

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8155 OF 2018

Hashmukh Harilal Shan and ors.

...Petitioners.

vs.

The State of Maharashtra and ors.

...Respondents.

Mr. S.S. Kanetkar for the Petitioners.

Mrs. Madhubala Kajale B Panel Counsel for Respondent Nos. 1 and 2-State.

Ms.Priya Diwadkar I/by Manilal Kher Ambaklal & Co. for Respondent No.4.

CORAM : R.M.BORDE AND V.L. ACHLIYA, JJ.

DATE : 11th February, 2019

PC :

1. The petitioners are objecting to the proceedings initiated by the respondents in respect of the land belonging to the petitioners. The acquisition that has been made for Maharashtra Industrial Development Corporation in observance of the procedure prescribed by the Maharashtra Industrial Development Act. It is contended that Notification under Section 33(2) of the Act was issued on 11.11.1965 to the extent of land admeasuring

6-Acres situated at Turbhe, District Thane belonging to the petitioners. The possession of the property was taken over by the MIDC on 4.12.1967. It is contended that, initially the award was declared under Section 33 and 33(10) of the Act determining the compensation of Rs.70969/- plus interest at the rate of 4% from 4.12.1967 upto the date of payment. The petitioner presented an appeal challenging the award which was allowed by the civil court on 30.10.1974 and the directions were issued to the respondents to pass a fresh award and determined the amount of compensation. In pursuance of the directions issued in appeal, a fresh award has been declared on 15.9.1985. The petitioners presented the reference application bearing No.43 of 1985 which was decided on 10.1.1991. The compensation in respect of the acquired land has been enhanced by the Reference Court. The petitioners have further preferred First Appeal bearing No.250 of 1992 before this Court. The State Government has also presented an appeal raising the challenge to the enhancement permitted by the Reference Court and both the appeals are pending. The petitioners contend that in view of the provisions of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act,

2013, the award is liable to be set aside. So far as the possession of the property is concerned same has been admittedly taken over in the year 1967.

2. The petitioners contend that, the amount of compensation has not been paid. Admittedly the petitioners have not made any grievance in respect of failure of the acquiring body to pay the amount of compensation either in the reference application presented by them and there does not appear to be any reference in that regard in the order passed by the reference court. The petitioners have also presented the first appeal bearing No. 250 of 1992 which is stated to be pending. It is open for the petitioner to execute the award passed by the reference court. At this belated stage of the proceedings, according to us, since the petitioner has accepted the award and challenged it only to the extent of quantum of compensation by filing reference application which was allowed, as well as the first appeal which is stated to be pending, no interference is called for. The challenge raised in the instant petition so far as the legality of the award is concerned, the same does not deserve consideration and the prayer made in that regard, stands rejected.

3. The petitioners contend that, in view of the fact that, MIDC has allotted the land to the private individuals and that the petitioners are entitled to claim plot of land under the policy framed by the MIDC. If that be so, it would be open for the petitioners to avail of remedy in that context before the appropriate forum.

4. With the liberty as aforesaid, instant petition, being devoid of substance stands rejected,.

(V.L. ACHLIYA, J.)

(R.M. BORDE, J.)