



Priya Soparkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10482 OF 2023

WITH

WRIT PETITION NO.10483 OF 2023

Bhaskar Mahipat Pavale,  
Age 33 years,  
Occupation -Agriculturists,  
Residing at Pavalewadi,  
Taluka-Maval,  
District-Pune – 412106.

...Petitioner

Versus

1. Lalita Gajanan Chinchawade,  
Age 44 years,  
Occupation -Housewife,  
Residing at -Kakde corner,  
Chinchvadgaon, Taluka-Haveli,  
District-Pune-411033.

2. Somnath Sitaram Pavale,  
Age 40 years,  
Occupation- Advocate,  
Residing at Pavalewadi,  
Post-bhoyare, Taluka-Maval,  
District-Pune-412106.

3. Janabai Suresh Chorge,  
Age 45 years,  
Occupation – House Wife,  
Residing at Ghonshet,  
Post-Takwe bk, Taluka-Maval,  
District-Pune-412106.

4. Mayaji Bhau Pavale,  
Age 53 years,  
Occupation – Agriculturists,

Residing at Ambethan Road,  
Dawad Mala, Chakan,  
Taluka-Khed,  
District-Pune-410501.

5. Hausabai Tukaram Mali,  
Age 65 years,  
Occupation – House Wife,  
Residing at Ghonshet,  
Post-Takwe bk, Taluka-Maval,  
District-Pune-412106.

6. Sitaram Bhau Pavale,  
Age 75 years,  
Occupation- Agriculture,  
Residing at Pavalewadi,  
Post-bhoyare, Taluka-Maval,  
District-Pune-412106.

7. Suman Haribhau Pavale,  
Age 70 years,  
Occupation – House Wife,  
Residing at Ghonshet,  
Post-Takwe bk, Taluka-Maval,  
District-Pune-412106.

8. Gana Bhau Pavale,  
Age 77 years,  
Occupation- Agriculture,  
Residing at Pavalewadi,  
Post-bhoyare, Taluka-Maval,  
District-Pune-412106.

9. Sunil Dashrat Bhongade,  
Age 45 years,  
Occupation- Business,  
Residing at Malwadi, Talegaon  
Dabhade, Taluka-Maval,  
District-Pune-412106.

10. Bharat Dashrat Bhongade,  
Age 41 years,  
Occupation- Business,  
Residing at Malwadi, Talegaon  
Dabhade, Taluka-Maval,  
District-Pune-412106.

11. Vijay Dashrat Bhongade,  
Age 39 years,  
Occupation- Business,  
Residing at Malwadi, Talegaon  
Dabhade, Taluka-Maval,  
District-Pune-412106.

12. Gurumukh Jangaldas Sukhwani,  
Age 64 years,  
Occupation- Business,  
Residing at 208/2, A,  
Sukhwani House, Station Road,  
Pimpri, Pune-411018.

13. Sunil Gana Pavale,  
Age 47 years,  
Occupation- Business,  
Residing at Pavalewadi,  
Post-bhoyare, Taluka-Maval,  
District-Pune-412106.

14. Sanjay Gana Pavale  
Age 40 years,  
Occupation- Agriculturists,  
Residing at Pavalewadi,  
Post-bhoyare, Taluka-Maval,  
District-Pune-412106.

15. Haribhau Gana Pavale,  
Age 39 years,  
Occupation- Agriculturists,  
Residing at Pavalewadi,  
Post-bhoyare, Taluka-Maval,  
District-Pune-412106.

16. Sandeep Chandrakant Kakade,  
Age 43 years,  
Occupation- Agriculturists,  
Residing at Manohar Nagar, Talegaon  
Dabhade, Taluka-Maval,  
District-Pune-410507.

17. Prathama Satish Gavai  
Age 35 years,  
Occupation- Agriculturists and Business,  
Residing at 4, Yashodhan Dinshaw,  
Wachha Road, New Marine Lines,  
Mumbai, Maharashtra-400020.  
Through Power of Attorney holder,  
Rajeev Satyavan Gavade,  
Age 45 years,  
Occupation- Business and Agriculturists,  
Residing at A 71, Mahindra Park,  
Narayan Nagar, Ghatkopar West,  
Mumbai-40086.

18. Maruti Sahadu Pavale,  
Age 71 years,  
Occupation- Agriculturists,  
Residing at Pavalewadi,  
Post-bhoyare, Taluka-Maval,  
District-Pune-412106.

