

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.760/2018

Sau. Meena Hanumantrao Asole and Ors. Vs. State of Maharashtra and Ors.

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders or directions
 and Registrar's orders

Court's or Judge's orders

Shri N. B. Bargat, Advocate for Petitioners.
 Shri A. A. Madiwale, A.G.P. for Respondent No.1.
 Shri Rohit Joshi, Advocate for Respondent Nos.2 to 8.

CORAM : AVINASH G. GHAROTE, J.

DATE : 11/10/2021.

1. Heard Mr. Bargat, learned Counsel for petitioners.
2. The basic challenge raised in the petition, is to the order dated 18.09.2017, passed by the respondent No.1/Sub-Divisional Officer, Darwha in the appeal filed by the petitioners, challenging the mutation entry No.3851 and 4687 dated 22.02.2012 and 26.09.2013 respectively, which appeal has been rejected, by the respondent No.1 by holding that the matter in issue, could be agitated by the petitioners by filing appropriate proceedings in the Civil Court. It is not in dispute that the petitioners, have already approached the Civil Court by filing Regular Civil Suit No.50/2017 on 21.09.2017, wherein the land of Survey No.233/1, 233/2 and the house property referred to in the petition is already the subject matter.
3. Not only that, the land Acquisition Officer, has also been made a party defendant No.8 to the said suit. A decree is also sought for apportionment of the compensation awarded by the defendant No.8 therein for the acquisition of the land of Survey No.233/1 and 233/2.

4. It is further apparent, that an application filed in the suit for a direction to the defendant therein to deposit the compensation amount in the Court was filed on 22.09.2017, which came to be withdrawn. Another application for the same purpose filed at Exh.32 on 05.12.2018, though not disclosed in the petition, came to be rejected on 03.08.2019. It is thus apparent, that the question about the petitioners having any share, in the entire suit property, including the land, which has been acquired by the Land Acquisition Officer in acquisition proceedings, is the subject matter of the suit pending before the Civil Court.

5. It is obvious, that the award regarding the acquisition of the land of Survey No.233/1 and 233/2, was passed on 21.07.2017, which was prior in point of time, to the filing of the suit. Para No. 8 of the plaint in Regular Civil Suit No.50/2017, also makes a mention about the objection dated 05.06.2017 filed by the petitioners in that regard. It is further material to note, that the application for grant of temporary injunction filed by the present petitioners in the said suit came to be allowed on 31.07.2018, whereby the parties have been restrained from creating third party interest in the suit property.

6. The above position clearly indicates, that all rights which have been claimed by the present petitioners including the right in the land of Survey No.233/1 and 233/2, are now subject matter of Regular Civil Suit No.50/2017, and shall be decided therein. The purpose of a reference under Section 64, by the Authority under the Right to Fair Compensation

and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is to determine, the entitlement of a party in regard to the share being claimed in the compensation. In the instant matter, the dispute is already there before the Civil Court, filed by the petitioners themselves, in which the Land Acquisition Officer, has already being made a party and a relief in that regard has already been sought, considering which, the purpose of Section 64 of the Act of 2013, already stands fulfilled. That apart as pointed out above, the petitioners themselves have subjected the entire issue to the jurisdiction in the Civil Court and has also suffered the order of rejection of the application at Exh.32. In view of the above position, I do not see any infirmity in the impugned order dated 18.09.2017 as the rights of the parties shall be determined in Regular Civil Suit No.50/17 and therefore, there is no merit in the petition. The petition is therefore accordingly dismissed.

JUDGE