

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7309 OF 2018

Rohidas Chandar Dhamale and anr. .. Petitioners
Vs.
The City and Industrial Development
Corporation (Maharashtra) Limited and ors. .. Respondents

Mr.Sachin Punde, for the Petitioners.
Mr.A.M. Kulkarni a/w Mr.Sarthak Diwan, for Respondents No.1
to 3.
Mr.P.P. Kakade, AGP for State – Respondents No.4 & 5.

**CORAM : NARESH H. PATIL, CHIEF JUSTICE &
M.S.KARNIK, J.**

DATE : 20th DECEMBER, 2018

P.C. :

. The petitioners's land was acquired for Navi Mumbai International Airport. An award has been passed on 27/04/2015 in respect of the said land. Admittedly, the land is owned by the Trust. The concerned persons mentioned in the Award have been compensated for the land, existing construction over the land, trees etc.

2. The petitioners's concern is that compensation

towards construction of house to the tune of Rs. 3,93,598/- ought to have been paid to them, instead of that the respondents have paid it to the Trust. He further contended that the compensation towards the house property wherein the petitioners's family is residing has not been paid so far to the petitioners. He submits that neither the benefit accruing to petitioners under Government Resolution dated 01/03/2014 have been paid. Learned Counsel appearing for the petitioners further submits that the petitioners ought to have been given benefits of clauses 1, 5, 7 accruing to the petitioners as enlisted in the annexure to the Government Resolution.

3. No reply has been filed by the Respondents.

4. Learned Counsel appearing for the CIDCO submitted that the Trust has been compensated for property acquired. Copy of award is on record along with compensation receipt which is also placed on record which contains signature of the petitioner. Learned Counsel appearing for the petitioners

submits that though such a receipt has been signed, but the possession is still retained with the petitioners. The petitioners with their family still reside there.

5. Learned Counsel appearing for CIDCO submits that the petitioners act is completely contrary to the award. The possession receipt in respect of the property support the fact that petitioners are residing in the house property forcibly. Therefore, the respondents are unable to take further steps in the matter. According to learned Counsel appearing for CIDCO, the petitioners's possession in the house property is unauthorised.

6. Learned AGP submits that in respect of additional benefits which the petitioners are claiming, they may file appropriate representation to the Special Land Acquisition Officer (for short SLAO).

7. We have considered the submissions advanced.

Perused the material placed on record. The admitted facts in the case are as under :

- a) passing of award on 27/04/2015.
- b) amount of compensation is prescribed in the award
- c) payment made to the Trust.

8. Learned Counsel appearing for the petitioners has contended in the Petition in paragraph 8 as under :

“The Petitioners state that the Respondent No.4 declared an Award dated 27/04/2015 under Section 11(1) of the Land Acquisition Act, 1894 in respect of land bearing Survey No. 38, admeasuring 13760 square meters sitauted at Village Wadghar, Taluka Panvel, District Raigad. The Respondent No.4 offered only Rs. 1,28,11,175/- towards the total compensation including Rs. 3,93,528/- only towards the said House No. 860A. A copy of the said Award dated 27/04/2015 is annexed herewith and marked as Exhibiti 'F' to this Writ Petition. The Respondent No.4 and 5 did not consider at all that the Petitioners have consented for acquisition of their House No. 860A and have prayed for granting benefits in terms of the said Government Resolution dated 01/03/2014. The Petitioners are constraiend to make a Reference under Section 18 of the Land Acquisition Act,

1894 along with other persons having interest in the said land bearing Survey No. 38.”

9. The contentions referred above shows that respondents No.4 offered amount of compensation towards the house property. The dispute seems to be that the petitioners have not received the amount towards the house compensation which has been accrued to the petitioners which instead is paid by the respondents to the Trust.

10. The petitioners have admittedly made Reference under Section 18 of the Land Acquisition Act, 1894 by resorting to appropriate statutory remedy and same would be decided by the appropriate Civil Court.

11. The issue which remains for consideration is as to whether the petitioners are entitled to additional benefit in accordance with Government Resolution. There is nothing on record to indicate that this issue has been considered by any of the authorities nor the petitioners have raised any proceedings

in that regard. In the facts, it would not be appropriate at this stage for this Court to deal with this issue as the same requires examination of record and questions of facts, evidence regarding the area of house property as was existing at the time of initiation of proceedings and many other connected issues.

12. We therefore find it appropriate that in case the petitioners makes a representation to the SLAO in respect of claim of the petitioners for benefits accruing to the petitioners under clauses 1, 5, 7 as enlisted in the annexure to the Government Resolution, the SLAO can decide the same on its own merits. SLAO would be in a better position to deal with these issues while deciding the representation. We therefore pass following order.

ORDER

a) The petitioners are at liberty to make a representation to the SLAO – Respondents No.4 within 2 weeks from today in respect of their claim accruing to the petitioners under clauses 1, 5, 7 as enlisted in the annexure to the Government Resolution.

b) Respondent No.4 is directed to decide the said representation with further 4 weeks. Respondent No.4 to hear the necessary parties before passing any order. Respondent No.4 shall pass a brief reasoned order.

c) All issues on merits are kept open.

d) In case the petitioners are aggrieved by the order of SLAO, the petitioners are at liberty to initiate appropriate proceedings.

e) For a period of 6 weeks from today, status-quo in respect of house property shall be maintained.

f) Needless to mention that after expiry of 6 weeks from today acquiring body – CIDCO would be at liberty to take appropriate steps for securing possession of the whole property. The respondent authorities are free to take appropriate action.

13. The Petition is disposed of in the above terms.

(M.S.KARNIK, J.)

(CHIEF JUSTICE)