has failed to produce any record in respect of the tenancy and all the tenancy proceedings are gone against the petitioner.

6. He invited my attention to Section 76 of the Act of 2013 as well as the judgment delivered by this Hon'ble Court in case of *Gandharva Dhaneshwar Patil Vs. State of Maharashtra, through Government Pleader and Others*, reported in 2024 SCC OnLine Bom 2589 decided on 07.08.2024 as well as in case of *Anjanabai W/o. Anna Thorat Vs. Dilip Baliram Khandare and Others*, in Writ Petition No.5922/2019 decided on 19.01.2023.

7. He relies upon para Nos.17, 18, 19 and 20 of the *Gandharva's Case (supra)* and Writ Petition No.5922/2019, there is no dispute regarding legal position settled therein. Para Nos.17, 18, 19 and 20 of the *Gandharva's Case (supra)* are reproduced as follows :-

“17. It is thus held therein that under Section 18 of the Land Acquisition Act, 1894, the Collector does not have power to withhold the reference. However, under Section 30 Collector may refer such dispute to the decision of the Court. In this regard, Collector has discretion and he has to pass order looking to the nature of dispute, the persons who is raising the dispute, the delay in inviting attention of the Court, etc. The provisions of Section 18 of 1894 Act are *pari materia* to Section 64 of Act of 2013. Similarly, Section 76 Act of 2013 is identical to Section 30 of Act, 1890. This Court therefore finds no hesitation to follow the judgment of the Hon'ble Supreme Court in

case of *Sharda Devi* (Supra), to hold that Section 64 would mandate the Collector to refer the dispute to the Authority under Section 51 but there is no compulsion under Section 76 for making the reference.

18. Even otherwise the terminology used in both Sections also indicates so. Proviso to Section 64 states that the Collector shall within 30 days from the date of receipt of the Application make a reference to the appropriate authority. Whereas in Section 76 it is stated that he may refer such dispute to the Authority. In the considered view of this Court the nature of Applications/dispute raised and prayer made therein would be the distinguishing factor for Application of any one of these two provisions. It is therefore held that having regard to the nature of the Application and relief prayed by the Petitioner before the Collector, the said Application is filed under Section 76 though captioned under Section 64 of the Act of 2013. Thus it was not mandatory for the Collector to refer the dispute to the authority.

19. Hon'ble Supreme Court in case of *Vinod Kumar* (Supra) has held that under National Highway Act, a reference is to be made to Principal Civil Court for deciding due of apportionment, similarly, Division Bench of this Court in the case of *Arun Lokare* (Supra) has held so. However, in the instant case Petitioner does not claim that the issue of apportionment can be decided by Authority under Section 51 of the Act but contends that it be decided by Civil Court in suit filed by Petitioner and others.

20. As the Petitioner has not asked for determination of the dispute by Authority under Section 51 of Act but has only asked for non disbursement of compensation till decision is taken by Civil Court. Thus no decision is sought even from Authority under Section 51 of Act, to make reference to it. Even on merits, if the facts of the case are taken into consideration, admittedly, suit RCS No. 377 of 1951 came to be decreed and decree passed therein was executed in Regular Darkhast No. 51 of 1959. Admittedly, predecessor of Respondent Nos. 4 to 10 is the auction purchaser of the properties in question. The said decree passed in RCS No. 377 of 1951 is not set aside nor the auction sale is held to be void till date. Apart from this Mutation Entry of the year 1960 (M.A. No. 1967) in favour of Respondents still holds the field. The challenge to the said Mutation entry is unsuccessful at all levels. Pertinently though the Petition has been filed by the Petitioners before this Court taking exception to the said entry by Writ Petition No. 1234 of 2024 however, there is no dispute about the fact that the orders in question are not stayed by this Court. Moreover, though the suit has been filed in the year 2022 taking exception to the judgment and decree passed in RCS No. 377 of 1951 and challenge is raised to the auction sale effected in 1951 in execution proceeding No. 51 of 1959, there is no stay from Civil Court to the said decree. Having regard to these facts, prima facie

there is inordinate delay caused in taking exception to the said entries as well as to the judgment and decree passed in 377 of 1951, this Court finds that in such a situation Collector was fully justified in not referring the dispute to Authority. In this regard it would be useful to refer to judgment of Division Bench of this Court in case of *Gautam Kumbhar* (Supra), wherein it is held that:—

Section 3H (4) provides that if any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated. The said provision cannot be read in a manner that even if a stranger without any prima facie right, files an objection, the competent authority should blindly refer the same to the principal civil court of original jurisdiction. If bonafide dispute exists, in that case only, the competent authority may, referring to section 3H(4), refer the dispute to the principal civil court of original jurisdiction.

These observations are fully applicable to the present case. No perversity therefore is found in the order passed by the Deputy Collector.”

The learned counsel for respondents submit that in both these cases, this Court has held that under Section 76 of the Act of 2013, mere filing of an application does not oblige the authority to make reference to competent authority; such reference lies within the discretion of the authority. Section 76 of the Act of 2013 is reproduced as follows :-

“76. Dispute as to apportionment.— When the amount of compensation has been settled, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such disputes to the Authority.”

8. On perusal, Section 76 of the Act of 2013 is also required to be considered. The provisions thereof are clear that if any dispute as to

apportionment arises or the persons entitled to receive the same or any part thereof, the Collector may refer such dispute to the appropriate authority.

9. In the present case the Deputy Collector has accepted that the petitioner is in possession of the property. However, the Deputy Collector rejected the claim solely on the ground that the petitioner has not produced the documents showing ownership. As far as the tenancy issue is concerned, the authority observed that the petitioner has not submitted relevant tenancy documents such as tenancy certificate. It is settled that the Authority is not competent to decide the civil rights of the parties.

10. It is evident from the record that a copy of crop statement was submitted by the petitioner which was accepted by the Authority while considering the application. This clearly establishes that the petitioner is in possession of the property as a tenant.

11. In view thereof, considering these specific observations and the averments made in the application along with the documents filed, the authority is directed to refer the dispute under Section 76 of the Act of 2013, to decide the apportionment, after giving an opportunity of hearing.

12. The petitioner is seeking relief as per prayer clause (b), (c) and (d), which are reproduced as follows :-

“(b) be pleased to quash and set aside the impugned orders dated 16.02.2024 (ANNEXURE-I) passed by the respondent No.1 i.e. the Deputy Collector/Land Acquisition Officer (Medium Project), Buldhana;

(c) be pleased to direct the respondent No.1 i.e. the Deputy Collector/Land Acquisition Officer (Medium Project), Buldhana to refer the objection/dispute raised by the petitioner to the Land Acquisition, Rehabilitation and Resettlement Authority u/s 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;

(d) be pleased to direct the respondent No.1 i.e. the Deputy Collector/Land Acquisition Officer (Medium Project), Buldhana to transfer/deposit the land acquisition compensation before the Land Acquisition, Rehabilitation and Resettlement Authority”

In view thereof, the present writ petition is **allowed**, in terms of prayer clause (b), (c) and (d). No order as to costs.

Rule is made absolute in above said terms.

(SIDDHESHWAR S. THOMBRE, J.)