

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2486 OF 2016
WITH
WRIT PETITION NO. 3002 OF 2016

Sunita Dinakarrao Kachare. ... Petitioner.
V/s.
NTPC Limited and others. ... Respondents.

N.P.Mule with Girish Badiger for the petitioner.
Mahadeo Choudhari for respondent No.1.
A.B.Vagyani, Govt.Pleader with Mrs.M.P.Thakur, AGP for the State.
Mrs.S.V.Bharucha with Dhanesh Shah for respondent No.4.

**CORAM : DR.MANJULA CHELLUR, C.J.
AND N.M. JAMDAR, J.**

DATE : 26th July 2017.

P.C. :

The petitioner in both the petitions is before us challenging the order dated 14th November 2011 passed by the Tehsildar who has permitted laying of water pipeline through the lands of the petitioner where the petitioner alleged to have grown valuable fruit trees like Pomegranate, Teakwood and Neem trees.

2. In Writ Petition No.2486/2016, the petitioner has claimed cutting of 700 Pomegranate trees, 16 Teakwood trees and 5 Neem trees. In Writ Petition No.3002/2016, the petitioner has claimed cutting of 984 Banana trees, 49 Teakwood trees and 5 Neem trees. Except prayer (b) where the petitioner has challenged the order dated 14th November 2011, all other prayers are pertaining to the payment of compensation and interest accrued on such compensation. Apparently, there is no acquisition of land either under the Land Acquisition Act, 1894 or under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Apparently, the surface of the land as such was not used for any construction. In order to lay pipeline, the land of the petitioner seems to have been dug and pipeline is put to a certain width and depth. Whether the entire pipeline in one line passing through the lands of the petitioner would make the land unusable destroying the fruit orchard is a factual situation which has to be ascertained. Apart from that, whether the very laying of the pipeline will obstruct any growth of trees on the land in question forever is also to be assessed. Unless these facts are assessed, one cannot conclude in a petition under Article 226 that the petitioner is entitled to compensation.

3. Learned counsel for the petitioner submits that in terms of direction of Tehsildar, some amount has to be deposited before

commencing the work of laying of pipeline and the same was not complied with. This petition is filed in the year 2016 challenging the order passed on 14th November 2011. As on today, the entire work of laying of the pipeline is completed. If the order was passed in 2011, the petitioner has to blame herself for not approaching the Court at the relevant point of time. So far as alleged damage to the existing fruit trees etc. and also the fact that the entire land cannot be used in future, the same has to be supported not only by oral evidence but also by documentary evidence by an expert. All this requires ascertainment of facts. There is nothing on record which can be treated as admitted fact so that we could interfere under Article 226 of the Constitution.

4. However, if the petitioner is aggrieved by the order dated 14th November 2011 passed by the Tehsildar in terms of section 49 of the Maharashtra Land Revenue Code, 1966 ("Code" for short) and if she is entitled to any general damages, she is at liberty to claim the same before appropriate forum. Under section 249 of the Code, where there is no express provision under the Code to challenge the order, an appeal shall lie from the decision or order passed by the Revenue or Survey officer to the higher officer in terms of column 1 of schedule-E under the Code.

5. In that view of the matter, we are not opining on the merits of the matter and it is left to the discretion of the petitioner either to approach the authority concerned under the Code to seek redressal of his grievances or to take appropriate proceedings including civil suit.

6 With the aforesaid observations, the writ petition is disposed of.

(N.M. JAMDAR, J.)

CHIEF JUSTICE