

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.8261/2017

Sunil Rajendra Khutate and others.

Vs.

The State of Maharashtra and others.

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Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

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Shri P. M. Shukla, Advocate for the petitioners.
Shri V. H. Kedar, Advocate for the respondent Nos. 2 and 3.
Mrs. M. Deshmukh, Assistant Government Pleader for the
respondent Nos. 1 and 4.

CORAM : **R.K. DESHPANDE &
MILIND N. JADHAV, JJ.**

DATED : **04th NOVEMBER, 2019.**

. This petition seeks direction to the respondents not to dispossess the petitioners of 0.19 H.R. of land and a structure standing thereupon from Survey No.314/4, Mouza Narkhed without following due process of law. An interim relief is also claimed to restrain the respondents from interfering with the peaceful possession of the petitioners over the land in question.

2. On 26.12.2017, the learned Judge of the Vacation Court issued notice in the matter to the respondents and directed the parties to maintain *status quo*. The order was thereafter, continued and is operating till this date.

3. The undisputed position is that the land admeasuring 1.18 H.R. out of Survey No.314/4 of mouza Narkhed was acquired for the purposes of Maharashtra State Road Transport Corporation. Award was passed on 31.10.1995 and the entire compensation has been paid. Reference was also preferred by the claimant under Section 18 of the Land Acquisition Act, 1894, which was dismissed on 03.01.2000. Writ Petition No. 2476 of 2000 was filed before this Court challenging the order passed on reference, which was dismissed on 24.03.2003. The Special Leave Petition filed against it, was also dismissed.

4. On the basis of the registered sale-deed in favour of the petitioners executed on 04.11.1976, it is claimed that the entire Survey No.314/4 consists of 1.23 H.R., which was subsequently corrected in the revenue record as 1.26 H.R. The contention of the petitioners is that the land acquired, which is 1.18 H.R., consists of the structure of Dal Mill and the compensation in respect of it, was not paid to the petitioners. The petitioners do not dispute that the possession of the land admeasuring 1.18 H.R. was taken by the respondents on 13.04.1998. The dispute pertains to 0.19 H.R. and the contention of the respondent No.2 – Maharashtra State Road Transport Corporation is that there is an encroachment by the petitioners, on some portion of the land, which has already been acquired.

5. If there is a dispute regarding measurement of the land, then the Competent Authority to adjudicate upon such dispute in the reference Court under Section 18 of the Land Acquisition Act. The proceedings were concluded against the petitioners up to the Apex Court and hence, any dispute regarding measurement cannot be re-opened now. The question as to whether there existed any structure of Dal Mill in the area of 1.18 H.R., is also a disputed question of fact, and if such aspect is not covered by the jurisdiction under Section 18 of the Land Acquisition Act, 1894, it is open for the petitioners to adopt such other appropriate remedies as are permissible in law. Even otherwise, the relief claimed in the petition is in the nature of a decree, which can be granted by the Civil Court, if its jurisdiction is not barred under the provision of the Land Acquisition Act.

6. Writ Petition is dismissed.

7. At this stage, Shri Shukla, the learned counsel appearing for the petitioners, submits that the order of *status quo* passed by this Court be continued for a period of two weeks. We do not find any reason to continue such interim order. The prayer is rejected.

JUDGE

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