

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3616 OF 2015

(Raju Narayanrao Gaddinkar and others vs. Divisional Commissioner and others)

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

Shri A.S. Kilor, Advocate for petitioners.
Shri A.S. Fulzele, Assistant Government Pleader for
respondent nos.1 to 4.
Shri S.G. Jagtap, Advocate for respondent no.5.

CORAM : B.P. DHARMADHIKARI AND
P.N. DESHMUKH, JJ.

DATED : MARCH 30, 2016

Heard for sometime.

Perused communication dated 18/11/2015
sent by Executive Engineer, V.I.D.C. to Collector,
Amravati.

The only objection raised is that as joint
measurement was not conducted in presence of
representative of V.I.D.C., the facts narrated therein
are not binding upon it.

Adv. Kilor for petitioners submits that
measurement has been conducted by Government
Officer, i.e. Taluka Inspector of Land Records and
properties of petitioners find mention therein.
Though other persons whose names appear in that list

have been paid, only 54 persons including petitioners are not being paid. He, therefore, complains that this is nothing, but discrimination and also harassment.

Adv. Jagtap for respondent no.5 submits that if this Court finds that petitioners had houses there, only for structures, compensation can be paid. According to him, as the houses are admittedly constructed on encroached Government land, for land, no compensation can be paid.

Shri Fulzele, learned Assistant Government Pleader adopts the same line of arguments. He points out that several houses are found to be encroachment by T.I.L.R.

In writ jurisdiction, we cannot go into this disputed issue at this juncture. Perusal of communication dated 18/11/2015 shows that list of 46 encroached houses was submitted on 6/7/2009 and further list of 56 encroached houses was submitted on 7/7/2009. Similarly, list of 71 encroached houses was submitted on 6/10/2009 and thereafter a list of 112 has been submitted on 15/5/2010. These lists have been submitted by Deputy Superintendent, City Survey, Chandur Railway. If there was joint survey, list of all properties could have been prepared and formed part of only one report. Total 285 properties thus have surfaced as encroachments.

Adv. Kilor submits that because in these lists certain names were found repeated, final list of only 151 encroached houses was prepared. The V.I.D.C. has accepted existence of 97 properties and paid for it. However, existence of remaining 54 houses is not being accepted. He contends that accepting very same logic, compensation for remaining 54 houses also needs to be released.

The mode and manner of submitting list of encroached properties in instalments, later finding duplication therein and, therefore, resulting in curtailment of such list are all admitted facts. This, therefore, shows that list prepared by T.I.L.R. could not have been and cannot be acted upon without due verification. If State Government and VIDC have paid compensation for 97 properties, we assume that it is after due verification.

Thus, only question is now in relation to 54 allegedly encroached properties. The petitioners can submit necessary documents like payment of property tax, etc. to Collector, Amravati and prove existence of encroached properties. If petitioners submit their documents within four weeks from today, the said Authority shall arrange for its verification. During verification, necessary opportunity shall be given to the petitioners as also to

respondent no.5. After due verification, respondents can finalise list of properties in relation to which compensation can be paid. If such list is finalised, the petitioners whose names figure therein, shall be paid their due compensation within further three months.

Acceptance of such compensation and participation in this exercise shall not preclude petitioners from challenging correctness of the exercise undertaken.

With above directions, we partly allow the petition and dispose it of. No costs.

JUDGE

JUDGE

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