

WRIT PETITION NO.2488 OF 2019

Versus

And Others

... Respondents

Mr. Ashish Gabhale i/b M/s Jay & Co. for Respondent No.6.

**CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.**

DATE : 2 DECEMBER, 2021

P. C. :

Heard the learned Counsel for the Petitioner.

2 By way of the present petition, the Petitioner has raised challenge to a notice dated 3 September 2015, issued by the Sub-Divisional Officer, Wai Sub Division, Wai, District Satara, placed on record at page 20 of the petition. The principal prayer of the petition reads thus :-

“a. That against the acquisition of the land, the Petitioner is entitled for 15 per cent and also entitled for compensation @ Rs.70,00,000/- (Rs.Seventy Lakhs Only) per Hector.”

On perusal of the documents placed on record, it reveals that

the Petitioner is the sharer along with his brother Pandharinath Baburao Takavale in certain land situated in Village Shivajinagar, Tal. Khandala and Dist. Satara. The details of areas, Gat Nos. and respective shares are referred to in paragraph-2 of the petition. Be that as it may, the Respondent State Government thought it fit to initiate the process of acquisition of land and notice for personal hearing was issued to the interested parties taking recourse to the process of law. The Petitioner unilaterally expressed his willingness for an agreement to receive a share of compensation to the extent of 15 per cent return and money consideration. A copy of the document placed on record at page 20, Exhibit 'B' to the petition, clearly shows that it is an act of the Petitioner unilateral for receiving the return in respect of the compensation to the tune of 15 per cent return and consideration @ Rs.70,00,000/- per hector.

3 Now on the backdrop of these facts, the Petitioner approached the revenue authority by giving them a legal notice and then submitted an application to Sub-Divisional Officer at Phaltan, Dist. Satara dated 29 October 2018, raising the claim that though the application was made for disbursement of the compensation, the Petitioner was not in receipt of such compensation. The application was replied by a communication dated 7 December 2018. Sub-Divisional Officer at Phaltan clearly stated in the communication that though the Petitioner made a request for disbursement of amount of compensation to his share, i.e. $\frac{1}{2}$ share, it was only unilateral willingness of the Petitioner. The other sharer to the extent of 15 per

cent, i.e. brother of the Petitioner, Pandharinath Baburao Takawale, who is also land-holder as per the revenue record, raised an objection for acquisition of the land. As per the communication received from Maharashtra Industrial Development Corporation ("MIDC"), as there was no consent by all land-holders, sharers, the Notification under Section 32(1) was not issued and as such, the award was also not declared. As there was no declaration of award, there was no reason for the authority to supply a copy of the award to the Petitioner. By referring all these facts, a request made by the Petitioner to the authorities by way of an application was turned down.

4 Now considering all these facts, we are of the clear opinion that there are disputed questions of fact involved in the matter. Though the Petitioner expressed his willingness, the act of his willingness was unilateral act. To the so called agreement, the other sharer, i.e. brother of the Petitioner was never a party. On the contrary, the brother of the Petitioner raised an objection for the proposed act of the acquisition of the land itself. Considering these facts, we are of the opinion that this is not the matter, where the court can exercise its extra-ordinary power under Article 226 of the Constitution of India to entertain the petition. Though, we are not inclined to entertain the petition, the Petitioner may avail other appropriate remedies for ascertainment of his share, right in the property etc. by approaching the appropriate forum including the legal forum as provided under the provisions of law.

5 While disposing of the writ petition, we deem it appropriate to refer to certain other facts. Firstly, the two affidavits-in-reply are filed by Respondent Nos.1, 2 and 4, through Sub-Divisional Officer Shri Rajendrakumar Jadhav, Sub-Divisional Officer, Wai, Dist. Satara. He has stated in the affidavit-in-reply that the subject matter is transferred to Respondent No.5 as per the Maharashtra Government letter No.IDC-2016/PNo.163/U.14 in month of March 2016 to District Collector Office, Satara and now the appropriate authority to conduct the further procedure for land acquisition is with Sub-Divisional Officer, Phaltan. In the affidavit-in-reply filed on behalf of Respondent Nos.1 and 5, through Shivaji Navanath Jagtap, Sub-Divisional Officer, Phaltan Division, Phaltan, certain statements are made in paragraphs-5, 6 and 8.

6 On perusal of these facts, we are of the opinion that there is some dispute between the sharers and the parties are not in agreement, cannot be a reason for the authorities to stall the acquisition process. The issue of payment of compensation would arise after acquisition of the land and authorities can certainly seek a guidance by perusal of the provisions of Maharashtra Industrial Development Act, 1961 and particularly, Section 33(2) and (3). For ready reference we may quote the following provisions :-

“**Section 33(2)** Where the amount of compensation has been determined by agreement between the State Government and the person to be compensated, it shall be determined in accordance

with such agreement.

(3) Where no such agreement can be reached, the State Government shall refer the case to Collector for determination of the amount of compensation to be paid for such acquisition as also the person or persons to whom such compensation shall be paid.”

7 Thus the authorities may take appropriate steps by following due process of law. Before parting, we are constrained to express our displeasure for the approach of the authorities. By our order dated 21 October 2021, more particularly, by paragraph-2, Respondent No.2-Collector was directed to file his affidavit-in-reply as to why Respondent No.1 failed to respond to the communication forwarded by the Government Pleader’s Office to his Office and why there was a delay in providing necessary instructions to the Office of the Government Pleader which resulted in adjourning the matter inspite of there being an order referring that last chance is given to to learned AGP to file reply. Interestingly enough, the explanation is provided in the affidavit-in-reply filed by Shri Shivaji Navanath Jagtap, Sub-Divisional Officer, Phaltan Division, Phaltan, in paragraph-13 and it reads thus :-

“I say and submit that respondent no.1 has not received notice relating to subject matter might be because of Covid-19 restriction. In fact Respondents received email on 24/09/2021 and then after we proceeded to this subject matter which resulted in delay to communicate and file reply. Apologize on behalf of Respondent in filing delayed reply.”

8 In our opinion, even this explanation only refers to ifs and buts as the affidavit-in-reply states that Respondent No.1 might not have received the notice because of Covid-19. It is not the statement indicating that on perusal of the record, the authorities was satisfied, so as to make a statement that there was no earlier communication received by the Office of the Government Pleader or notice issued in the matter received in the Office of Respondent No.1 and it is only by a guesswork, the statement is made that Respondent No.1 has not received notice relating to subject matter might because of Covid-19 restriction.

9 There is also no explanation, as to why Respondent No.2-Collector failed to file an affidavit-in-reply. Respondent No.2-Collector could certainly have sought necessary instructions from his subordinates and could have filed reply in this court in compliance of our order of this court on 21 October 2021. This exercise is not undertaken by the learned Collector of Satara. Though the approach of the authorities is certainly not very appreciable, at this stage, we refrain ourselves from making any further observation and we only say that we hope and trust that henceforth the authorities of the State Government would look into orders of this court with all seriousness and needless to state would follow the orders scrupulously.

10 With these observations, the writ petition is disposed of.

11 An authenticated copy of the order be issued to the learned Counsel appearing for the respective parties.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)