

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1846 OF 2019

Shrikant Raghunath @ Kisan Alat

...Petitioner

vs.

State of Maharashtra through
Its District Collector and Ors.

...Respondents

Mr. Sujeet R. Bugade - Advocate for the Petitioner

Mr. S. B. Kalel – AGP for the Respondent No. 1 and 2.

CORAM : R. D. DHANUKA AND
S. M. MODAK, JJ.

DATE : 04th JANUARY, 2022

P. C. :-

1. Learned counsel for the Petitioner seeks liberty to delete Respondent Nos. 3 to 8 on the ground that no reliefs are sought against the said Respondents. Leave to amend is granted. The amendment to be carried out within two weeks from today.

2. Rule. Learned AGP waives service of notice on behalf of Respondent Nos. 1 and 2. By consent of parties, petition is heard finally.

3. By this petition filed under Article 226 of the Constitution of India, the Petitioner has prayed for writ of certiorari for quashing

and setting aside the impugned order dated 07th December, 2012 passed by the Respondent No. 2 on the application filed by the Petitioner and the Respondent Nos. 5 and 6 under Section 28A of the Land Acquisition Act.

4. It is the case of the Petitioner that the Petitioner was not issued any notice by the Respondent No. 2 before deciding the said application filed by the Petitioner and Respondent Nos. 5 and 6 under Section 28A of the Land Acquisition Act.

5. Learned counsel invited our attention to the impugned order annexed at Exh. D to the petition and submitted that no such documents are required to be produced as referred in the impugned order dated 07th December, 2012.

6. In support of his submission the learned counsel placed reliance on an unreported judgment of this Court delivered on 29/11/2013 in the Writ Petition No. 9666 of 2013 filed by the ***S **h**ri Dhondiba Sudam Sonawane Vs. The State of Maharashtra and Ors..***

7. The learned AGP made an attempt to justify the order passed by the Respondent No. 2 on the ground that the Petitioner had not disclosed the current address of the Petitioner to the Respondent No.

2.

8. The perusal of the averments made in the petition clearly indicates that the address of the Petitioner was changed and was not residing at the address at which the Respondent No. 2 had allegedly sent the notice.

9. The impugned order is violation of principal of natural justice. Be that as it may in case of *Shri Dhondiba Sudam Sonwane (Supra)* this Court held that most of the requisitions set out in the impugned communications are completely contrary to the requirements of Section 28A of the Land Acquisition Act. Except for the certified copy of the award of the Civil Court, no other documents were required to be produced alongwith an application under sub-section (1) of Section 28A of the Land Acquisition Act. The statement that a reference under Section 18 of the said Act has not been applied for by the Applicant must be normally incorporated in the application itself. If such statement is not made in the application, a separate affidavit in that behalf can be filed. This Court accordingly held that calling upon the claimants to furnish such details was completely illegal as such requisitions will completely defeat the very object of incorporating Section 28A of the Land Acquisition Act.

10. The Principles laid down by this Court in case of *Shri Dhondiba Sudam Sonwane (Supra)* apply to this case. We are respectfully bound by the said judgment. We do not propose to take any different view in this matter.

11. In our view the impugned order dated 07/12/2012 is contrary to the Section 28A of the Land Acquisition Act and the principles laid down by this Court in case of *Shri Dhondiba Sudam Sonwane (Supra)*, and thus deserves to be set aside.

12. We accordingly passed following order:-

ORDER

(a) The impugned order dated 07/12/2012 passed by the Respondent No. 2 is quashed and set aside.

(b) The application made by the Petitioner and Respondent Nos. 5 and 6 bearing No. 7 of 2009 filed under Section 28A of the Land Acquisition Act are restored to file and to be disposed of on its own merits.

(c) Respondent No. 2 to decide the said application in accordance with principles laid down by this Court in case of *Shri Dhondiba Sudam Sonwane (Supra)*.

(d) If the Petitioner has not produced certified copy of the award, the same shall be produced within two weeks from today.

(e) The Petitioner is directed to furnish current

address of the Petitioner to the Respondent No. 2 within one week from today for the purposes of communication.

(f) The Respondent No. 2 shall decide the matter afresh and in accordance with law within eight weeks from the date of communication of this order.

(g) The Respondent No. 2 shall give fresh notice on Petitioner and Respondent Nos. 5 and 6.

(h) The Petitioner is directed to remain present before Respondent No. 2 on 12/01/2022 at 11 a.m. without fail. If the date assigned by this Court is not convenient to the Respondent No. 2, the convenient date shall be informed to the Petitioner with 48 hours advance notice before the date of hearing proposed by the Respondent No. 2.

(i) The learned AGP agrees to convey this order to the Respondent No. 2 for information and compliance.

(j) Writ petition is allowed in the aforesaid term.

13. Rule is made absolute. Accordingly, no order as to costs..

14. Parties to act on the authenticated copy of this order.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]