

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3955 OF 2015

Smt. Surekha Shailendra Nitave
and others.

..Petitioners

Versus

The State of Maharashtra & Ors.

..Respondents

WITH
WRIT PETITION NO.3953 OF 2015
WITH
WRIT PETITION NO.3954 OF 2015
WITH
WRIT PETITION NO.3956 OF 2015
WITH
WRIT PETITION NO.3957 OF 2015
WITH
WRIT PETITION NO.4321 OF 2015

....

Mr. Suresh M. Kamble, Advocate for the Petitioners.
Mr. S.D. Rairikar, AGP, for the Respondents-State.

....

CORAM : R. G. KETKAR, J.

DATE : 21st MARCH, 2016

P.C.

1. Writ Petition Nos.3955/2015, 3957/2016 and 4321/2015 are on today's board. Writ Petition Nos.3953/2015, 3954/2015 and 3956/2015 are not on board. At the request and by consent of parties, they are taken on board.

2. Heard Mr.Suresh Kamble, learned Counsel for the petitioners and Mr. S.D. Rairikar, learned AGP for the respondents in all the petitions at length.

3. By these petitions under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 19.11.2014 passed by learned Civil Judge, Senior Division, Kolhapur in land reference. By these orders, the learned trial Judge rejected the applications made by the petitioners, hereinafter referred to as the claimants for appointment of Court Commissioner for examining the quality of the soil of the acquired lands.

4. Mr. Kamble submitted that the Special Land Acquisition Officer has made award. However, inadequate compensation was given to the claimants. The claimants, therefore, made reference under Section 18 of the Land Acquisition Act, 1894 (for short, 'Act'). During pendency of these references, applications are made for appointment of the Court Commissioner for examining the quality of soil of the acquired lands. He submitted that the burden is on the claimants to establish that the land acquired was capable of fetching higher

market value. He submitted that in para-3 of the impugned order, learned trial Judge observed that the market value of the acquired land is to be determined on the basis of comparable sale instances. Similarly situated lands are required to be examined with reference to the crops taken therein, water facility, proximity to the road and geographical situation of the land are the important facts to be taken into consideration. He submitted that insofar as the acquisition of other lands is concerned, S.L.A.O. has awarded the compensation considering the quality of those lands. However, as far as the petitioners are concerned, S.L.A.O. has not applied the same yardstick while awarding the compensation. In order to substantiate the petitioners' claim about fertility and quality of the acquired land, it is absolutely necessary to appoint the Court Commissioner. In support of his submissions, he relied upon Sections 9 and 23 of the Act as also decision of Apex Court in the case of **Special Deputy Collector and another vs. Kurra Sambasiva Rao & Ors., 1997 (6) SCC 41.**

5. I have considered the submissions advanced by Mr. Kamble. I have also perused the material on record.

6. Section 9 of the Act reads thus :

“9. Notice to persons interested. - (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensations for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place or business and [registered under sections 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898)].

. Perusal of sub-section (2) of Section 9 shows that the Collector has to issue notice requiring the persons to state nature of their respective interests in the land and the amount **and particulars of their claim to compensation for such interests, and their objections** (if any) to the measurements made under section 8. *[Emphasis supplied]*

7. While resisting Writ Petition No.3957/2015, Shantaram S. Sangade, Tahsildar, Kagal has made affidavit dated 28.7.2015. In para-7 of the affidavit, it is asserted that the petitioner therein had chances to submit say regarding the claims of compensation during enquiry under Section 9(3)(4) of the Act.

8. Apart from that Section 23 of the Act lays down that the factors to be considered in determining the amount of compensation. Section 23(1) of the Act reads thus :

“23. Matters to be considered on determining compensation. - (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-

first, the market value of the land at the date of the publication of the [notification under section 4, sub-section (1)];

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

[(1-A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation. – In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.]”

9. While rejecting the application, learned trial Judge have observed in para-3 that examination of the soil through expert is not the criteria for determining adequate compensation, nor does a proper method to determine the quality and fertility of the acquired land. Section 23 of the Act lays down the factors to be considered for determining the compensation.

10. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the applications. Hence, Writ petitions are dismissed. It is, however, expressly made clear that while deciding the reference, the learned trial Judge will deal with all contentions advanced as also uninfluenced by the observations made in the impugned order as also in this order. Order accordingly.

(R. G. KETKAR, J.)