

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 5448 OF 2016

The State of Maharashtra
through Special Land Acquisition Officer & Anr. ... Petitioners
Vs.
Laxman Gopal Taware (Decd.)
through LRs. & Ors. ... Respondents

Mr. Asif I.I. Patel, Additional Assistant Government Pleader a/w. Ms. Jyoti Jadhav for the petitioners/State.
Mr. Sachin K. Hande, Advocate for respondent nos. 2 to 5 and 7.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **5th July, 2017.**

P.C.:

Pursuant to the order dated 12.4.2017, time was given to the parties to sit together and arrive at a particular amount, as there is a dispute in respect of arithmetical calculation in the amount of compensation under the Land Acquisition act. On 12.4.2017, the matter was fixed on 4.7.2017 to enable both the parties to sit together.

2. Today, the Government Pleader is not present. The learned Counsel for the respondent nos. 2 to 5 and 7 informs that he has sent a letter to the petitioner on 9.6.2017, however, he did not receive

any response. It appears that the Government is not interested in following the order passed by this Court. Hence, the Petition is dismissed in default.

At 3 p.m.

3. The Additional Assistant Government Pleader appeared at this stage and requested for restoration of the Writ Petition, which was dismissed in the morning session.

4. At the request of learned AGP, the Writ Petition is restored to its file and learned AGP is called upon to argue the matter.

5. Rule. Rule made returnable forthwith. By consent, Writ Petition is heard finally and decided at the stage of admission.

6. In this Writ Petition, the petitioner/Government of Maharashtra, under Article 227 of the Constitution of India, challenges the judgment and order dated 31st August, 2015 passed by the learned District Judge, Thane in Regular Darkhast No. 2 of 2003 and the order dated 30th January, 2016 passed by the District Judge below Exhibit 1 in Miscellaneous Application No. 312 of 2015. The issue

involved in this Petition is restricted to arithmetical calculation of the amount of award. The award passed by Special Land Acquisition Officer was challenged before the Reference Court, who enhanced the amount of compensation and directed the State to pay the enhanced amount. The said order of the Reference Court was challenged by the State in First Appeal and this Court in First Appeal No. 312 of 2005 directed the State to deposit the enhanced amount and maintained the order passed by the Reference Court and First Appeal was partly allowed. Pursuant to which, in the Executing Court, as per the calculation of the respondent/ decreeholder, the amount of compensation was calculated at Rs.1,29,63,776/- and as per the calculation of the State, the amount was Rs.1,13,10,858/-. The said undisputed amount is admittedly paid by the State and received by the respondent/decreed holder. Thus, as per the decree holder, an amount of Rs.16,52,918/- was to be paid in the decree. However, the respondents, in between, in the said Darkhast proceedings filed Miscellaneous Application No. 312 of 2015 thereby giving their calculation that the enhanced amount of compensation was Rs.2,42,74,521/-. The said amount is disputed by the State and the State produced the valuation done by the expert, i.e., Class-I Town Planning Valuation Expert, District Thane and he confirmed that

the amount of compensation due and liable was Rs.1,13,10,858/-.

7. It is contended by learned AGP that Executing Court without taking into account the said report of the expert valuer passed the order against the Government and in favour of the respondent/decreed holder and directed the State to pay total amount of Rs.2,42,74,521/-. The learned AGP has submitted that by the order dated 10th June, 2016 this Court has directed both the parties to produce the valuation. However, till today, the respondents have not produced the calculation as per their valuation and the Government has produced the valuation on 16th June, 2016. This Court, by taking note of this history, has by order dated 12th April, 2017 directed both the parties to sit together and arrive at a particular amount to which the respondent is entitled to. However, after three months, it appears that no steps are taken by the Government. The matter cannot be kept pending in respect of arithmetical calculations in this Court and after considering the submissions made by the learned counsel for the petitioner and the respondent No. 2 to 5 and 7, I think it is appropriate for both the parties to approach the Executing Court where the Darkhast proceeding No. 2 of 2003 was disposed of. The impugned orders dated 31st August, 2015 and 30th

January, 2016 are hereby set aside. Regular Darkhast is taken on record. Both the parties to appear before the Executing Court on 12th July, 2017 at 11 a.m. and submit their calculations. The learned Judge of the Executing Court, after going through the calculations and with the assistance of the expert, which the Court think it appropriate, may pass the order on merits. It is to be decided till 15th September, 2017. All the contentions are kept open. Parties to cooperate the Court.

8. Rule is made absolute in terms of prayer clause (b) of the Petition.

(MRIDULA BHATKAR, J.)