

59 WRIT PETITION NO.8676 OF 2018

SAMIR KHALIL PATEL AND OTHERS ... Petitioners
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS .. Respondents

Advocate for Petitioners : Shri Ajeet B. Kale
AGP for Respondents – State : Shri S.P. Tiwari
Advocate for Respondent No.2 : M.V. Kini & Co &
Shri D.S. Manorkar
Advocate for Respondent No.3 : Shri R.B. Bhosale

**CORAM: S. V. GANGAPURWALA &
AVINASH G. GHAROTE, JJ.**

DATE : NOVEMBER 13, 2019

ORAL ORDER :-

1. Mr. Kale, the learned advocate for the petitioners submits that, the Award dated 25.07.2017 be set aside. The petitioners were never issued with the notice. The lands of the petitioners have been acquired under the said award. According to the learned advocate, re-measurement has been done. The affidavit has been filed by the Deputy Superintendent of Land Records admitting about the re-measurement and the panchanama being carried out. The report is also communicated. The same will justify that the lands of the petitioners are affected under acquisition along with the constructions over it. The learned advocate also rely upon the report of the Collector dt. 17.07.2019 to substantiate his contention.

2. Mr. Manorkar, the learned advocate submits that, none

of the petitioner's land is under acquisition. The respondents have not acquired nor taken possession of the structure of the petitioners. The learned advocate submits that, no construction permission is existing. Proper procedure has been followed.

3. We have heard the learned advocate for the competent authority also.

4. The report has been submitted by the Collector, Osmanabad. It is submitted that, the compensation in respect of the land Gut Nos. 3, 35 and 900 has already been disbursed to the persons whose names were appearing in the ownership column. The amount of compensation of land Gut No.40 has been deposited with the Civil Court under Section 3H of the National Highways Act, 1956. Gut No.901 is the Government Gairan land. As far as the land in Gut Nos.13 and 40 is concerned, the communication is made to the National Highway Authority about the requirement of the land. The communication is not yet received.

5. It would appear that there would be a dispute with regard to the persons entitled to the compensation. Section 3H (4) of the National Highways Act gives power to the competent authority to refer the dispute to the Principal Civil Court of original jurisdiction if there is a dispute with regard to the persons to whom the amount is payable.

6. It appears from the report that, to the extent of Gut No.

40 the amount has been deposited with the Civil Court under Section 3H of the National Highways Act. With regard to the other lands, the petitioners may make an application to the competent authority under Section 3(H) 4 of the National Highways Act. The competent authority on receiving the application shall consider the documents on record, so also say of the interested persons and decide the said application within a period of three months from the date of receipt of the application. If the competent authority comes to the conclusion to refer the dispute to the Principal Civil Court of original jurisdiction under Section 3H (4) of the National Highways Act, shall do it expeditiously and if the proceedings are referred to the Principal Civil Court of original jurisdiction, the principal court shall decide the same expeditiously on its own merits in accordance with law, preferably within nine (9) months from the date of receipt of the same.

7. The another bone of contention of the petitioners appears to be that no compensation is awarded in the award in respect of the constructed portion. Everything would depend upon the decision that would be taken by the principal civil court of original jurisdiction or the competent authority as the case may be. The petitioners may also put-forth their stand about the constructed portion appearing on the acquired land before the authorities concerned. The same shall be certainly considered by the authorities/ court.

8. All the contentions of the respective parties are kept open.

9. Writ Petition is disposed of. No costs.

[AVINASH G. GHAROTE]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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