

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.1118 OF 2020
AND
WRIT PETITION NO.13763 OF 2018**

Vishwas s/o. Devrao Janjal
Age : 55 years, Occ. Agri.
and others

..Applicants

Vs.

The State of Maharashtra
and others

..Respondents

Mr.D.R.Jaybhar, Advocate h/f. Mr.S.D.Jayabhar, Advocate
for applicants

Mr.S.B.Yawalkar, AGP for respondent nos.1 to 4 and 6

**CORAM : PRASANNA B. VARALE
AND**

R.G. AVACHAT, JJ.

DATE : JANUARY 30, 2020

PER COURT :-

Upon perusal of the grounds raised in the Civil Application, the prayers made therein as well as perusal of the Writ Petition, we are of the opinion that the petition itself can be decided in view of the fact that replies have been filed on behalf of the contesting respondents to the petition.

2. Heard Mr.Jaybhar, learned Counsel for the petitioners, Mr.Yawalkar, learned Addl. Govt. Pleader for respondent nos.1 to 4 and Mr.Sangle, learned Counsel for respondent no.5.

3. The petitioners, who are the land owners, have approached this Court challenging the award dated 12.11.2018 passed by the Sub-Divisional Officer/Special Land Acquisition Officer, Sillod. Prayer Clause (C) is the principal prayer in the petition and other prayers are the prayers seeking interim relief.

4. Learned Counsel for the petitioners submits that considering the developments made in the lands of the petitioners and as there are various fruit-bearing trees in the lands, the petitioners are expecting adequate compensation against acquisition of their lands. Learned Counsel submits that though the lands of the petitioners have been acquired, no compensation has been paid to them.

5. Countering the above submissions, Mr.Sangle, learned Counsel for respondent no.5 - acquiring body, by inviting our attention to the affidavit-in-reply filed on behalf of the acquiring body, submits that majority of the land owners have accepted the amount of compensation and the same has been paid to them. Mr.Sangle submits that some of the land owners have accepted 80% the amount of compensation, which was deposited with the Special Land Acquisition Officer.

6. In response to the notice issued in the petition, reply is filed on behalf of respondent nos.3 and 4 by Shri.N.K.More, Naib Tahsildar, Sub-Divisional Officer, Sillod. Mr.Yawalkar, learned AGP, invited our attention to the statements made in paragraphs 4 and 5 of the affidavit-in-reply filed on behalf of respondent nos.3 and 4, which read thus :-

4. I further say and submit that after the declaration of the land acquisition award, the respondent no.4 has also issued the notice of payment dated 19.11.2018 to the present petitioner, thereby intimating the present petitioner to remain present in

the office of the respondent no.4 on 28.11.2018 for receiving the payment of compensation as determined as per the land acquisition award dated 12.11.2018. The copy of the said notice dated 19.11.2018 issued by the office of the respondent no.4 is annexed herewith and marked as EXHIBIT "R-2".

5. *I further say and submit that though the respondent no.4 had issued the said intimation notice for payment to the present petitioner through the concerned Talathi, however, the present petitioners have refused to accept the notice of payment issued by the respondent No.4. The said fact has been reported to the respondent No.4 by the concerned Talathi vide his report dated 27.11.2018. The copy of the said report dated 27.11.2018 is annexed herewith and marked as EXHIBIT "R-3".*

7. Thus, in view of the above statements in the affidavit-in-reply, we are unable to accept the submission made by learned Counsel for the petitioners, that the respondents/authorities are not paying compensation to the petitioners against the acquired lands.

8. Now, the other issues raised by the petitioners are that the authorities are approaching

to take possession of the lands of the petitioners and a notice has been issued on 21.01.2020, informing the petitioners that the authority would take possession of the lands on 30.01.2020 i.e. today. On the back-drop of this fact, learned Counsel for the petitioners, submit that in case the possession is taken today, the petitioners would not be in a position to show the actual position of the lands and the same may put the petitioners to prejudice, as the petitioners are aggrieved by inadequate compensation awarded to them.

9. Per contra, Mr.Yawalkar, learned Addl. Government Pleader for respondent nos.1 to 4 and Mr.Sangle, learned Counsel for respondent no.5 - acquiring body, submit that though the authorities proceeded to take possession of the lands, due to the objection of the petitioners, possession of the lands could not be taken. According to them, therefore, the petitioners would not be entitled to claim compensation on the back-drop of the record available

and more particularly, the measurement carried out in the process of acquisition of lands. The petitioners cannot take benefit of certain developments carried out in the lands, after taking objection for possession.

10. In our opinion, the above submissions and rival contentions are disputed questions of facts and this Court cannot entertain the petition on these disputed questions of facts.

11. Now, what remains is, giving some protection to the petitioners by way of assurance that the exercise of taking possession of the lands, to be carried out today in view of the notice dated 21.01.2020 issued by the authority, shall be by following the appropriate procedure.

12. Learned Counsel for the petitioners made a specific statement before this Court that the petitioners have no objection for taking possession of the lands and they are only interested to have adequate compensation against the acquisition.

13. At the cost of repetition, it is reiterated that we are not inclined to entertain the petition on the back-drop of the disputed questions of facts. In the circumstances, in our opinion, the purpose of the petition would be substantially served by issuing certain directions to the authorities.

14. Hence, we disposed of the petition with the following directions :-

(a) At the time of taking possession of the lands of the petitioners, the respondents/authorities shall draw a panchnama. The petitioners have already been intimated by way of notice to remain present at the time of taking the possession.

(b) The Tahsildar, Soygaon, shall see that the panchnama shall bear the signatures or thumb impression of the petitioners. The Tahsildar may also videograph the exercise of drawing panchnama and maintain the record thereof.

(c) We direct that the petitioners shall co-operate the respondents/authorities in the exercise of taking possession of the lands. They shall not create any hurdle or object in the process of taking possession peacefully by the respondents/authorities.

(d) The petitioners would be at liberty to avail of the appropriate remedy for grant of enhanced compensation, if they are aggrieved of compensation awarded to them and if so advised, they may approach the competent forum including any judicial forum.

(e) Needless to state that if such claim is made, the respondents are not prevented to raise their counter submissions to the claim.

(f) In view of disposal of the Writ Petition, no orders are required to be passed on Civil Application.

(g) Learned AGP to communicate gist of this order to the respondents/authorities.

(h) Authenticated copy of this order be provided
to learned AGP.

[R.G. AVACHAT, J.]

[PRASANNA B. VARALE, J.]

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