

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11251 OF 2014

Shri Ramchandra Sadashiv Shelke and others. ... Petitioners.
V/s.
Ld.District Collector of Kolhapur and others. ... Respondents.

Manoj A. Patil for the petitioner.
V.S.Gokhale, AGP for respondent Nos.1 to 3.

CORAM : A.S. OKA AND C.V.BHADANG, JJ

DATED : 14th January 2016.

PC. :

Heard learned counsel appearing for the petitioner and the learned A.G.P. for the respondents.

2. One of the three substantive prayers made in this petition is for modification of the award dated 25th May 2001 under section 11 of the Land Acquisition Act, 1894 (for short “said Act”) made by the second respondent in respect of the land bearing Gat No.102 of village- Padsali, Taluka- Radhanagari, District Kolhapur. A notification under sub-section (1) of section 4 of the said Act dated 15th January 1998 was published in the Government Gazette on 29th January 1998. The present petitioners claim to have purchased the said land by a sale-deed dated 26th May 1998. The award shows that, in fact, the notification published under section 4(1) of the said Act in the Government Gazette on 29th January 1998 was

also published in two local newspapers on 23rd and 24th January 1998. These petitioners are the purchasers of the said land after the publication of the notification under section 4(1) of the said Act. The grievance made in this petition is that though the draft award under section 11, showed that the petitioners are entitled to compensation in respect of the said land, in the final award dated 25th May 2001, the names of the petitioners do not appear and, therefore, they are not entitled to receive compensation. Prayer (b) is for modification of the said award by incorporating the names of the petitioners as beneficiaries under the award. Prayer (a) is for challenging the order dated 7th January 2013 passed by the Sub-Divisional Officer, Radhanagari by which the application made by the petitioners for the modification of the award has been rejected.

3. The submission of the learned counsel appearing for the petitioners is that under the judgment and decree of the Civil Court in Regular Civil Suit No.919/2001, the sale-deed by which the said land was purchased by the petitioners was declared as legal and valid. The submission is that the order passed under the Maharashtra Land Revenue Code, 1966 on 11th May 2001 of deleting the names of the petitioners from the revenue record is illegal. The submission is that on 21st August 2001, an ante-dated award was made without incorporating the names of the petitioners as beneficiaries to receive the compensation. The submission is that no authority has taken cognizance of the grievance made by the petitioners and, as a result of their failure, the petitioners would not be entitled to rehabilitation.

4. We have carefully considered the submissions. Under the first proviso to sub-section (1) of section 11 of the said Act, no award can be made by the Collector without previous approval of the of the appropriate government or of such officer of the appropriate government who is authorized in that behalf. Therefore, in our view, the petitioners cannot rely upon the draft award as it is not an award in the eyes of law.

5. As far as the the said Act is concerned, it is a complete code by itself. The petitioners could have applied for a reference either under section 18 or section 30 of the said Act. This was the only remedy available to the petitioners to raise an objection to the award. The petitioners have not done that. It cannot be said that the failure to mention the names of the petitioners in the award as the persons entitled to receive compensation under the said award is a clerical or arithmetical mistake in the award. Hence, the award could not have been modified. Therefore, we find that the impugned order dated 7th January 2013 is rightly passed rejecting the application made by the petitioners for incorporating their names in the award.

6. More importantly, the petitioners have purchased the said land under a sale-deed after the publication of the notification under section 4(1) of the said Act in the Government Gazette and, therefore, the petitioners have purchased the land with the notice of the acquisition proceedings.

7. The finding of the civil Court is only as regards the legality and validity of the sale-deed. Finding of the civil Court has nothing to do with the legality or validity of the award.

8. Hence, no case is made out by the petitioners for interference under Article 226 of the Constitution of India. The petition is, thus, dismissed.

(C.V. BHADANG, J)

(A.S.OKA, J)