19. Nanda Sahadu Pavale  
Age 89 years,  
Occupation- Agriculturists,  
Residing at Pavalewadi,  
Post-bhoyare, Taluka-Maval,  
District-Pune-412106.

20. Pandit Bhima Pavale,  
Age 52 years,  
Occupation- Agriculturists,  
Residing at Pavalewadi,  
Post-bhoyare, Taluka-Maval,

District-Pune-412106.

21. Bajirao Bhima Pavale,  
Age 50 years,  
Occupation- Agriculturists,  
Residing at Pavalewadi,  
Post-bhoyare, Taluka-Maval,  
District-Pune-412106.

22. Arun Bhima Pavale,  
Age 48 years,  
Occupation- Agriculturists,  
Residing at Pavalewadi,  
Post-bhoyare, Taluka-Maval,  
District-Pune-412106.

23. Anandibai Bhima Pavale,  
Age 79 years,  
Occupation- Housewife,  
Residing at Pavalewadi,  
Post-bhoyare, Taluka-Maval,  
District-Pune-412106.

24. Tanaji Varshu Pavale,  
Age 67 years,  
Occupation- Agriculturists,  
Residing at Pavalewadi,  
Post-bhoyare, Taluka-Maval,  
District-Pune-412106.

25. Zhumbar Varshu Pavale,  
Age 66 years,  
Occupation- Agriculturists,  
Residing at Pavalewadi,  
Post-bhoyare, Taluka-Maval,  
District-Pune-412106.

26. State of Maharashtra  
(Summons to be served on the  
Learned Government Pleader  
appearing for the State of

Maharashtra under Order XXVII  
Rule 4 of the Code of Civil Procedure,  
1908)

27. Sub Divisional Officer Maval,  
Mulshi, Sub-Division, Pune,  
(Summons to be served on the  
Learned Government Pleader  
appearing for the State of  
Maharashtra under Order XXVII  
Rule 4 of the Code of Civil Procedure,  
1908)

28. Maharashtra Industrial  
Development Corporation,  
Through It's CEO,  
Having Office at Jog Center,  
1<sup>st</sup> Floor, Wakdewadi, Pune.

...Respondents

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**Mr. Prathamesh Bhargude** with Mr. Sumit Sonare, Advocates for  
the Petitioner in both petitions.

**Mr. Aditya R. Deolekar**, AGP for the State in both petitions.

**Mr. Drupad Patil** with Mr. Suyash Sule, Advocates for the  
Respondents No.18 to 23 in WP No.10482 of 2023 and for  
the Respondents No.12, 14 to 17 in WP No.10483 of 2023.

**Mr. Chaitanya Nikte** with Mr. Prajit Sahane with Ms. Sakshi  
Thombre, Advocates for the Respondents No.8 and 14 in WP  
No.10482 of 2023 and for the Respondent No.10 in WP  
No.10483 of 2023.

**Mr. Sachin Punde** with Mr. Suraj B. Jadhav, Advocates for the  
Respondent No.16 in WP No.10482 of 2023.

**Mr. Chetan Patil** with Mr. Ashwin Pimpale, Advocates for the  
Respondent No.12 in WP No.10482 of 2023.

**Mr. Sugandh Deshmukh**, Advocate for the Respondents No.24 and  
25 in WP No.10482 of 2023 and for the Respondents No.18  
and 19 in WP No.10483 of 2023.

**Mr. Chetan R. Nagare**, Advocate for the Respondents No.1,3,4 and  
5 in WP No.10483 of 2023.

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

RESERVED ON : 24<sup>th</sup> March 2025

PRONOUNCED ON : 26<sup>th</sup> March 2025

**Judgment and Order (Per M. S. Sonak, J.)::-**

1. Heard learned counsel for the parties.
2. Rule in both these petitions. The rule is made returnable immediately at the request and with the consent of the learned counsel for the parties.
3. The learned counsel for the parties agree that a common judgment and order can dispose of both these petitions because common issues of law and fact arise. They point out that the only difference in the two petitions is the survey numbers of the properties acquired. They request that Writ Petition No.10482 of 2023 may be treated as the lead petition.
4. The Petitioner challenges order dated 24<sup>th</sup> July, 2023 made by Sub-Divisional Officer (**SDO**), Maval Mulshi, Sub-Division Pune in proceedings No. Land Acquisition/Objection/SR/1,3,6,8,21/23 dated 24<sup>th</sup> July, 2023. They seek a mandamus directing the Sub-Divisional Officer-Respondent No.27 (**R-27**) to deposit the compensation amount as determined in the award dated 27<sup>th</sup> February 2023 in the account of Civil Judge Junior Division at Vadgaon where Regular Civil Suit No.96 of 2019 is pending. Possibly, in the alternate, they seek similar relief of deposit of the

