

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8334 OF 2020

USHA SUBHASH MEHATA
VERSUS
THE UNION OF INDIA AND OTHERS

Advocate for Petitioner : Mr. Balbhim R. Kedar
Standing Counsel for Respondents No.1 : Mr. A. B. Dhongade
Advocate for Respondent Nos.2 and 3 : Mr. Deepak S. Manorkar

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 18TH NOVEMBER 2021

PC :

1. We have extensively heard this Petition on 26-10-2021. Today, we have again recorded extensive submissions of the learned counsel for the respective parties.
2. From the above, we find thus;
 - (a) The petitioner claims to have purchased 7 R land from the erstwhile owner in 2018.
 - (b) Prior to the said purchase, the erstwhile owner possessed 33 R land, out of which, 26 R land was acquired and the Award was delivered to that extent.
 - (c) The 7/12 extract indicates that 7 R land was with the erstwhile owner, namely, Shaikh Naser.

- (d) The petitioner claims to have in her possession 7 R land based on the mutation entry.
- (e) Respondent No. 2 initially expressed it's intention to acquire the entire 7 R land.
- (f) The petitioner contends that in the acquisition at hand, the Acquiring Body has acquired the entire 7 R land.
- (g) Respondent No. 2 Acquiring Body stated on oath in the affidavit that they have acquired only 3 R land.
- (h) The petitioner contends that there is no land available, not even an inch of land, much less 4 R land, which may be found at the spot where acquisition has taken place.
- (i) A compensation to the extent of 3 R land has been paid to the petitioner.

3. The above noted factors are based on the affidavit filed by the petitioner as well as the affidavit filed by an authorized person, namely, Smt. Sarita Sutrave, respondent No. 3. Both the parties have maintained their stand.

4. While exercising our extra ordinary jurisdiction under Article 226, a writ of mandamus cannot be issued when there are seriously disputed factors which can be considered by recording of evidence. Had the Acquiring Body i.e. respondent nos. 2 and 3 made a statement that they have acquired entire 7 R land, it would have been easy for this Court to issue directions for the payment of compensation.

When the stand taken on oath is that only 3 R land is acquired and not an inch beyond the same, it would be appropriate for the petitioner to avail of a remedy by filing a civil suit. However, while granting such remedy, we deem it appropriate to observe that if in the civil suit, the trial Court come to the conclusion that the Acquiring Body or any person has played a fraud, it shall impose cost of Rs. 5,00,000/- (Rupees Five Lakhs) on such litigant to be deposited in the Court prior to preferring a Regular Civil Appeal.

5. As such, this Petition is disposed off with liberty to the petitioner to avail of the statutory remedy which shall be subject to our observations recorded in the forgoing paragraph no.4.

6. In the event, the petitioner applies to the competent authority for measurement of the land, the authority shall co-operate wholeheartedly and shall ensure that the measurement is carried out by following the due procedure laid down in the law and preferably within three weeks from the date of the application.

[S.G. MEHARE, J.]

[RAVINDRA V. GHUGE, J.]