

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6263/2015

(PRATIBHA WD/O MADHUKARRAO GADEKAR & OTHERS **VERSUS** THE COLLECTOR,
AMRAVATI & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.P. Kshirsagar, counsel for the petitioners.
Mrs. B.H. Dangre, G.P. for the R-1 & 2.

CORAM : SMT. VASANTI A. NAIK AND
PRASANNA B. VARALE, JJ.

DATE : NOVEMBER 23, 2015.

By this petition, the petitioners seek a direction to the respondent nos.1 to 3, i.e. Collector, Special Land Acquisition Officer and National Highway Authorities to pay compensation along with interest towards the acquisition of 28585.56 square feet of land of Mouza Benoda owned by late Shri Uttam Gadekar.

The petitioners claim that Shri Uttam Gadekar was the owner of certain land in Survey No.3/2 of village Benoda. It is stated that by the issuance of Section 4 notification, the State Government decided to acquire the land of Shri Uttam Gadekar and the respondent no.4-Shri Vallabdas Sikchi from Survey Nos.3/2 and 3/1. It is stated that though the name of Shri Uttam Gadekar was mentioned in the Section 4 notification, his name did not find place in the Award passed by the Special Land Acquisition Officer under Section 11 of the Land Acquisition Act, 1894. It is stated that the compensation towards the acquisition of Survey Nos.3/2 and 3/1 was paid to the respondent no.4-Shri Vallabhdas Sikchi. According to the petitioners, who claim to be the legal heirs of Shri Uttam Gadekar, when they raised an objection to the payment of entire compensation to the respondent no.4-Shri Vallabhdas Sikchi,

the petitioners were informed that when the joint measurement was made, the land of Shri Uttam Gadekar was not acquired and only some other plots were acquired. It is stated that Survey No.3/2 was exclusively owned by Gadekar family. It is stated that by making manipulations, the respondents have paid the entire compensation to the respondent no.4-Vallabhdas Sikchi and deprived the petitioners of their rightful claim for compensation.

Mrs. Dangre, the learned Government Pleader appearing for the respondents, submitted that the Award was passed long back in the year 2012 and if the petitioners have any grievance in regard to the apportionment of the compensation or a dispute in regard to the persons to whom it is payable, i.e. the petitioners on one hand and the respondent no.4 on the other, the petitioners are entitled to avail the remedy under Section 30 of the Land Acquisition Act, 1894. It is stated that the petitioners are entitled to seek a reference under Section 30 of the Land Acquisition Act, 1894, so that the matter could be referred to the Civil Court for deciding whether the petitioners were entitled to seek the compensation or the respondent no.4 was entitled to the same.

We uphold the objection raised on behalf of the respondent nos.1 and 2. We find that several disputed questions of facts arise for determination in this petition. The question whether the land of the Shri Uttam Gadekar was actually acquired by the State Government or not and whether the land that was acquired belonged to the respondent no.4, could be appropriately decided by a Civil Court. The dispute that is sought to be raised in this writ petition cannot be decided in exercise of the writ jurisdiction.

Hence, we decline to entertain the writ petition and the same is disposed of with no order as to costs. The petitioners are, however free to avail the appropriate remedy.

The points raised in the petition are kept open.

JUDGE

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