compensation amount before the authority prescribed under Section 35 of the Maharashtra Industrial Development Act, 1961 (MIDC Act).

5. The Petitioner claims an interest in the property acquired under the award dated 27<sup>th</sup> February 2023. Accordingly, he filed his objections before R-27 regarding apportioning the compensation amount. By the impugned order dated 24<sup>th</sup> July 2023, R-27 has dismissed the Petitioner's objection and directed the disbursement of the compensation amount to some of the Respondents in this petition upon such Respondents furnishing an indemnity bond. R-27 has thus declined the reference under Section 35 of the MIDC Act and insists on disbursing the compensation amount to some of the Respondents. Aggrieved by the impugned order dated 24<sup>th</sup> July 2023 and the insistence to disburse compensation, the Petitioner has instituted the present petition.

6. This petition was moved for urgent circulation on 22<sup>nd</sup> August 2023. A Co-ordinate Bench of (Coram: B. P. Colabawalla and M. M. Sathaye, JJ.) by way of interim relief restrained R-27 from disbursing the compensation amount to any of the parties under the award dated 27<sup>th</sup> February 2023 until further orders. This interim order continues to date.

7. Mr. Prathamesh Bhargude, learned counsel for the Petitioner, submitted that under Section 35 of the MIDC Act if any dispute arises as to apportionment of the compensation amount or as to

the persons to whom the same or any part thereof is payable, the Collector-SDO may refer such a dispute to the decision of the authority as defined under Section 2(a-1) of the MIDC Act.

8. Mr. Prathamesh Bhargude submits that this provision is like the one contained in the National Highways Act, the Maharashtra Highways Act or even the Land Acquisition Act, which require the dispute of apportionment to be referred to the Court for adjudication. He relies upon *Sojar @ Rukminibai w/o Hari Mule Vs. Krishnath @ Krishna s/o Gopal Tate and ors.*<sup>1</sup> and upon Hon'ble Supreme Court judgment in the case of *Vinod Kumar and ors. Vs. District Magistrate, Mau and ors.*<sup>2</sup> in support of his contentions.

9. Mr. Prathamesh Bhargude submits that in 2019, the Petitioner instituted a civil suit claiming an interest in the property, which is now the subject matter of acquisition and payment of compensation. He referred to the genealogy and tried to demonstrate how the Petitioner has right, title and interest in the property, which is now compulsorily acquired. He submitted that the SDO's impugned order, to the extent it observes that the Petitioner has not produced any interim order from the pending suit, is quite perverse because such production or non-production cannot be the basis for disbursal of the compensation amount by the SDO to the other authorities, solely because the names of such other parties appeared in the revenue records.

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<sup>1</sup> 2025 SCC OnLine (Bom) 307

<sup>2</sup> 2023 Live Law SC 511

**10.** Mr Prathamesh Bhargude submitted that the impugned order is *ex-facie* without jurisdiction, and this is a fit case where the same should be set aside, and the mandamus be issued for referring the apportionment dispute to the authority under Section 35 of the MIDC Act.

**11.** Mr. Aditya Deolekar, learned AGP defended the SDO's order with great vehemence. He submitted that the Petitioner had not produced any evidence to establish his claim, and, therefore, there was nothing wrong in the SDO himself disbursing the compensation amount of Rs.34 crores or thereabouts amongst the parties. He submitted that the SDO had ordered the parties to furnish an indemnity bond, which would secure the interest, if any, of the Petitioners.

**12.** Mr. Aditya Deolekar submitted that the survey records were not in the Petitioner's name. The Petitioner had not taken steps for several years to have his name entered in the survey records. The Petitioner had also not produced any interim or injunction order from the Civil Court. He submitted that based on all these relevant facts, the SDO had made the impugned order, thus, warranted no interference.

