

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6982 OF 2016

Haribhavu Gosavi Patil
(since deceased through LRs)

...Petitioner

vs.

The State of Maharashtra and Ors.

...Respondents

Ms. Pramila Bhangade I/b. M. Janardhanan, for the Petitioner
Mr. A.R. Metkari, AGP for Respondent No. 1.
Mr. S.S. Punde, for Respondent Nos. 2 to 6

CORAM : M. S. SONAK, J.

DATE : APRIL 08, 2019

JUDGMENT

. Heard Ms. Bhangade, learned counsel for the Petitioner, Mr. Punde, for Respondent Nos. 2 to 6 and Mr. Metkari, learned AGP for Respondent-State.

2. Rule. Rule is made returnable forthwith with consent of and at the request of learned counsel for the parties.

3. The challenge in this Petition is to the order dated 4th April, 2016 by which the learned Reference Court has substituted the name of the Petitioner with the name of Respondent Nos. 2 to 6 in L.A.R. No. 17 of 2008.

4. Ms. Bhangade submits that the impugned order is clearly in excess of jurisdiction. She submits that the Reference Court, in effect has to dismiss the Petitioner's Reference. She submits that in matter of this nature, there is no provision to delete the name of the Petitioner and to substitute the same with the names of Respondent Nos. 2 to 6, who claims same interest in the acquired property. She submits that at the highest, Respondent Nos. 2 to 6 should have been made Respondents to the Reference so that their objections, if any, could have been considered in accordance with law.

5. Mr. Punde, learned counsel for Respondent Nos. 2 to 6 submits that this is a case where the Reference was continues wrongly by the Land Acquisition Officer. He submits that the Land Acquisition Officer clearly erred in making Reference under Section 28(A)(2) of the Land Acquisition Act, 1894. He submits that in any case, the Petitioner was not at all "*persons interested*" in either the acquired land or compensation to be paid in respect of acquired land. He submits that the application made on behalf of Respondent Nos. 2 to 6 was in fact supported by the State. He points out that even Land Acquisition Officer admitted that

Reference was incorrectly made. Mr. Punde submits that the impugned order has been made taking into consideration all these aspects and there is absolutely no jurisdictional error in the impugned order. He therefore submits that this Petition may be dismissed.

6. Mr. Metkari, learned AGP for Respondent-State supports the contention of Mr. Punde and submits that this Petition may be dismissed.

7. The rival contentions now fall for determination.

8. In this case, the Reference No. 17 of 2008 was made by the Land Acquisition Officer at the behest of the Petitioner and the Reference has been pending since the said date. Even if the contentions raised by Mr. Punde on behalf of Respondent Nos. 2 to 6 have to be considered, there is no justification for ordering the deletion of the Petitioners and substituting the name of the Petitioner with Respondent Nos. 2 to 6. Clearly this exercise is without jurisdiction on the part of the Reference Court. By the impugned order, the Reference in so far as the Petitioner is

concerned has been virtually dismissed. The Reference Court now purports to consider the Reference on behalf of Respondent Nos. 2 to 6. Incidentally, the Respondent Nos. 2 to 6 should now by virtue of the impugned order seek to continue with the Reference. This is contended that this reference was incompetent & incorrectly made by Land Acquisition Officer. All this is the effect of the impugned order, which according to me, is clearly in excess of jurisdiction.

9. This is, however, does not mean that application made by the Respondent No. 2 to 6 is required to be rejected in its entirety. The interest of justice will be made if the Respondent Nos. 2 to 6 are also join L.A.R. No. 17 of 2008 as Respondents. It will be always open to the Respondent Nos. 2 to 6 to raise whatever contentions as are legally available to them. If such contentions are raised, there is no reason to disbelieve that the same will not be considered and decided by the Reference Court.

10. Accordingly, the impugned order is set aside.

11. However, the Respondent Nos. 2 to 6 are directed to implead the Respondents in the Reference. The Reference Court to permit

these Respondents to file their response or raise their objections and if such objections are now raised, to dispose of the same in accordance with law and on their own merits.

12. It is made clear that this Court has not adverted into the merits of the matter and therefore all contentions of all the parties are left open for the decision by the Reference Court.

13. Rule is made partly made absolute in the aforesaid terms.

14. There shall be no order as to costs.

15. The interim order is hereby vacated.

16. The parties to appear before the Reference Court on 26th April, 2019 at 11.00 am and file authenticated copy of this order.

17. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)