

JPP

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

***WRIT PETITION NO. 6820 OF 2021
with
INTERIM APPLICATION (ST.) NO. 25921 OF 2022***

Barkya Kaluram Thakur (deceased)
through Legal Heirs and Ors.

... Petitioners

V/s.

Special Land Acquisition Officer & Ors.

... Respondents

Mr. Saurabh Patil with Priyanka Lanke for the Petitioners

Mr. Samadhan A. Kashid for the Respondent No.17

Mr. Sarthak Diwan i/b. A.M. Kulkarni for Respondent No.3 –
CIDCO

Mr. Abdul Kader Millwala for the Respondent Nos. 25/1/1, 25/1/2,
25/1/3, 25/1/4, 26/1/5, 26/2/3, 26/3/2, 26/4/1, 26/5/3, 26/6/1, &
27/1/3

Mr. R.S. Pawar, AGP for the Respondent - State

***CORAM : NITIN JAMDAR &
SHARMILA U. DESHMUKH, JJ.***

DATE : 18 OCTOBER 2022

P.C. :-

Heard the learned Counsel for the parties.

2. The Petitioners are seeking a direction that the Award bearing Nos. 342-P, 238, 79, 70, 40, 405-P in respect of the lands at Village Owe, Taluka Panvel, District Raigad, Navi Mumbai be modified to the effect that the Petitioners are the owners of $2/3^{\text{rd}}$ area of the land. The Petitioners also seek a direction that since the Petitioners are owners of $2/3^{\text{rd}}$ area of the land, under the Award, compensation accordingly be paid to the Petitioners. The Petitioners have made a request to the Respondent - Acquiring Authorities on 29 April 2016 as regard their $2/3^{\text{rd}}$ share in the compensation under the Award. In this connection, the Petitioners have referred to a decision given by the Civil Court, Panvel in Regular Civil Suit No. 140 of 1985 dated 30 April 1991, the decision given by the District Court, Alibag in Civil Appeal No. 79 of 1995 dated 19 April 1995, and the decision given in the Second Appeal Nos. 262 of 2014 with Civil Application No. 370 of 2002 dated 7 April 2016.

3. As regards the representation of the Petitioners – Plaintiffs to give effect to the decision of the Civil Court, there is no further response. However, the Divisional Commissioner, Konkan Division, by order dated 27 May 2020 has stated that it is not possible to modify the Award which is rendered 30 years ago.

4. Apart from the modification of the Award, the Petitioners - Plaintiffs have decrees of the Civil Court in their favour. Before the learned Civil Judge, Panvel, the dispute as to the

entitlement of the Petitioners and the Respondents qua in respect of the share in the compensation awarded by the Land Acquisition Officer was arose. A specific issue was raised as to Petitioners – Plaintiffs regarding entitlement to receive the compensation and the learned Civil Judge decreed the Suit holding the Petitioners – Plaintiffs right to receive 2/3rd share in the compensation along with the Defendant Nos. 16 and 17 therein. The learned District Judge thereafter dismissed the Appeal filed by some of the Defendants. The Second Appeal filed by some of the Defendants was dismissed by order dated 7 April 2016. The matter was concluded in favour of the Petitioners where there is a specific finding of the Court that the Petitioners are entitled to 2/3rd share in the compensation.

5. Once this fact is placed before the authorities, the authorities will have to deal with what is the effect of the orders passed by the Civil Court. In the Suit filed by the Petitioners – Plaintiffs, it has the factum of acquisition by CIDCO is referred but the Plaintiff had taken objection and claimed their right before the concerned authority. On 3 September 1985, notice was received by the Petitioners – Plaintiffs that unless there is an order from the Court, the amount of compensation will be paid to the Defendants and therefore, the Suit was filed. Therefore, it was the Respondent – CIDCO who was directed the Petitioners to approach the Civil Court to get their rights adjudicated. Thereafter, once the civil proceedings are over and all decisions are in favour of the Petitioners,

that the Petitioners have made representation, then according to us, only on the ground of delay, the Petitioners' claim cannot be defeated, therefore, the authorities will have to consider the representation of the Petitioners.

6. The learned AGP states that the appropriate decision will be taken by the Respondent – Acquiring Authorities on the representation of the Petitioners dated 29 April 2016 based on the decrees of the Civil Court.

7. In the light of this position, we dispose of the Writ Petition. All contentions of the parties are open.

8. We are informed that the substantial part of the compensation has already been disbursed, but some part of the compensation remained. It is not possible to put the clock back, and for the part which has remained to be disbursed, the Petitioners – Plaintiffs representation be considered.

9. With these observations, the Writ Petition is disposed of. The Interim Application is disposed of accordingly.

SHARMILA U. DESHMUKH, J.

NITIN JAMDAR, J.