**13.** Mr. DhruPAD Patil learned counsel for Respondents No. 18 to 23 in Writ Petition No.10482 of 2023 and Respondents No. 12, 14 to 17 in Writ Petition No.10483 of 2023, submitted that a reference could be made to the prescribed authority under Section 35 of the MIDC Act. However, he submitted that the Respondents he

represents were claiming through Sakharam Pavale. By referring to the genealogies the Petitioner and the other Respondents relied upon, he submitted that both parties admitted that Sakharam was one of sons of Mayaji Pavale to whom the property initially belonged.

**14.** Mr Patil submitted that according to the Petitioner, the share of the Respondents he represents would come to 50%, and according to the other Respondents, the share would come to 33%. He, therefore, submitted that there was no dispute about the share of respondents he represented being at least 33%. He submitted that suitable directions be issued to the SDO to pay 33% of the compensation amount to the Respondents he represents since there was no dispute regarding this position. He added that the Respondents he represents claimed 100% of the compensation amount; therefore, a reference to determine this issue would be appropriate.

**15.** Mr. Chaitanya Nikte learned counsel for Respondents No.8 and 14 in Writ Petition No.10482 of 2023 and for Respondent No.10 in Writ Petition No.10483 of 2023, submitted that the Petitioner was claiming only a minuscule share in the compensation. He submitted that no title documents were produced, and there was no explanation why, for so many years, changes were not effected in the survey records. He submitted that the suit was filed in 2019 after preliminary acquisition notifications were issued in 2017. He submitted that the impugned order may not be interfered with in such circumstances.

16. Mr. Chaitanya Nikte, without prejudice, submitted that the compensation amount corresponding to the minuscule share claimed by the Petitioner could be secured by offering some solvent security. He submitted that the apportionment of the entire compensation amount should not be stalled because of the frivolous disputes raised by the Petitioner. He relied on *Nilesh Bhailal Pardeshi Vs. The State Maharashtra and others, Writ Petition No.2514 of 2021 decided on 29<sup>th</sup> March, 2022 and Sharda Devi Vs. State of Bihar and anr.*<sup>3</sup>, to support his contentions.

17. Mr. Sachin Punde, learned counsel for Respondent No.16 in Writ Petition No.10482 of 2023, Mr Chetan Patil, learned counsel for Respondent No.12 in Writ Petition No.10482 of 2023 and Mr Sugandh Deshmukh, learned counsel for the Respondents No.24 and 25 in Writ Petition No.10482 of 2023 and for the Respondents No.18 and 19 in Writ Petition No.10483 of 2023 and Mr Chetan Nagare, learned counsel for the Respondents No.1, 2, 3, 4 and 5 in Writ Petition No.10483 of 2023 substantially adopted the arguments of Mr Chaitanya Nikte and submitted that on account of the frivolous and the minuscule claim of the Petitioner, the apportionment of the entire compensation amount should not be stalled. He submitted that the SDO had already directed the parties to furnish an indemnity bond, and this would secure the interest, if any, of the Petitioner.

18. For all the above reasons, the learned counsel for the Respondents submitted that this petition may be dismissed.

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<sup>3</sup> 2003 (3) SCC 128

19. Rival contentions now fall for our determination.

20. In these petitions, we are concerned with properties described in paragraph No.1 of the respective petitions acquired under an award dated 27 February 2023 under the provisions of the MIDC Act. The award determined the compensation payable to the parties, mainly relying upon the survey records or the revenue entries followed by sale deeds with which some plots were acquired by the Respondents from persons claiming under Mayaji Pavale.

21. Since objections were raised to the apportionment of the compensation amount, not only by the Petitioner but also some of the Respondents, *inter-alia* represented by Mr. Sugandh Deshmukh and some others, the SDO heard the parties and has made the impugned order dated 24<sup>th</sup> July 2023. By this order, the SDO has dismissed the claims of all the objectors and directed the disbursement of the compensation amounts to the parties referred to in the award dated 27<sup>th</sup> February 2023. This was made subject to such parties submitting an indemnity bond to secure the interest of the objectors/claimants like the Petitioner herein.

