

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

WRIT PETITION NO. 3455 OF 2014

Shri Kamlya Budhya Khernekar

... Petitioner

v/s

The State of Maharashtra & ors.

... Respondents

Mr.R.S. Apte, Sr. advocate i/by Rakesh Agrawal for the petitioner.

Ms.S.S. Bhende, A.G.P. for Resp. No.3.

***CORAM: SMT. VASANTI A. NAIK &
SHRI C. V. BHADANG, JJ.***

DATED : 28 JANUARY 2015

PC.:

By this writ petition, the petitioner seeks a writ of mandamus commanding respondent No.2 to delete the name of Kashinath Kanya Karavkar from the award under Section 11 of the Land Acquisition Act.

The land admeasuring 3 acres and 1.4 gunthas from Survey No.246 was acquired by the State of Maharashtra by issuance of Section 4 notification under the Land Acquisition Act, 1894. The award was passed under Section 11 of the Act by the Special Land Acquisition Officer in the year 1986. In the said award, the name of the petitioner and Kashinath Kanu Kharavkar was recorded and

the compensation was disbursed equally to Kashinath as well as the petitioner in terms of the award towards acquisition of the aforesaid land. The petitioner did not file a reference under Section 30 of the Land Acquisition Act seeking a declaration that the compensation could not have been apportioned between the petitioner and Shri Kashinath and the compensation was liable to be paid to the petitioner only. It is stated that the petitioner filed a reference application under Section 28-A of the Act of 1894 and the said application is allowed. Since the amount payable to the petitioner in terms of the award under Section 28-A was not paid to the petitioner, this Court directed the State Government to pay the same. The petitioner then applied to the CIDCO for grant of 12.5% area of the acquired land. According to the petitioner, the CIDCO refused to release 12.5% area of the acquired land in favour of the petitioner on the ground that the name of Kashinath was also included in the award under Section 11 of the Act. The petitioner has filed the instant petition seeking the deletion of the name of Kashinath from the award passed by the Special Land Acquisition Officer in the year 1986.

We find that the petitioner has abused the process of the Court by filing the petition for seeking a direction to the State Government to delete the name of Kashinath from the award under Section 11 of the Act. The award was passed by the Special Land Acquisition Officer in the year 1986. The petitioner as well as Kashinath received the compensation in equal proportion. The

award showed that the petitioner as well as Kashinath were the owners of the land. The petitioner could have filed a reference under Section 30 of the Land Acquisition Act for a declaration that the compensation could not have been apportioned between Kashinath and the petitioner and the entire compensation was liable to be paid to the petitioner only. The petitioner never challenged the inclusion of the name of Kashinath in the award immediately after passing of the same by the Land Acquisition Officer. The petitioner had filed a reference application under Section 28-A of the Act as the petitioner was one of the owners of the land and his name was included in the award of 1986. Hence, the award under Section 28-A of the Act was passed in favour of the petitioner alone. Though Kashinath may not have joined the petitioner in seeking enhancement of compensation by filing a reference under Section 28-A of the Act, the petitioner cannot seek the deletion of the name of Kashinath from the award passed under Section 11 of the Act. The dispute in regard to the title of the petitioner to the acquired land could have been looked into, by a Reference Court only in a reference under Section 30 of the Act. The petitioner had never filed the reference application under Section 30 of the Act and had also not filed any civil suit for seeking a declaration that the petitioner was the absolute owner of the land and Kashinath has nothing to do with it. We find that, by filing the writ petition the petitioner has taken a chance to secure the order directing the deletion of the name of Kashinath from the award passed in the year 1986 so that the petitioner can easily get

12.5% land from the CIDCO.

It is also surprising that though the petitioner has sought the deletion of the name of Kashinath, the petitioner has not joined him as a party respondent to this petition.

In view of the aforesaid, we dismiss the writ petition with no order as to costs.

(C. V. BHADANG, J.)

(VASANTI A. NAIK, J.)