

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

RAJESH
VASANT
CHITTEWAN

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WRIT PETITION NO.3694 OF 2021

Firoj Begum Sujauddin Kazi
And Others

... Petitioners

Versus

State of Maharashtra
And Others

... Respondents

Mr. Harshad M. Inamdar for the Petitioners.

Mrs. M.S. Bane, AGP for the State.

Ms. Chaitrali Anand Deshmukh for Respondent Nos.2 and 3- Nasik Municipal Corporation.

Mr. P.J. Thorat for Respondent No.4.

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

DATE : 7 DECEMBER, 2021

P. C. :

. Considering a limited controversy involved, we have heard Mr. Harshad Inamdar, learned Counsel appearing for the Petitioners, Ms. Chaitrali Anand Deshmukh, learned Counsel appearing for Respondent Nos.2 and 3, Mr. P.J. Thorat, learned Counsel appearing for Respondent No.4 and Mrs. M.S. Bane, learned AGP appearing for the State. **Admit.**

2 The land in question was acquired by Respondent No.2-Nashik Municipal Corporation ("NMC") by way of private negotiations with Respondent No.4. The registered sale deed to that effect was

executed on 5 February 2021. The description of the land is Survey No.806/2A/1, admeasuring 17692 square meters. It was reserved as per development plan for public amenities and reservation number is 191. One Nirmala Girdhar Kale is the confirming party. The total consideration paid was Rs.48,14,66,880/-. It was paid in installments and the description is given in the sale deed. Even there is a justification given for reducing the consideration. The parties negotiated amongst themselves and decided the compensation.

3 The present five Petitioners claim to be the legal representatives of one Gayasoddin Kazi. Chiraguddin Gayasoddin Kazi filed Special Civil Suit No.40 of 1955 against other heirs of Gayasoddin Kazi and land in question came to the share of one Chiraguddin Kazi, who is a vendor of Respondent No.4. There was Special Darkhast No.59 of 1956 was filed by Rafiyoddin Chiraguddin Kazi and others and separate orders were passed including sending matter to Collector for effecting partition. As the land was allotted to the share of Chiraguddin Kazi, those lands were excluded from the partition. There was the Consent Deed dated 5 March 2009, executed in between Petitioner Nos.1 and 2 on one hand and Respondent No.4 on the other hand. The Petitioners are disputing the said consent deed.

4 After acquisition of land by NMC in the year 2021, the Petitioners have filed the present petition alleging that the acquisition took place behind their back and hence, they have prayed for prohibiting NMC and other officers from disbursing the amount.

Learned Counsel appearing for the Petitioners relied upon the judgment in the case of **Arun S.o. Trimbakrao Lokare Vs. State of Maharashtra And Others**¹. His main contention is that the entire dispute is in between the Petitioners on one hand and Respondent No.4 on the other hand and the concerned authorities, i.e. Respondent Nos.2 and 3 ought to have referred the dispute to principal civil court. According to him, even though observations in above mentioned judgment pertains to acquisition of land under National Highways Act, 1956, the principles laid down are applicable. The prayer is opposed on behalf of the Respondents. The NMC has filed affidavit-in-reply, so also Respondent No.4 has also filed the affidavit-in-reply. The prayer is opposed on various grounds including not filing an application before the Collector for referring the dispute to civil court prior to execution of sale deed. It is true that in a case relied upon, there is acquisition for expansion of National highway. It was a compulsory acquisition. The Competent Authority is supposed to decide the quantum of compensation. As per provisions of Section 3-H, sub-section (4) of the said Act, he has to refer the dispute about entitlement and apportionment to civil court.

5 We are not inclined to allow the petition, mainly for two reasons. One is that the Petitioners do not come with the grievance that they have agitated issues before any of the authorities under the Land Acquisition Act. Secondly, this is not compulsory acquisition, but is acquisition by negotiations. The provisions of the Maharashtra

1 2017(6) Mh.L.J.

Regional Town Planning Act, 1966, lays down different modes of acquisition. If the land is reserved for public purposes as per the development plan, there are two modes prescribed, one is by an agreement and second is, by making an application to the State Government for acquisition of land. When the land is acquired by a private agreement, the amount of compensation is decided by private negotiations. So what we feel is that remedy of referring the matter to civil court would not arise. Because the provisions of Land Acquisition Act were not resorted. It does not mean that the Petitioners are without remedy. They can approach civil court thereby agitating their grievances.

6 The issue of dropping land from acquisition under Section 48 of Land Acquisition Act and power to drop it, whether available to the Minister had come before this court in a case of **City & Industrial Development Vs. State of Maharashtra**.² In that case, the land was not acquired as per the provisions of Section 126(1)(c) of the Maharashtra Regional And Town Planning Act, 1966 and hence, it was held that the provisions of Section 48 of Land Acquisition Act would not be applicable. Hence, we are of the considered view that there is no merit in the petition. The consideration of land by a mutual agreement is also disbursed. Hence, the writ petition is dismissed.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)

2 2017(6) Bom. C.R. 22