22. In the impugned order, the SDO discussed how, according to him, the Petitioner and other claimants had no right to compensation. The SDO has held that the Petitioner and other claimants took no steps to have their names included in the revenue records for several years. He has even ventured into adjudication by referring to the genealogy and shares of the co-

owners. He has even commented upon the merits of the suit filed by the Petitioner pending before the Civil Court. He has concluded that the Petitioner has failed to make out any *prima facie* case regarding his interest in the acquired property. The SDO has also reasoned that since the Petitioner has not produced any injunction or interim order from the Civil Court, there can be no disbursal of compensation in his favour or that there was no necessity to make any reference to the authority under Section 35 of the MIDC Act. Finally, the SDO concluded that the interest of the Petitioner and the other claimants could be secured by obtaining an indemnity bond from the parties to whom he ordered a disbursal of the compensation amount.

**23.** Chapter VI of the MIDC Act deals with the acquisition and disposal of the land. Section 32 is concerned with compulsory acquisition by the State for the purposes of MIDC. Section 33 is concerned with compensation and the determination thereof. Section 34 deals with an appeal to the authority as defined under Section 2(a-1) by any person aggrieved by the decision of the Collector determining the amount of compensation. Section 35 is concerned with “Disputes as to apportionment”.

**24.** Section 35 of the MIDC Act is relevant in the context of the present petitions and is therefore transcribed below for the convenience of reference:-

*“35. Disputes as to apportionment: - When the amount of compensation has been settled under section 33, 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 dispute for the decision of the Authority.”*

**25.** Section 36 concerns the payment of compensation, Section 37 concerns the investment of the amount deposited with the authority, Section 38 concerns the payment of interest, Section 39 concerns the disposal of land by the Corporation, and Section 42 deals with the delegation and powers of the State Government.

**26.** Section 35 of the MIDC Act may not be identical to but is somewhat similar to the corresponding provisions under the National Highways Act, the Maharashtra Highways Act, the Land Acquisition Act, 1894 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (**2013 Act**) on the aspect of apportionment of the compensation that may be determined by the Collector or by the SDO for compulsory acquisition of land. All these provisions generally require the reference of disputes as to apportionment of compensation or the persons to whom such compensation shall become payable to the decision of preferably a judicial authority. Most of the legislation refers to such apportionment disputes to the Principal Civil Court of the original jurisdiction of the District in which the acquired lands are situated. Section 35 refers to the reference of such disputes to the authority defined under Section 2(a-1) of the MIDC Act.

**27.** Section 2(a-1) of the MIDC Act defines authority to mean “authority” as defined in clause 3(f) of the 2013 Act. Clause 3(f) of

the 2013 Act defines “authority” to mean the land acquisition, rehabilitation, and resettlement authority established under Section 51 of the 2013 Act.

**28.** Section 51 of the 2013 Act requires the appropriate Government to establish land acquisition, rehabilitation and resettlement authority. Section 52 deals with the composition of such authority. Section 53(1) provides that a person shall not be qualified for appointment as a Presiding Officer of an authority unless he has been a District Judge or a qualified legal practitioner for not less than seven years. The appropriate government must appoint such a presiding officer in consultation with the Chief Justice of the High Court, whose jurisdiction the authority is proposed to be established.

**29.** Section 60 deals with the authority's powers and procedure, and Section 61 provides that the authority's proceedings shall be judicial proceedings. Section 63 bars the jurisdiction of the Civil Courts in respect of the matters by which the Collector or the authority is empowered by or under the 2013 Act.

**30.** In the context of the provisions of Section 3H of the National Highways Act, 1956 and dealing with a similar if not identical provision in sub-section (4), the Hon’ble Supreme Court, in the case of *Vinod Kumar* (supra) has held that the language of sub-clause (4) of Section 3H is plain and simple. It provides that if any disputes arise 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.

**31.** In *Vinod Kumar* (supra) the Hon'ble Supreme Court, rejecting the arguments very similar to those advanced by Mr. Deolekar and some of the other learned counsel for the Respondents 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.

**32.** The Court held that apportionment of compensation is not free from difficulties. It involves giving each claimant the value of the interest he 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 various interests, rights and claims to land, which must be valued in terms of money. The compensation awarded for compulsory acquisition is the value of all the extinguished interests. That compensation must be distributed equitably amongst persons having an 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. However, considerable difficulty is encountered in the valuation of competing interests, which, from its very nature, is dependent upon indefinite factors and uncertain data. 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.

