

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9641 OF 2015

Urmish Manharlal Udani. ... Petitioner.
V/s.
The Collector, Raigad and others. ... Respondents.

A.S.Rajadhyaksha, Senior Advocate with Akhilesh Dubey i/b.
Law Counsellors for the petitioner.

N.P.Deshpande, Addl.G.P. AGP for the State.

Abhijeet Marathe for respondent No.4.

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

DATE : 23rd January 2017.

P.C. :

The petitioner before this Court is challenging the jurisdiction of respondent No.5- Divisional Commissioner, Konkan Division, in directing removal of name of the petitioner from the award. Apparently, the land in question belongs to a Trust from whom the petitioner is said to have acquired certain rights after parting with certain amount to the Trust. In short, according to the petitioner, by virtue of alleged agreement between him and the Trust

in question, he has to get all the benefits arising out of or as a consequence of the acquisition proceedings.

2. In earlier round of litigation, in the order dated 20th February 2015 passed in Writ Petition Nos.1407/2013 and 1927/2013, the Division Bench of this Court referred to the claim or right or interest of the present petitioner by observing as under:

“ We find on hearing learned counsel for the parties that there are serious disputed question of facts involved in the Writ petitions and some of the issues arising therein could be decided only by a competent Civil Court. It is informed to this Court by the learned senior counsel for the respondents that a Reference under Section 30 of the Land Acquisition Act 1894, is pending in the Civil Court and the respondent No.4 in Writ petition No.1407 of 2013 has made an application for it's joinder as a party to the Reference. The property stood in the name of the respondent No.4 at the time of acquisition of the same and admittedly, the title to the said property had not passed on to the petitioner before the award was passed. No registered sale deed was executed in favour of the petitioner by the respondent No.4 – Trust, till the award was passed by the Special Land Acquisition Officer. In this background, it was necessary for the Special Land Acquisition Officer to have referred the dispute between the petitioner and the respondent No.4 in Writ petition No.1407 of 2014 under Section 30 of the Land Acquisition, Act. Be that as it may, since the respondent No.4

has filed an application before the reference Court for its joinder, in the facts of the case, we direct the reference Court to join the respondent No.4 as a party to the proceedings under Section 30 of the Land Acquisition Act as the respondent No.4 claims absolute title to the acquired property. We also direct the reference Court to decide the reference as early as possible, after the joinder of the respondent No.4 as a party to the same. The points and contentions raised by the parties in this Court, are kept open. Since some of the issues involved in the Writ petitions could be decided only by a competent Civil Court, i.e. the reference Court, it would not be proper for the Special Land Acquisition Officer and Deputy Collector to take any further action in pursuance of the impugned notice dated 11 December 2012. The reference Court should decide the application filed by the respondent No.4 and the other tenants for temporary injunction restraining the petitioner from withdrawing the compensation as also the other benefits, in accordance with law, at the earliest.”

3. Reading of the above observation of the Division Bench is very clear that the claim of the petitioner was not accepted as put forth by the petitioner so far as the alleged agreement between the petitioner and the Trust in question. Mere removing the name of the petitioner from the award, his entitlement, if any, under section 30 of the Land Acquisition Act cannot be affected. The parties including owners of the land i.e. Trust and the tenants/occupants of

the said land are before the concerned forum where the reference under section 30 of the Act is pending. Ultimately, the petitioner with or without his name being in the award would be entitled to the benefits as claimed by him under the alleged agreement between him and the Trust, only if the reference court decides section 30 reference in favour of the petitioner. That being the basis for appreciating the stand of the petitioner, mere removal of his name, even if it were to be by the authority which was not competent to do so, we are of the opinion that such grievance remains only an academic issue and does not go to the root of the matter i.e. real conflict between the parties.

4. In the above circumstances, for the reasons mentioned above, we decline to entertain this petition. The petition is dismissed.

5. It is, however, made clear that all the rival contentions are expressly kept open.

(G.S.KULKARNI, J.)

CHIEF JUSTICE