

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4898 OF 2013

with

Civil Application No.3210 of 2015

Shri. Veerbasav Mahadev Shreshthi And Ors ...Petitioners

Versus

The State Of Maharashtra And Ors ...Respondents

Mr.Amit Borkar for the Petitioners.

Mrs.M.P.Thakur, AGP for the State-Respondents.

CORAM : DR. MANJULA CHELLUR, C. J., & G.S.KULKARNI, J.**DATE : FEBRUARY 27, 2017**

P. C.

1. Apparently the Petitioner is before us challenging the dismissal of application filed by the Petitioner under Section 48 of the Land Acquisition Act,1894. Apparently, there was a Writ Petition earlier when the earlier application under Section 48 of 1894 Act came to be rejected. By virtue of intervention of this Court, the said order was set aside directing the concerned Authority to consider the matter afresh. Now after an inquiry into the matter again the opinion was to dismiss Section 48

application, which is under challenge.

2. Apparently in the year 2009 a notification under Section 4(1) of 1894 Act came to be issued, followed by a notification under Section 6(1) of 1894 Act in the year 2010. In between there was an inquiry in the year 2009 and as contemplated under Section 5A of 1894 Act. The main contention of the Petitioner is that the lands taken from him on the ground of benefited zone, did not really fall within the benefited zone, since the petitioner is not getting any benefit, the petitioner's land was not in the benefited zone. This becomes a matter of fact to be verified in the inquiry at the time of conducting Section 5A inquiry before issuance of notification under Section 6(1) of 1894 Act.

3. The learned Counsel for the Petitioner submits that so far as consideration of technical reports, there is no uniformity by the authorities concerned. It is well settled that the authorities cannot sit over expert's opinion and come out with their own opinion in the place of expert or technical opinion. In the light of

technical opinion being considered, the grievance of the petitioner was rightly considered by the authorities concerned.

4. To consider the request under Section 48 of the 1894 Act, the criteria definitely cannot be that the land in question was not in benefited zone. Such consideration would be prior to Section 6 notification when an inquiry under Section 5A is contemplated. However, in the earlier order under Section 48 application and also the second order subsequent to issuance of directions by this Court in the year 2011 to consider the grievance and dispose of Section 48 application, the authority concerned has applied its mind especially to the technical reports concerned, in order to opine whether the land in question would fall within the benefited zone or not. Since, there is application of mind by the authority concerned in response to the directions given by the earlier writ petition, we are of the opinion that it is too late in the day to go back and say that the land in question is not coming within the benefited zone of the project.

5. Accordingly, the Writ Petition is disposed of.

6. As Writ Petition itself is disposed of, nothing survives in the pending Civil Application. It is accordingly disposed of.

(G.S.KULKARNI, J.)

(CHIEF JUSTICE)