

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

C.A.W. NO.906/2016 IN WRIT PETITION NO. 4722/2014 (D)
(SUNITA BHAURAO CHIKANKAR VERSUS W.C.L., NAGPUR)

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

Court's or Judge's orders

Shri O.W. Gupta and Shri N.G. Solao, counsel for the applicant-petitioner.
Shri N.R. Rode, A.G.P. for the R-4.

CORAM : SMT.VASANTI A. NAIK AND
V.M. DESHPANDE, JJ.

DATE : APRIL 20, 2016.

By this civil application, the applicant seeks a direction to the respondents to allow the applicant-petitioner to remove the standing trees and other fixtures from the acquired agricultural field, before entering into an agreement for payment of compensation for the acquired land as per Government Resolution dated 22.08.2012. The applicant-petitioner seeks a direction to the respondent to pay the escalation charges and solatium on the proposed amount as per the provisions of Coal Bearing Areas (Acquisition and Development) Act, 1957. The applicant-petitioner seeks a direction to deduct only the amount of the cost of land earlier paid to the applicant-petitioner from the compensation that would be payable in terms of the judgment dated 08.06.2015 and not the payments made against the price of trees, well and fixtures. The applicant-petitioner seeks a declaration that the land of the applicant-petitioner is irrigated land and, therefore, the respondents should pay the compensation to the applicant-petitioner by considering the land to be irrigated land and not dry crop land.

We find on a reading of the judgment dated 08.06.2015, by which two similar writ petitions were decided, that the relief sought in the said writ petitions was only for a direction to the respondents to pay the compensation to the petitioners as per the Government Resolution dated 22.08.2012. Since the compensation was paid to others on the basis of the said Government Resolution and the same was denied to the petitioners, the writ petitions were disposed of after holding that the petitioners are also entitled to similar compensation, as paid to the other landholders on the basis of the Government Resolution dated 22.08.2012. The issue involved in the writ petitions was small and simple. By the said writ petitions, the petitioners had only sought the implementation of the Government Resolution.

However, by this application, the applicant-petitioner seeks a decision on the issue whether the land of the petitioner is irrigated land or dry crop land and whether the petitioner would be entitled to compensation by considering his land to be irrigated. Also, the petitioner has sought a direction against the respondent that the petitioner should be permitted to remove the standing trees and fixtures from the acquired land, if the petitioner is not held to be entitled for compensation towards the standing trees, well and structures. The petitioner is also seeking escalation charges and solatium on the proposed amount that is payable to the applicant-petitioner in view of the provisions of Coal Bearing Areas (Acquisition and Development) Act, 1957, by this civil application.

On a reading of the civil application and the prayers made therein, we find that the scope of the issues in the civil application is much enlarged than the scope of the issues in the original writ petition. In the original petition, this Court was only required to decide whether the petitioner was entitled to the benefit of the Government Resolution that provides a

particular rate of compensation for three different types of land. After the relief stands granted in favour of the petitioner, by this civil application, the applicant-petitioner is seeking to enhance the scope of the issues in the original writ petition and has sought certain directions which cannot be issued unless the factual issues are adjudicated upon. It would not be proper for this Court to decide the factual issues like, whether the land of the applicant-petitioner is irrigated land or dry crop land and whether the applicant-petitioner would be entitled to remove the trees and other fixtures from the land if the compensation is not paid to the applicant-petitioner, etc. Such issues were not raised by the applicant-petitioner in the original writ petition. It is not in dispute that the other petitioners whose petition was decided by the same order have entered into an agreement with the respondent and have secured the compensation. The applicant-petitioner is also entitled to enter into an agreement with the respondent under protest and raise the issues that are sought to be raised in this civil application, in appropriate proceedings. In stead of resorting to the appropriate remedy, the applicant-petitioner has approached this Court seeking the directions which cannot be granted on a civil application in a decided writ petition, specially when the issues involved in this civil application were not the issues before the Court in the original writ petition.

In view of the aforesaid, we dismiss the civil application.

The petitioner is free to take up appropriate proceedings.

JUDGE

JUDGE