

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No. 3305 OF 2012

Shri. Subhash Abaji Gite

...Petitioner

*Versus*1.The Special Land, Acquisition Officer,
Jal Vidyut Project, Nashik And Ors

...Respondents

*Mr.S.G.Rajput with Mr.Sachin Gite, for the Petitioners.**Mr.P.P. Kakade, AGP for the Respondent Nos.1 to 4 - State.*

**CORAM :- DR. MANJULA CHELLUR, C.J., &
G. S. KULKARNI, J.****DATE:- FEBRUARY 7, 2017**

P.C.:

1. Heard the learned Counsel for the petitioner as well as the learned A.G.P for the State-Respondents.

2. The undisputed facts in the present case are as under:-

The land at Gat No.164 admeasuring 2 H. 16 R + 59 R Pot Kharaba land at Village Khadangali, Dist.Nashik came to be acquired for the purpose of 'Mendhi Percolation Tank' project. By negotiations with Respondent No.3- Irrigation Department, Mantralaya, Mumbai, this land came to be handed over to Respondent No.3 by the petitioner way back in the year 1987. Thereafter, the acquisition proceedings, after a gap of two years seems to have commenced only when there was a requisition from Respondent No.3 to the Collector, Nashik on 31.1.1989 for acquiring the land of the

petitioner. Thereafter, the District Inspector of Land Records, Nashik conducted a joint inspection on 12.10.1989 so far as the present land in question. The question of making or assessing valuation for 1400 trees did not arise according to the Respondents-Government since the joint measurement report did not disclose existence of any tree.

3. Apparently, in the year 2002, a Writ Petition came to be filed bearing Writ Petition No.4564 of 2002 which came to be withdrawn with liberty to the petitioner to apply to the State for passing supplementary award so far as assessment of compensation in respect of Nilgiri trees said to be in existence on the land in question. Thereafter, the orders at page 58 of the Petition, came to be passed by the Special Land Acquisition Officer wherein he admits handing over possession of the land by the petitioner to Respondent No.3 way back in the year 1987, but initiation of acquisition proceedings was commenced in the year 1989 after a request from Respondent No.3-Department. In the year 1987 itself, the land was handed over to the Irrigation Department. In assessing the compensation in respect of 1400 Nilgiri trees, the basis or foundation would be the fact of presence / existence of those trees on the date of handing over possession of the land to Respondent No.3 on 17 July 1987.

4. The proceedings under the land acquisition came to be initiated two years after handing over of the land, only in the year 1989. Apparently, there is no mention of trees in the Award and no order of compensation is passed for the loss of 1400 trees. It is also

noticed that in 'Exhibit I', the order dated 10 July 2004 and even in the revenue record i.e. 7/12 extract, there is no mention of existence of trees (Nilgiris). Apparently, no such record is forthcoming before us. On perusal of paragraph 7 of the affidavit of Special Land Acquisition Officer Mr.V.N.Ahire, he only records an objection put in by the owner of the land with regard to existence of 1400 trees, but there is no categorical opinion with regard to existence of trees. In that view of the matter, we cannot inquire into details by recording evidence with regard to existence of trees or otherwise in the Writ Petition to give a positive writ of mandamus directing the Authorities to make assessment of compensation so far as Nilgiri trees. We also make it clear that if there is any other forum, where factual issue can be established, since at this stage there is no admission with regard to existence of trees, the petitioner can reach that forum seeking damages against the concerned Authorities. With these observations, the Writ Petition is disposed of.

5. It is needless to say that if the petitioner approaches any other forum for compensation in the form of damages, none of the observations made in this order would come in the way of deciding the same on merits.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)