**33.** The Court held that it 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 Vs. P.M. Bharucha, (1956) 60 Bom LR 1208**]. 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 following the nature and quantum of the respective interests, In the ascertainment of those interests, the determination of their relative importance and how 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 must be formulated in each case to ensure a just and equitable distribution of the total value or compensation among the persons interested in the land. 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.

**34.** 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 Court rejected such contention in paragraph 30, 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.

**35.** 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.

**36.** 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. Still, suppose after such determination, dispute may arise 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, the 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 it 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).

**37.** Following the decision in *Vinod Kumar* (supra), this Court in the case of *Sojar @ Rukminibai w/o Hari Mule* (supra) reiterated that the disputes relating to apportionment should not be decided by the Collector or the SDO but should be referred to the Court or the prescribed authority. This Court also referred to similar decisions of the Division Bench of this Court on the subject. This

Court also referred to the unhealthy trend of Land Acquisition Officers/Collector/ Competent Authority usurping the jurisdiction of the Court themselves deciding apportionment disputes. This Court noted how in several matters, compensation amounts were hurriedly disbursed to the parties, before any interim order could be passed by the High Court restraining such ultra vires disbursement. In this case, detailed directions were issued to clarify the legal position and apprise the Collector/ Land Acquisition Officers/Competent Authority to refrain from deciding the apportionment disputes themselves and rushing to disburse the compensation amount based on their decisions.

**38.** Section 35 of the MIDC Act refers to disputes as to apportionment or any part thereof or as to persons to whom the same or any part thereof may become payable. This section provides that the Collector may refer the disputes for the decision of the authority. Even though the legislature has chosen to use the word “may”, unless there are strong reasons for not referring such disputes to the authority's decision, the Collector must not refuse to refer such disputes. Ultimately, the Collector must bear in mind that apportionment of compensation is essentially a judicial function that is best undertaken by courts or by authorities comprising judicially trained persons at the level of District Judges. Hon’ble Supreme Court has explained that apportionment of compensation is never free from difficulties. In apportioning the compensation, the Court must have due regard to the value of each Claimant’s interest 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.

**39.** The Hon'ble Supreme Court has explained that the difficulty experienced is due to the nature of the variety of interests of rights and claims to the lands, which must be valued in terms of money. Compensation is valued for all the interests that are extinguished, and that compensation must be distributed equitably amongst persons having an interest therein. From its very nature, the valuation of computing interest is dependent upon indefinite factors and uncertain data. In the ascertainment of competing interests, determination of their relative importance and how they can be contributed to the total value fixed are questions to be decided in the right of the circumstances of each case and the relevant provisions of the law governing the rights of the parties. The actual rule for apportionment must be formulated in each case to ensure just and equitable distribution of the total value or compensation amongst the persons interested in the land.

**40.** Mr Deolekar questioned whether the Collector is merely a postman and is bound to refer even frivolous disputes for the authority's decision. At least in the present case, such a question is hypothetical and does not arise. By no stretch can the Petitioner's claim be described as frivolous. At least when acting under section 35 of the MIDC Act, it could be argued that discretion is vested in the Collector. But such discretion is by no means unfettered or absolute. Such discretion must be exercised on sound principles after considering relevant factors and eschewing irrelevant ones.

The principles the Hon'ble Supreme Court adverted to must guide the exercise of such discretion.

**41.** From the genealogies submitted by all the parties on record, there is no doubt that the acquired property is a part of Mayaji Bhau Pavale's estate. According to the Petitioner and even some of the Respondents, late Mayaji had only two sons, Sakharam and Gangaram. The Petitioner claims through Gangaram, his son Bhagu, and Bhagu's children. This is evident from the genealogy on page 44 of the paper book in this petition. Almost three years before the SDO made the impugned order, the Petitioner had already instituted a partition suit being Regular Civil Suit No.96 of 2019, in the Court of Civil Judge Junior Division at Vadgaon, Maval. The pleadings in this suit show the nature of interest claimed by the Petitioner.

**42.** This is not the stage for deciding whether the Petitioner's claim in the suit would finally bear fruit or succeed. However, once it is not disputed that the acquired property formed a part of the Mayaji's estate and the Petitioner has established linkage with said Mayaji and even filed a suit much before the impugned order was made, it is hardly open to contend that the Petitioner's claim was frivolous or that the Petitioner was impostor *qua* the acquired property. Therefore, the hypothetical question posed by Mr. Deolekar warrants no answer, at least in the facts of the present case. However, Mr. Bhargude did submit that there is nothing in Section 35 of the MIDC Act or in the decision of the Hon'ble Supreme Court in *Vinod Kumar* (supra), which suggests that the

Collector or Land Acquisition Officer must refer apportionment disputes only upon being satisfied that the *prima facie* case is made out by the Claimant.

