

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LAND ACQUISITION REFERENCE NO.7 OF 2016

Deputy Collector (Land Acquisition) No.4
Mumbai Suburban District

.. Applicant

AND

- 1) Haroman Anshel Farera
- 2) Margaret Stella Farera and Ors.

.. Claimants

AND

Chief Engineer (Development Plan)
Municipal Corporation of Greater Mumbai

.. Acquiring
Body

Mr.Amar Mishra, A.G.P. for the applicant

Mr.Amar Bhatt i/b Mr.S.H.Rajak for the claimant nos.1 to 8

Mr.R.Y.Sirsikar for the M.C.G.M. Acquiring Body

Mr.Errol Herman Ferreira, claimant no.1(c)

Mr.Tyfon Sutari, claimant no.5

CORAM : K. K. TATED, J.
DATE : FEBRUARY 28, 2017

P.C.:

1 Heard the learned counsel for the parties.

2 This Land Acquisition Reference is forwarded by Special Land Acquisition Officer under section 30, 31, 32 and 33 of the Land

Acquisition Act, 1894 for apportionment of compensation in respect of acquired land.

3 The Chief Engineer (Development Plan) Brihan Mumbai Municipal Corporation has submitted proposal for acquisition of land from Village Eksa Taluka Borivali in the year 2008 as follows:

No.	Name of Village	S.No. H.No.	C.T.S.No.	Area Sq.Mtrs.	Name of Owner
1	Ekksar Tal.- Borivali	153/12B	1099(pt)	969.70	Shri Vincent Pareira
2		153/17 158/1 158/6 159/1	1271/D	1466.50	1)Haroman Ancel Farera 2)Margaret Stela Farera
		159/2			Shrimati Yashoda Damodar Patil and Other 1
3		159/3 158/7 158/9	1271E	670.80	1) Stanli Elaas Kinny and others 4 2) Tayson Sutari and other 4 3) Melvin Dsouza 4) Shri Donald Symon Kinny 5) Shrimati Julo Baptist Kinny

4 Thereafter, the joint measurement was carried out on 12.2.2009 and area of acquisition was fixed to 3107.0 sq.mtrs. The Notification under section 126 of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as “the Town Planning Act”) and under section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as “the said Act”) was published in the official gazette on 15.9.2000 and corrigendum was published in official gazette on 29.4.2016. Notice under section 9(1) and (2) of the said Act was published on 5.5.2011 and notice under section 9(3) and (4) were issued to the interested persons. After following due process of law the Special Land Acquisition Officer declared the award dated 17.11.2016 granting compensation as under:

No.	C.T.S. No.	S.No. H.No.	Name of Owner	Amount of Compensation
1	1099(pt)	153/12B	Since the name of Vincent Pareira has been mutated in 7x12 extract as per <i>Ferfar</i> No.5252 dated 14.10.2013 after the death of Merry H. Swami as per her Will made during her lifetime, the consideration is to be paid to Shri Vincent Pareira as the holder of the said land.	Rs.5,93,24,148/-
2	1271/D	153/17 158/1 158/6 159/1	1)Haroman Ancel Farera 2)Margaret Stella Farera	8,97,12,593=00 As per 7/12 abstract, these are the owners of the acquired property. However, there are no sufficient particulars available with the said land holders as to how much land is acquired out of the land owned by them. Hence, as the consideration to be paid by them cannot be determined, the consideration amount under Section 30 be deposited in the Hon'ble Court.
		159/2	Shrimati Yashoda Damodar Patil and Other 1	
3	1271E		1)Stanly Elaas Kinny and others 4 2)Tyson Sutari and other 4 3)Melvin Dsouza 4)Shri Donald Symon Kinny 5)Shrimati Julie Baptist Kinny	4,10,35,778/- As per 7/12 abstract they are the owners of the acquired property. However, there are no sufficient particulars available with the said land holders as to how much land is acquired out of the land owned by them. Hence, as the consideration to be paid by them cannot be determined, the consideration amount under Section 30 be deposited in the Hon'ble Court.

5 As some of the claimants raised objection for apportionment of compensation, Special Land Acquisition Officer made a reference under section 30 of the said Act. At the time of forwarding reference under section 30 of the said Act, Special Land Acquisition Officer stated that there was no dispute between the claimants of land bearing C.S.No.1099 (pt.) area 969.70 sq.mtrs. Therefore, they paid sum of

Rs.5,93,24,148/- to them. Considering the reference application and objections raised by the claimants, the issue involved in the present L.A.R. is “How much amount of compensation is entitled by each claimants?”

