

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

WRIT PETITION 6655 OF 2022

Mr. Mangesh Babanrao @ Abbasaheb
Chavan & Ors.

... Petitioners.

Versus

Mr. Shashikant Balasaheb Dhamale & Ors. ... Respondents.

Mr. M. J. Kamawat, Advocate for the Petitioners.
Mr. Gaurav Potnis, Advocate i/by Ms. Pallavi Potnis for the
Respondents.

CORAM : ROHIT B. DEO, J.

DATE : JUNE 21, 2022

P.C. :-

1. The Petitioners are Defendants 8, 10, 12 in Regular Civil Suit 1255 of 2013 which is instituted by Respondents 1 and 2, seeking decree of partition and separate possession; perpetual injunction and enforcement of right of preemption. Some portion of subject matter of the suit is covered by the Notification issued under section 15 (2) of the Maharashtra Highways Act, 1955 ("Act"). The said provision refers to the power of the State Government, at the instance of the Highway Authority to declare its intention to acquire such land

as is required by the Highway Authority, by notification in the official gazette. Section 16 provides for power to enter or survey the land and section 17 provides that any person interested in the land other than the persons whose objections or suggestions have already been considered or heard by the Highway Authority may object to the declaration of intention to acquire land. Section 18 deals with the declaration of acquisition and it is only after publication of the declaration under sub-section (2) of section 18 that land vests with the State Government.

2. Section 19B deals with the determination of compensation. Sub-section (2) provides that the amount of compensation may be determined by agreement between the State Government and the person to be compensated and in the absence of such agreement, sub-section (3) comes into play, which speaks of reference to the land acquisition officer for determination of the amount of compensation.

Section 19C mandates that the amount determined under section 19B shall be deposited in the prescribed manner with the Land Acquisition Officer before taking

possession of the land. It is obvious that the amount determined is required to be deposited under section 19C (1) whether such amount is determined under the agreement or then by the Land Acquisition Officer. Other provisions of section 19C provides for determination of the *inter-se* claims to apportionment of the compensation, if there be, any. Sub-section (4) also contemplates a reference to Civil Court in an appropriate case.

3. The Plaintiffs preferred two Applications in the context of the declaration under section 15 of the Act. The first application is under Order 6, Rule 17 bringing on record the developments concerning the acquisition process and the other application is preferred under Order 1 Rule 10 of the CPC, seeking impleadment of the Officers of the State Government as party Respondent. These Applications are allowed by the learned trial Court by separate orders dated 11.03.2022, which are impugned herein.

4. In my considered view, the learned trial Court committed an error in allowing the said Applications. The proceedings are inchoate and at the stage of the

declaration under section 15 of the Act of the intention to acquire. There is an elaborate statutory regime in place which can be triggered by the Plaintiffs at the appropriate stage. Even if the submission of the learned counsel for the original Plaintiffs is accepted, and the submission is that the Plaintiffs apprehend that the contesting Defendants may enter into an agreement and directly collect the compensation, the fallacy lies in the assumption that the amount of compensation which is determined under the agreement can be directly paid to the party to the agreement, without taking recourse to section 19, which speaks of the deposit of the amount and issuance of a notice, inviting claims. That apart, as noted supra, even if the Plaintiffs are held entitled to invite the civil court to consider the issues involved, that stage can only be, at the earliest, after the title is transferred in favour of the State Government under section 18(2) of the Act.

5. At this stage, prayers made are certainly premature and orders impugned are, therefore, set aside with the clarification that the liberty is reserved with the Plaintiff to

take out an appropriate application at an appropriate stage and the earliest stage can only be the vesting of the title in the State Government under sub-section (2) of Section 18 of the Act.

6. Subject to the clarification and liberty reserved supra, the orders impugned are set aside.

7 Petition is partly allowed and disposed of in the aforesaid terms.

(ROHIT B. DEO, J.)

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