

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

WRIT PETITION NO. 1911 OF 2020

- 1) Dileep S/o Balkrishna Nevatia,
Aged 70 years, Occu: Business,
R/o. 5-A, Shashi Deep, Worli Sea Face,
Mumbai 400 030.
- 2) Sunita W/o Dileep Nevatia,
Aged 68 years, Occu: Business,
R/o. 5-A, Shashi Deep, Worli Sea Face,
Mumbai 400 030.

.... **PETITIONERS**

// VERSUS //

- 1) The Deputy Collector
Land Acquisition (General),
Collector's Office Complex,
Civil Lines, Nagpur 440 001.
- 2) Sheetal Deshmukh,
Deputy Collector,
Land Acquisition (General),
Collector's Office Complex,
Civil Lines, Nagpur 440 001.
- 3) Vijaya Bankar,
Deputy Collector,
Land Acquisition (General),
Collector's Office Complex,
Civil Lines, Nagpur 440 001.
- 4) The Collector, Nagpur,
Collector's Office Complex,
Civil Lines, Nagpur 440 001.
- 5) Nagpur Municipal Corporation,
through the Municipal Commissioner,
Mahanagar Palika Marg,
Civil Lines, Nagpur 440 001.

- 6) The State of Maharashtra,
through Secretary, Urban Development
Dept. Mantralaya, Mumbai – 32.
- 7) Kapil S/o. Mukund Sutaria,
Flat No.13, Laxmi Apartment,
164, Ravindranath Tagore Marg,
Civil Lines, Nagpur – 440 001.
- 8) Kavita W/o. Shailendra Nath,
Bungalow No.58, Mall Road,
Kamptee Cantonment,
Nagpur – 441 001.
- 9) Sonal W/o. Anuj Mehra,
501, Ashishwang C.H.S.,
Pochkhanawalla Road,
Worli, Mumbai 400 030.
- 10) Nisha W/o. Bret Shoup,
17, Shivtirth No.1,
Bhulabhai Desai Road,
Mumbai 400 026.

.... **RESPONDENTS**

Shri R. L. Khapre, Senior Advocate assisted by Shri R. P. Joshi,
Advocate for the petitioners.
Shri S. M. Ukey, Additional Government Pleader for respondent
Nos.1, 4 & 6.
Shri R. M. Bhangde, Advocate for respondent No.7.
Shri P. P. Kothari, Advocate for respondent No.8, 9 & 10.

CORAM : SUNIL B. SHUKRE AND
ANIL L. PANSARE, JJ.

DATED : 24.11.2021

ORAL JUDGMENT : (Per Sunil B. Shukre, J.)

1. Heard. **Rule.** Rule made returnable forthwith. Heard finally
by consent of the learned counsel appearing for the parties.

2. Basically the dispute involved in this petition is in respect of right to receive the compensation which has already been determined by passing an award dated 09.09.2019. It has been the contention of the petitioners that there being the transfer of their land before Section 4 Notification was issued, they are entitled to receive the compensation of the land, which was compulsorily acquired by respondent No.1 for a public purpose, which contention had been disputed by respondent Nos.7, 8, 9 and 10 so far. However, now during the pendency of the petition, this dispute has been amicably settled by the contesting parties and they have accordingly incorporated their terms of settlement in a written Memorandum of Settlement which has been placed on record.

3. We have gone through the Memorandum of Settlement, which has been already marked as document 'A' for identification. It has been entered into between the parties on 23rd November, 2021 at Nagpur. It has been signed for the petitioners by duly constituted Power of Attorney Mr. Subodh Vishwanath Joshi, while it has been signed for respondent Nos.9 and 10 by their duly constituted Power of Attorney Mr. Ajay Surinder Chohan.

4. When this matter came up for hearing yesterday, we made inquiry with both these Power of Attorneys and also respondent Nos.7

and 8, who were personally present before the Court. Upon such enquiry, we were satisfied that the terms of settlement have been voluntarily entered into between the parties without being influenced by any factor. We were also satisfied that the parties were agreeable to the terms of settlement. However, in order to be more cautious, we decided to have interaction also with the petitioner Nos.1 and 2 and respondent Nos.9 and 10 through virtual mode, to remove any doubts, if any, regarding the voluntary nature of settlement. Accordingly, these parties virtually appeared before this Court just now and after inquiry with them, this Court is satisfied that the terms of settlement vide document 'A' have been entered into by the parties voluntarily and that the contesting parties do not have any objection if they are acted upon and given effect to accordingly.

5. At this stage, Shri S. M. Ukey, learned Additional Government Pleader for respondent Nos.1, 4 and 6 takes an exception to give effect to the terms of settlement on two grounds. Firstly, the registration of the sale-deed has been done long after the date of issuance of declaration under Section 4 of the Land Acquisition Act, 1894 and it is settled law that such sale-deed cannot be taken into consideration for determining the amount of compensation payable over acquisition of the lands. The second ground of objection is that since reference under Section 30 of the Land Acquisition Act, 1894 is

already pending, which is about apportionment of the amount of compensation determined in the present case, the terms of settlement can be placed before the reference Court and reference Court would have the jurisdiction to take an appropriate decision thereupon.

6. So far as the second ground of objection is concerned, we must say that although it is possible for the parties to appear before the reference Court and seek its order as regard the terms of settlement, there is nothing in law which should prevent this Court from entertaining the request of the parties to consider the terms of settlement and pass appropriate order thereupon. Relegating parties to such alternate remedy, in a petition filed in the year 2020 and which relates to dispute which has been raging between the parties since the year 2000, would only cause further delay to what is likely to happen in respect of the terms of settlement. Therefore, we do not think it necessary to direct the parties to appear before the reference Court in this case.

7. As regards the first objection, we must say that the objection could have been considered and even accepted by this Court had it been the case that the alienation of the land had taken place after Section 4 declaration was published. In the present case, the alienation of the land had taken place on 28.06.1995, may be by

unregistered document but, such alienation has got its validity when the unregistered sale-deed was got registered in the year 2015. As per Section 47 of the Registration Act, 1908 such subsequent registration of the unregistered document of transfer of immovable property under the provisions of the Registration Act relates to the date of execution of the document witnessing transfer of ownership of the immovable property. Considering this provision of law, we find that the alienation of the land which had taken place by unregistered document in the year 1995, has got its validity by such retrospective effect and therefore, it has to be said that the alienation or the transfer of the land had taken place well before Section 4 declaration was published. Besides, the alienation of the land which has been made in the present case could not have been said to have been done with any oblique motive for obtaining enhanced compensation or artificially increasing the price of the land so as to influence the decision of the Land Acquisition Officer while determining the true value of the lands under acquisition. Therefore, we find no substance in the objection taken by the learned Additional Government Pleader.

8. In view of above, this petition deserves to be allowed and it is allowed in terms of settlement vide document 'A'. The payment of compensation be made in terms of the settlement vide document 'A', within a period of four weeks from the date of the order. The order of

reference Court dated 24.01.2020 (Annexure 'O'), is hereby quashed and set aside.

Rule is made absolute in the above terms. No costs.

(ANIL L. PANSARE, J.)

(SUNIL B. SHUKRE J.)

Kirtak