6 The learned Counsel for the claimants submit that there is no dispute between all the claimants for apportionment of compensation. He submits that all the claimants decided to withdraw the amount without making any grievance for enhancement. He submits that the legal heirs of claimant nos.1 and 2 filed affidavit dated 1.2.2017 stating that there is no dispute among themselves and they have no objection to issue cheque in favour of M/s.Errol Herman Ferreira. Paragraph 6 and 7 of the said affidavit reads thus:

“6. We further say and submit that, we have no dispute among ourselves as the legal heirs of our deceased father and deceased mother right from the inception even today also and we further say that, we the Legal heir no.1, 2, 4 and 5 have also appointed legal heir no.3 Mr.Errol Herman Ferreira as a Constituted Attorney in respect of this, to receive compensation amount as per the award passed by the Deputy Collector (Land Acquisition) no.4 in respect of the said land bearing C.T.S. NO.1271D Part, which is reflected in 7/12 extract bearing no.153/17, 158/1 and 6 and 159/1, area admeasuring 1187.9 sq.meters.

7. We further say and submit that, we have no objection for the compensation amount in respect of the land bearing No.C.T.S. No.1271/D Part, which is reflected in 7/12 extract bearing no.153/17, 158/1 and 6 and 159/1, area admeasuring 1187.9 sq.meters if the cheque is issued in the name of Power of Attorney Mr.Errol Herman Ferreira.”

7 The learned Counsel for the claimant submits that even the legal heir of claimant no.3 Prabhakar Damodar Patil filed affidavit dated 1.2.2017 and 25.2.2017 stating that there is no dispute between the

legal heir for apportionment of compensation in respect of acquired land. Paragraph 3 and 5 of the said affidavit dated 1.2.2017 reads thus:

“3. I further say that, my deceased mother was owner of the said property land old C.T.S.no.1275 and new C.T.S.no.1271/D Part, bearing no.278.6 Sq.meters admeasuring area and which is reflected in 7/12 extract bearing no.159/2. Hereto annexed the copy of 7/12 and mutation entry and marked it as Exhibit-”C”.”

“5. I further say that, being I am the legal heir of my mother there was no said dispute at the time of handling our property to the Municipal Corporation therefore, I am entitled to get the compensation in respect of the land bearing no.C.T.S.1271/D Part, bearing no.278.6 Sq.meters admeasuring area.”

8 Even in affidavit dated 25.2.2017, he stated that they do not want to challenge the award passed by Special Land Acquisition Officer. He further stated in his affidavit that he only handed over possession of the acquired land to the acquiring body. Paragraph 2, 3 and 5 of the said affidavit reads thus:

“2. I say that, I am the only legal heirs of my deceased mother and the said facts, I have already communicated to the collectorate authority i.e. the Applicant through my affidavit of no objection in the abovementioned matter. Hereto annexed the copy of the communication letter dated 01-12-2016 and marked as Exhibit-”B”.”

“3. I further say that, my deceased mother was owner of the said property land bearing old C.T.S.no.1275 and new C.T.S. no.1271/D Part, bearing no.278.6 Sq.meters admeasuring area and which is reflected in 7/12 extract bearing no.159/2. Hereto annexed the copy of 7/12 and mutation entry and marked it as Exhibit-”C”.”

“5. I further say that, being I am the legal heir of my

mother there was no said dispute at the time of handling our property to the Municipal Corporation therefore, I am entitled to get the compensation in respect of the land bearing no.C.T.S.no.1271/D Part, bearing no.278.6 Sq.meters admeasuring area.”

9 The learned Counsel for the claimant submits that even there is no dispute between the legal heir of deceased claimant no.4. He submits that the legal heir of claimant no.4 also filed affidavit dated 1.2.2017 stating that there is no dispute between them for compensation. It is also stated in the said affidavit that all the legal heirs have no objection if compensation is issued in the name of Mrs.Julie Baptist Kinny. Paragraph 5, 6 and 7 of the said affidavit reads thus:

“5. We further say and submit that, we have also made affidavit of no objection mentioning all details for making award payment in the name of Mrs.Julie Baptist Kinny. Hereto annexed the copies of correspondence made with collectorate authority dated:1.12.2016 and same marked as Exhibit-”D”.”

“6. We further say and submit that, we have no dispute among ourselves as the legal heirs of the deceased right from the inception even today also and we further say that, we are the legal heirs of Late Stanley Elias Kinny and have no dispute between ourselves and also don't have any dispute if the cheque is issued in the name of Mrs.Julie Baptist Kinny i.e. the Claimant no.8 in the abovementioned matter.”

“7. We further say and submit that, we have no objection for the compensation amount in respect of the land bearing old C.T.S.no. 1276 and 1279 Part and new C.T.S.no.1271/E, bearing no.670.8 Sq.meters admeasuring area and which is reflected in 7/12 extract bearing no.158/7, 158/9 and 159/3.”

10 The learned Counsel for the claimant submits that even claimant no.5, Tyson Sutri filed affidavit dated 1.2.2017 along with other three heirs stating that there is no dispute between them for apportionment of compensation of acquired land. They also stated in their affidavit that payment of compensation be made in the name of Julie Baptist Kinny. Paragraph 2 and 3 of the affidavit dated 1.2.2017 reads thus:

“2. We further say and submit that, we have also made affidavit of no objection mentioning all details for making award payment in the name of Mrs.Julie Baptist Kinny. Hereto annexed the copies of correspondence made with collectorate authority dated:1.12.2016 and same marked as Exhibit-”C”.”