43. As noted earlier, even the SDO, while making the impugned order, has proceeded on the premise that the entries in the revenue records are supreme and the parties' claims, title and interest must hinge entirely on the entries in the revenue records. This premise is entirely misconceived because it is well settled that entries in revenue records are never determinative of the title of the parties. Secondly, the SDO, in making the impugned order, has decided in favour of some of the Respondents only because the Petitioner did not produce any injunction or interim relief order from the Civil Court in the suit instituted by him. A non-production of any injunction or any interim order would never have been the basis for ordering the disbursal of the compensation amount to some of the Respondents.

44. Even if we assume that some discretion was vested in the SDO due to using the word “may” in Section 35 of the MIDC Act, this case demonstrates that discretion has been exercised perversely or without regard to the relevant considerations. Irrelevant factors have influenced the SDO’s discretion, constituting a good ground for judicial review of the SDO’s impugned order. In **Sakhubai v. NTPC**<sup>4a</sup>, a learned single judge of this court, after considering *Sharada Devi (Supra)*, held that though the expression “may”, the discretion vested in the Collector

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4      2012(4) Mh LJ 147

was not uncontrolled discretion. The collector was bound to consider the nature of the dispute, persons raising the dispute, delay in inviting the Collector's attention to the dispute, etc. Even in this case, reference was sought to be denied by excessively focusing on the absence of the claimant's name in the survey records.

**45.** The genealogy produced on record by some of the Respondents claimed that Mayaji, in addition to Sakharam and Gangaram, had another son by the name Gana. These Respondents claimed through Gana. Again, these are highly contentious issues that must be determined based on evidence that the parties may choose to lead. Considering the position of the Collector/SDO, it is apparent that the legislature did not intend to leave such complex matters for adjudication by the Collector /SDO in most cases.

**46.** The arguments that the claims of the Respondents represented by Mr Drupad Patil to the extent of at least 33 % were admitted by all parties are not clearly borne out of the records. In any event, it would be open to the legal representative of Sakharam to put this contention before the authority and request to release the admitted portion of the compensation, if any. It will not be proper for this Court to undertake such an exercise.

**47.** Similarly, the contention that the Petitioner's claim was minuscule may not be correct. Ultimately, this is not the question of Petitioner's claim but the claim of even some of the Respondents who dispute that Gana was the son of Mayaji. Some of the

Respondents claimed that they have nothing to do with any of the parties to this petition because they have purchased portions of the acquired portion by independent conveyance. However, it was finally admitted that the property belonged to Mayaji and was purchased from some of the legal representatives of Mayaji.

48. In any event, the parties will be free to establish their claims before the authority that could decide the issue of apportionment of the compensation. Once a reference is made to the authority, the parties will also be free to put forth their claims and compensation as were raised before us. We do not doubt that the authority will decide all such issues following the law and depending upon the evidence that the parties produced.

49. The decision in *Nilesh Bhailal Pardeshi* (supra) turns on its peculiar facts. Even there, this Court ruled that the parties had made out a *prima facie* case for referring the matter to the authority as contemplated by Section 35 of the MIDC Act. This Court noted that the Petitioner had claimed the share in the properties and had shown a link with the deceased property owner (grandfather). This Court, however, noted that even going by all the admitted facts, the share of the Petitioner would be minuscule. Accordingly, a warrantable order was made allowing withdrawals by some parties and with a direction to such parties to jointly give solvent security before the authority in a sum of Rs.25 lakhs. This decision was delivered entirely in the peculiar facts, which are not comparable to the facts of the present case.

**50. *Sharda Devi*** (supra) explains the difference between the provisions in Sections 18 and 30 of the Land Acquisition Act of 1894. This decision holds that under Section 18, the Collector has no power to withhold the reference once a writ application is made, satisfying the requirement of Section 18. However, under Section 30, the Collector has the discretion to refer such a dispute to the decision of the Court. This decision states that in case the Collector refuses to refer to Section 30, the person adversely affected by withholding the reference or refusal to refer shall be at liberty to pursue such other remedy as may be available to him under law, such as filing such a writ petition under the civil suit. In this case, as noted earlier, if the SDO has a discretion under Section 35, the discretion in the facts of the present case has not been validly exercised. Relevant and vital considerations have been excluded, and the reference is refused based on irrelevant considerations like the absence of an injunction or undue emphasis on revenue entries.

