

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.7172 OF 2017

Akbar Ismail Shaikh.] ... Petitioner

Versus

The Deputy Collector (Acquisition No.2),]
Nashik & Ors.] ... Respondents

Mr. Shriram Kulkarni i/b Mr. Sachin Chavan for Petitioner.

Mr. P. G. Sawant, AGP for State.

Mr. Sharan Jagtiani i/b Mr. Prakash Ahuja for Respondent No.7.

**CORAM :- DR. MANJULA CHELLUR, C.J., &
G. S. KULKARNI, J.**

DATE :- 27 MARCH 2017

P. C. :-

1. The present petitioner is before us claiming to be a person having interest in the land in question by virtue of an agreement for development of the land in question. He also happens to be the Power of Attorney holder of respondent nos.5 and 6 - original owners who said to have cancelled the agreement of development as well as Power of Attorney. Apparently, two suits were filed by the very same petitioner, one being Regular Civil Suit No.244 of 2008 against the Corporation and respondent nos.5 and 6 for permanent injunction. Subsequently, another suit being Civil Suit No.796 of 2011 came to be

filed wherein the relief was for specific performance of agreement dated 16/02/2007 in respect of the subject-matter in the above Writ Petition. Apparently, no interim order of any nature came to be made in favour of the petitioner when he sought for an order of temporary injunction. An appeal came to be filed challenging the order of the Civil Court dated 04/04/2012. In Appeal from Order No.732 of 2012, learned Judge of this Court, by an order dated 27/11/2012, dismissed the appeal opining that there was no case made out *prima facie* to grant the interim relief of temporary injunction. It is observed that in in respect of a property where the consideration under agreement of development was for Rs.1.17 Crores, only Rs.1 Lakh, out of the total consideration, was paid. Having regard to all these facts, no interim relief of any nature came to be given to the petitioner and the suit is still pending.

2. When the things stood as stated above, the land in question seems to have been acquired through acquisition proceedings and the present litigation seems to be an outcome of claim by the petitioner for payment of compensation to him to be determined in respect of the subject-matter of the suit by the Land Acquisition Officer.

3. According to the petitioner, he being a person interested in the property in terms of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, '2013 Act'), the Land Acquisition Officer must decide his claim

before he takes a final call of disbursing the amount and he also contends that if there is any dispute with regard to the persons to whom the compensation is to be paid, the same has to be deposited in the Civil Court in accordance with the procedure contemplated under 2013 act. He refers to definition of 'person interested' as defined under 3(x) of the definitions, Sections, 21, 63, 64 and 77 of 2013 Act.

4. Mr. Sharan Jagtiani who appears for respondent no.7, is before this Court. As per the averments in the Writ Petition, respondent no.7 seems to have acquired title to the property in question from respondent nos.5 and 6 under a conveyance document dated 07/09/2011 subsequent to the alleged development agreement prior to the filing of Civil Suit No.796 of 2011. Mr.Jagtiani arguing for respondent no.7, contends that unless the claimant / applicant before the Special Land Acquisition Officer is opined as the person having interest in the property, the question of considering or referring the matter to the Civil Court by depositing the compensation amount for adjudication of the entitlement, would not arise.

5. As far as the material placed on record and the submissions, we notice that the petitioner is before us claiming interest in the property by virtue of a development agreement of 2007 in respect of the property in question. Respondent nos.5 and 6 are the original owners of the property who said to have entered into an agreement of development with the petitioner. Respondent nos.5 and 6 are also said to have conveyed the property in favour of respondent

no.7 before us. The Civil Suit is still pending which is to be decided after a full-fledged trial by the 3rd Civil Judge Senior Division, Nashik. As of today, there are two orders on the interim relief, one of Civil Judge Senior Division, Nashik and the order of the learned Single Judge of this Court as referred to above. Under these circumstances, definitely, the Special Land Acquisition Officer has to consider who are the persons who could be brought under the category of 'interested persons' as defined under definition 3(x) of 2013 Act. The Special Land Acquisition Officer, needless to say further, has to consider the claim as well as opposition to the said claim before he proceeds to refer the claim of the parties. He must definitely look into the provisions of definition 3(x), Sections 21, 64 and 77 of 2013 Act. According to us, it is too early for this Court to express any opinion so far as entitlement of either the petitioner or the respondents before us since the Special Land Acquisition Officer before whom all the relevant material is placed, is yet to take a final call. With these observations, the Writ Petition is disposed of.

6. All contentions of the parties are kept open.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)