“3. We further say and submit that, we have no dispute among ourselves and we further say that, we have no dispute between ourselves if the cheque is issued in the name of Mrs.Julie Baptist Kinny i.e. the claimant no.8 in the above mentioned matter.”

11 The learned Counsel for the claimant submits that even claimant no.6 filed affidavit dated 1.2.2017 stating that there is no dispute about apportionment of compensation amongst them. He further submits that they do not want to file any reference application for awarding additional compensation. In clause no.6 of his affidavit, it is stated that they do not have any objection to issue cheque towards compensation and other benefits in favour of Ms.Julie Baptist Kinny. Paragraph 5, 6 and 7 of the affidavit dated 1.2.2017 reads thus:

“5. I further say and submit that, I have also made affidavit of no objection mentioning all details for making award payment in the name of Mrs.Julie Baptist Kinny. Hereto annexed the copies of correspondence made with collectorate authority dated:1.12.2016 and same marked as Exhibit-”C”.”

“6. I further say and submit that, I have no dispute among

ourselves and I further say that, I have no dispute between ourselves if the cheque is issued in the name of Mrs.Julie Baptist Kinny i.e. the Claimant no.8 in the above mentioned matter.”

“7. I further say and submit that, I have no objection for the compensation amount in respect of the land bearing old C.T.S.no.1276 and 1279 Part and new C.T.S.no.1271/E, bearing no.670.8 Sq.meters admeasuring area and which is reflected in 7/12 extract bearing no.158/7, 158/9 and 159/3.”

12 The learned Counsel for the claimant submits that even claimant no.7, Mr.Donald Saimon Kinny filed affidavit dated 24.1.2017 stating that cheque of compensation be issued in the name of Julie Baptist Kinny. Paragraph 3 of the said affidavit reads thus:

“3. I further say that, I have no objection to one cheque issued by the Mumbai Municipal Corporation/Collector of Land Records in the name of Mrs.Julie Baptist Kinny as our share compensation awarded to us in lieu of our property acquired by the Mumbai Municipal Corporation under LAQ/451/Eksar/230 dated 03/05/2011, Special Notice issued under Clause (3) and (4) of Section 9 of the Acquisition Act, 1894 (1) of the land situated in Village Eksar, Taluka Borivili, Dist. Mumbai Suburban CTS No.1271 E.”

13 The learned Counsel for the claimant submits that claimant no.8 Mrs.Julie Baptist Kinny also filed affidavit dated 1.2.2017 that she is entitled to withdraw compensation amount on behalf of all the claimants. It is also stated in her affidavit that there is no dispute among the parties about apportionment of compensation. Paragraph 5, 6 and 7 of the affidavit dated 1.2.2017 reads thus:

“5. I further say and submit that, I have also made affidavit of no objection mentioning all details for making award payment in the name of mine. Hereto annexed the

copies of correspondence made with collectorate authority dated:1.12.2016 and same marked as Exhibit-"C".

"6. I further say and submit that, I have no dispute among ourselves in the abovementioned matter."

"7. I further say and submit that, I have no objection for the compensation amount in respect of the land bearing old C.T.S.no.1276 and 1279 Part and new C.T.S.no.1271/E, bearing no.670.8 Sq.meters admeasuring area and which is reflected in 7/12 extract bearing no.158/7, 158/9 and 159/3."

14 The learned Counsel for the claimant submits that as there is no dispute amongst the parties about apportionment of compensation and or their shares in the acquired land. Therefore, they are entitled to withdraw the entire amount deposited by Special Land Acquisition Officer in the Registry of this court. He submits that in respect of CTS No.1271-D Special Land Acquisition Officer awarded sum of Rs.8,97,12,593/- and in respect of land bearing CTS No.1271-E Rs.4,10,35,778/-.

15 Considering the submissions made by the learned counsel for the claimant and the various affidavits filed by the claimants before this court, I am of the view that claimants can withdraw entire amount with accrued interest if any.

16 In view of the above mentioned facts and the various affidavits filed by the claimants and remain present in court to whom advocate for claimant identified, I am of the opinion that the claimants have made out a case for withdrawal of the amount deposited by the Special Land Acquisition Officer in respect of acquired land with the office of the Prothonotary and Senior Master, High Court, Original Side, Mumbai in following manner:

- a) Claimant nos.1, 2 and 3 are entitled to withdraw sum of Rs.8,97,12,593/- for acquired land bearing CTS No.1271-D along with statutory benefits and interest.
- b) Amount on behalf of claimant no.1, 2 and 3 be paid to Errol Harman Fereira.
- c) Claimant nos.4 to 8 are entitled to withdraw sum of Rs.4,10,35,778/- towards acquired land bearing CTS No.1271-E along with all benefits including interest.
- d) Julie Baptist Kinny is permitted to withdraw the compensation on behalf of claimant nos.4 to 8 as stated hereinabove and cheque be issued in his name.
- e) Decree be drawn accordingly.
- f) Reference is allowed accordingly.
- g) Considering the facts of the present case, no order as to costs.

JUDGE