

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2231 OF 2010

1. Nagnath S/o Pandharinath Khobare
and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri U. K. Patil, Advocate for Petitioners.

Shri N. B. Patil, A.G.P. for Respondent Nos. 1 and 2.

Shri S. S. Dande, Advocate for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA AND
K. K. SONAWANE, JJ.**

DATE : 30TH MARCH, 2016.

PER COURT :

. Mr. Patil, the learned counsel for petitioners submits that, the land of the petitioners along with well and trees were acquired. Consent award was passed in respect of land U/Sec. 33(2) of the Maharashtra Industrial Development Corporation Act. However, as far as the valuation of well and trees was concerned, the same was to be done separately and the same was not part of consent award in respect of the land. The petitioners had filed reference U/Sec. 18 of the Land Acquisition Act (for short "L. A. Act") in respect of compensation for trees and well. The same was withdrawn with liberty to file proceedings U/Sec.

28-A of the L. A. Act, pursuant to compromise executed between the respondent/State and one of the claimants i. e. Navnath Erande. In view of the said compromise award, the petitioners moved application U/Sec. 28-A of the L. A. Act. The same is rejected on frivolous grounds, such as there is no award U/Sec. 11 of the L. A. Act, so also on the ground that, the application is not filed within three months from the date of award of the Reference Court.

2. The person who had filed reference U/Sec. 18 of the L. A. Act for trees and well is part of award of which petitioners are claiming compensation. According to the learned counsel, the petitioners are similarly situated and the same amount of compensation as agreed by the State in reference filed by one of such beneficiary ought to have been paid to petitioners. Even as per the valuation made by respondents in respect of well and trees, no award has been passed.

3. Mr. Dande, the learned counsel submits that, in respect of well and trees no award has been passed. When no award has been passed, Reference U/Sec. 18 of the L. A. Act itself is not tenable. In view of that, no question arises resorting to Sec. 28-A of the L. A. Act. Whatever amount has been valued for well and trees, the same has been paid.

4. The learned A. G. P. also adopts arguments of Mr. Dande, the learned counsel for the respondent No. 4.

5. If the petitioners had filed an application U/Sec. 28-A of the L. A. Act and the claim of petitioners is negatived, certainly petitioners had remedy U/Sec. 28-A(3) of the L. A. Act, which the petitioners had failed to avail, instead had directly approached this Court invoking writ jurisdiction.

6. The learned counsel for respective parties could not point out any award being passed in respect of well and trees. The consent award in respect of land is on record. In absence of any award U/Sec. 11 of the L. A. Act or under the relevant provision, the Reference U/Sec. 18 of the L. A. Act itself would not be tenable. Be that as it may, the valuation claimed is in respect of trees and well. The said valuation would be different depending upon age of the trees, etc. It is not on record as to what was valuation made in the compromise between State and another claimant in respect of well and trees. Considering above, the order of the authority rejecting the application U/Sec. 28-A of the L. A. Act cannot be faulted with.

7. It is also a matter of record that, well in lands of some of the petitioners and the trees in respect of some of the petitioners was subject matter of acquisition. The respondents were under

obligation to pay the compensation to the petitioners in respect of the same. It is submitted by the learned counsel for the M. I. D. C. that as per the valuation made (page No. 146 and 147) the compensation is paid to petitioners. The said fact is disputed by the learned counsel for petitioners.

8. In case the valuation of the well and trees as determined (page Nos. 146-147) along with statutory benefits as applicable is not paid to petitioners, then the respondents shall make payment of the same to petitioners expeditiously and preferably within a period of six (6) months from today. The writ petition accordingly is disposed of with aforesaid observations and direction. Rule is discharged. No costs.

[K. K. SONAWANE, J.]

[S. V. GANGAPURWALA, J.]