

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

M.C.A. NO. 873/2016 IN WRIT PETITION NO. 1358/2016 (D)

(PRABHAKAR KASHINATH SHENDE & OTHERS **VERSUS** THE STATE OF MAHARASHTRA & OTHERS)

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

Court's or Judge's orders

Shri I.G. Meshram, counsel for the applicants.
Shri V.P. Maldhure, A.G.P. for the non-applicant nos.1 to 3.
Shri R.M. Bhangde, counsel for the non-applicant no.4.
Shri K.C. Deogade, counsel for the non-applicant no.5.

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

DATE : SEPTEMBER 2, 2016.

By this review application, the applicants-original petitioners seek a review of the order dated 03.05.2016 in Writ Petition No.1358 of 2016.

Since the review application is filed by making a reference to the order passed by the Hon'ble Supreme Court on 11.07.2016, though normally we would have dismissed the application with an extremely short order, we are inclined to make some observations.

Writ Petition No.1358 of 2016 was filed by the applicants-petitioners for a declaration that the award passed by the Special Land Acquisition Officer in the land acquisition proceedings pertaining to the acquisition of the land of the petitioners on 16.02.2009 had lapsed in view of the provisions of Section 24(2) of the Right To Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. That was the only prayer made in the writ petition. The whole petition was mainly based on the applicability of the provisions of Section 24(2) of the Act of

2013, as could be seen from prayer clause (i) of the petition. The subsequent prayers made by the petitioners are consequential prayers and would be governed by the relief in prayer clause (i).

It was argued before this Court by the counsel for the petitioners on 03.05.2016 that despite the passing of the award by the Special Land Acquisition Officer on 16.02.2009, the compensation was not paid to the petitioners and the possession of the land was also not secured by the State Government. The arguments were advanced only in consonance with the prayer made in the writ petition, i.e. the challenge to the acquisition proceedings in view of the provisions of Section 24(2) of the Act of 2013. We had rendered the order dated 03.05.2016 in the open Court, in the presence of the counsel for each of the parties to the petition. We distinctly remember that on 03.05.2016 no ground, other than the aforesaid two grounds, of which we have made a mention in our order dated 03.05.2016, was canvassed. However, we find that a statement was made by the counsel for the petitioners before the Hon'ble Supreme Court, that the counsel for the petitioners had urged before the High Court that the acquisition of the land was for the construction of Nagpur Airport and the land was being used after considerable lapse of time, for Nagpur Metro.

We are afraid that the statement made by the learned counsel for the petitioners before the Hon'ble Supreme Court is factually incorrect. No such submission was made before us by the counsel for the petitioners on 03.05.2016. Had such a submission been made, since the order was dictated in the open Court, the counsel for the

petitioners could have risen up to inform the Court that one more point was argued and this Court may include the same in the submissions made on behalf of the petitioners. However, this was not done as the petitioners' counsel had not argued the point of which a mention was made before the Hon'ble Supreme Court, when the matter came up before the Hon'ble Supreme Court on 11.07.2016. Even otherwise, as per the settled position of the law, if a submission is made before a particular Court or Forum and the submission does not find place in the judgment that is not rendered in the open Court, it would be necessary for the party to move the same Court or Forum before which the submission was made and make a grievance about the non-inclusion of the submission in the order. It would be worthwhile to refer to Paragraph 61 of the judgment of the Hon'ble Supreme Court, reported in **(2003) 2 SCC 111** (*Bhavnagar University Versus Palitana Sugar Mill (P) Ltd. & Others*), in this regard. Since the submission as the one made before the Hon'ble Supreme Court, was not made before this Court, the counsel for the petitioners did not make a grievance before this Court at the time of rendering of the order, that is sought to be reviewed, in the open Court or even thereafter, that an important and relevant submission made by the counsel before the Court is not incorporated in the order and is not considered by the Court.

This is not the first case of the nature like the one in hand. We are now regularly coming across such matters in review applications wherein a reference is made to the orders of the Hon'ble Supreme Court, before which a statement is made by the counsel for the petitioners that a relevant

submission, though was made before the High Court, is not considered. If such a statement is factually correct, we would be glad to redress the grievance of the concerned party, if made before us, at the time of rendering the judgment or the order or within a short time thereafter. We, however, find that the well accepted procedure that needs to be followed, as per the judgments of the Hon'ble Supreme Court, is not being followed and a statement is casually made before the Hon'ble Supreme Court by the parties approaching the Supreme Court that a particular submission that was made before the High Court is not incorporated in the order. We do not appreciate the conduct of such parties that indulge in making incorrect statements before the Superior Courts as the Superior Courts would not be in a position to gauge the correctness or otherwise of the statement. It is well settled that even if several grounds are raised in a petition and if some of them are not argued, the ones that are not argued are deemed to have been given up. It would be necessary to refer to the judgment of the Hon'ble Supreme Court reported in **(2008) 2 SCC 95** (*Mohd. Akram Ansari Versus Chief Election Officer & Others* **WITH** *Naved Yar Khan Versus Haroon Yusuf & Another*), in this regard.

We reiterate that the point that the purpose of acquisition of the land of the petitioners was different from the purpose for which it is sought to be used now, was not argued before us on 03.05.2016. Though we are not hearing the matter on merits, the learned counsel for the applicants-original petitioners intends to place some judgments of the Hon'ble Supreme Court on record for proving the applicants' case on merits. We accept the judgments on record but, we

are not dealing with the same as the submission made on behalf of the applicants before the Hon'ble Supreme Court was not made before us on 03.05.2016. The Hon'ble Supreme Court has observed that it would be open for the applicants to file a review petition before the High Court if the point that the acquisition was for one purpose and the land was being utilized for another, was argued before this Court. Since this point was not argued before us on 03.05.2016, we are not inclined to entertain the review application. Though we have placed the judgments of the Hon'ble Supreme Court in the cases of *Kedar Nath Yadav Versus State of West Bengal & others* and *Savitri Devi Versus State of Uttar Pradesh & Others*, on record, we decline to consider them, as in our considered view, an absolutely incorrect statement was made before the Hon'ble Supreme Court on 11.07.2016 that a particular point was argued before this Court and this Court has not dealt with same in the order dated 03.05.2016.

In the circumstances of the case, we dismiss the review application with costs.

JUDGE

JUDGE

APTE

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed Order.

Uploaded by: Rohit D. Apte.

Uploaded on :14.09.2016.