

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11375 OF 2015

Mr.Manoj Arvind Vaidya .. Petitioner

vs.

Mr.Niranjan Ramesh Shah & Ors. .. Respondents

Mr.S.S.Kulkarni for the petitioner

Mr.Kiran Bhagalia for the respondent nos.1 to 4

Mr.Sidheshwar B. Kalel, A.G.P. for the respondent nos.5

CORAM : K. K. TATED, J.
DATE : SEPTEMBER 22, 2016

PC.:

1 Heard the learned counsel for the parties.

2 By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 29.8.2015 passed by learned District and Sessions Judge, Nashik at Nashik in Civil Appeal No.294 of 2015 arising from the order dated 17.8.2015 passed by learned Tahsildar at Nashik under the Maharashtra Land Requisition Act, 1948 (hereinafter referred to as “the said Act”) declining to grant any stay.

3 In the present proceeding, the State of Maharashtra requisites the land admeasuring 1821.31 sq.mtrs. from C.S.No.743/A/1/3 for D.P. Road. The possession was taken from the respondents. Thereafter the

learned Tahsildar decided the rental compensation payable to the respondents for the said requisition of the land. The same was disputed by the petitioner by preferring application under section 5 of the Maharashtra Land Requisition Act, 1948. That application was rejected by the Tahsildar on the ground that the possession of the land was taken from the respondent. He further stated that the respondent placed on record sale deed dated 30.9.2009 by which the respondents purchased the said land.

4 Being aggrieved by the said order, the petitioner preferred Appeal before the District and Sessions Judge at Nashik in Civil Appeal No.294 of 2015 and moved for ad-interim relief for stay of the order passed by Tahsildar. That request of the petitioner was rejected by the appellate court by order dated 29.8.2015. Hence, the present Writ Petition.

5 The learned counsel for the petitioner submits that the Tahsildar as well as the District Court failed to consider the fact that the dispute about ownership in respect of the suit property is pending in Special Civil Suit No.253 of 2011. He further submits that as per section 8 of the said Act, Tahsildar has to decide the issue about the eligibility for rental compensation. He submits that the learned Tahsildar by impugned order dated 17.8.2015 rejected their application only on the ground that Special Civil Suit No.253 of 2011 is pending in respect of the suit property. Hence, the said order is contrary to law.

6 The learned Counsel for the petitioner further submits that even the Appellate court i.e. the District Court Nasik failed to consider the fact that if amount is withdrawn by the respondent then nothing will survive in the Appeal. He submits that the appellate court failed to

consider the fact that provisions of Land Acquisition Act are applicable in the present proceeding. He submits that whenever there is a dispute about the entitlement of compensation, matter required to be referred to the Reference Court as per section 31 of the Land Acquisition Act. He submits that both the courts below failed to consider the fact that the petitioner disputed the entitlement of the respondent for rental compensation. Hence, pending the hearing and final disposal of the Civil Appeal No.294 of 2015 this Hon'ble Court be pleased to restrain the authority for disbursing the amount in favour of the respondent. He submits that if order is not passed, irreparable loss will be caused to the petitioner.

7 On the other hand the learned counsel for the respondent vehemently opposed the present Writ Petition. She submits that learned Tahsildar considered the fact that respondents are owner of the suit property as per sale deed dated 30.9.2009. Apart from that the possession was taken by the authority from the respondents. Hence, as per the said Act, petitioner is entitled for rental compensation. She further submits that section 31 of the Land Acquisition Act is not applicable in the fact and circumstances of the present case. She submits that provisions of Land Acquisition Act are applicable only for determining the amount of compensation. Hence, there is no substance in the present Writ Petition and same is required to be rejected.

8 I have heard both the sides at length. It is to be noted that there is no dispute that the possession of suit land was taken by the authority from the respondent. Even the Tahsildar in his order dated 17.8.2015 relied on the sale deed dated 30.9.2009 which shows ownership of the respondents. Apart from that the petitioner already filed Special Civil

Suit No. 253 of 2011 which is pending for hearing and final disposal on its own merits.

9 Here, the question is about the payment of rental compensation as per the said Act and not compensation of land as per the Land Acquisition Act. Apart from that by this petition, petitioner is challenging the interlocutory order passed by appellate court. The appeal is pending for hearing on its own merits. Considering these facts, I do not find any substance in the present Writ Petition and same stands rejected.

10 It is made clear that whatever observation is made by this court for deciding the present Writ Petition should not come in the way at the time of deciding the Appeal on its own merits.

11 The learned counsel for the petitioner submits that interim protection granted by this court on 5.10.2015 be continued for some period as the petitioner wants to file Appeal before the Apex Court, Whereas the learned counsel for the respondent vehemently opposed for stay.

12 Considering the fact that interim protection granted by this court on 5.10.2015, I am of the opinion that same be continued for further six weeks. Hence, ad-interim protection granted by this court on 5.10.2015 to continue for six weeks.

13 Petition rejected. No order as to costs.

JUDGE