**51.** The SDO's impugned order conflicts with several decided cases on the subject, including but not restricted to **Dnyaneshwar Tarde v. State of Maharashtra**<sup>5</sup>, **Rajaram Rane v. Ramkrishna Rane**<sup>6</sup>, **Arun Lokare v. State of Maharashtra**<sup>7</sup>, **Sri Prasada Rao v. State Of AP**<sup>8</sup> and **Pravin Chamaria v. State of Maharashtra**<sup>9</sup>.

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**5** [2002] 4 Mh LJ 612

**6** 2018 SCC OnLineBOM 6437

**7** 2017[6]MhLJ 612

**8** 2000(9) SCC 371

**9** 2025 SCC On Line 320

52. Accordingly, we are satisfied that the Petitioner has made out a case warranting interference with the impugned order and further for a direction to the SDO to refer the apportionment dispute to the authority to determine the apportionment dispute following the law.

53. However, before we part with this judgment, we must take cognisance of the vehemence with which the learned AGP defended the SDO's impugned order. While such vehemence is welcomed, we note that normally, it is not for the State to defend the orders made by its officials who act in judicial or quasi-judicial capacity, unless any allegation have been made against such officials. The orders of judicial or quasi-judicial authority must speak for themselves.

54. In *Syed Yakoob Vs. K. S. Radhkrishnan and ors.*<sup>10</sup>, the Constitution Bench of the Hon'ble Supreme court was confronted with the request by an Advocate appearing on behalf of the State and the Tribunal who demanded for costs because ultimately the appeals/petitions against the Tribunal's order were being dismissed. The Constitution Bench dismissed such a demand by making the following significant observations: -

“19. Mr. Ranganathan Cherry who appears for respondents 2 and 3 has asked for his costs. We do not think this request can be accepted. **It may be that in such proceedings, the Authority and the Appellate Tribunal are proper and necessary parties, but unless allegations are made against them which need a reply from them, it is not usual for the authorities to**

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10 AIR 1964 SC 477

be represented by lawyers in Court. In ordinary cases, their position is like that of courts or other Tribunals against whose decisions writ proceedings are filed; they are not interested in the merits of the dispute in any sense, and so, their representation by lawyers in such proceedings is wholly unnecessary and even inappropriate. That is why we direct that respondents 2 and 3 should bear their own costs.”  
*(Emphasis supplied)*

**55.** For all the above reasons, we allow these petitions, set aside the SDO’s impugned order dated 24<sup>th</sup> July 2023 and direct the SDO to refer the apportionment dispute to the authority within a month from today, together with all necessary papers. The SDO must, within a month from today, also forward the entire compensation amount which is retained by him, given the interim order made by this Court on 22<sup>nd</sup> August 2023, together with interest, if any, that shall have accrued on this amount to the authority.

**56.** The authority, upon receipt of the reference and the compensation amount, must, in terms of Section 37 of the MIDC Act, invest the amount with a nationalized bank so that at the time of the apportionment, the parties get proportionate interest on this compensation amount.

**57.** The authority should endeavour to dispose of these apportionment disputes as expeditiously as possible. The authority must remain conscious that the properties have been compulsorily acquired, and this issue of compensation must be resolved as speedily as possible.

**58.** We clarify that we have not examined the rival contentions of the parties on the merits of the apportionment disputes. Therefore, all such contentions are left open for the authority to be determined in accordance with law and on their own merits. The authority must not let itself be influenced by any observations in this judgment and order on the merits of the matter.

**59.** The authority must also consider applications, if any, for withdrawal of the compensation amount should all the parties agree and declare that there are no disputes regarding the shares and entitlements of some of the parties. However, if such issues are contentious and would unduly delay the proceedings, then it would be better if the apportionment dispute was finally decided one way or the other instead of delaying the entire process.

**60.** The rule is made absolute in both the petitions in the above terms without any costs order. All concerned to act on the authenticated copy of this judgment and order.

**(Jitendra Jain, J.)**

**(M. S. Sonak, J.)**