

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 WRIT PETITION NO.313 OF 2023

PRABHAKAR BHAGWAN THORAT
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

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Advocate for Petitioner : Mr. Pathan Hamzakhan I.
AGP for Respondents-State : Mr. G. O. Wattamwar
Advocate for Respondent No.5 : Mr. P. N. Kalani
Advocate for Respondent No.3 : Ms. Nikita N. Gore
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CORAM : ARUN R. PEDNEKER, J.
DATE : 23rd January, 2023

PER COURT :

1. The present petition is filed against the order dated 27/12/2022, passed by Sub-Divisional Officer and Land Acquisition Officer, Kalamnuri.

2. Heard the learned Advocates appearing on behalf of respective parties. The learned Advocate for the petitioner submits that the respondent Nos.4, 5 and 6 owned only 13 R land each in Gut No.47 and he owned, two different pieces of land i.e. 38 R and 17 R in Gut No.47. It is the petitioner's case that 13 R land compensation has already been taken by the said respondents. The petitioner has also taken compensation for 38 R land in Gut No.47 and 8 R from the

remaining 17 R land in Gut No.47 and the present dispute relates to the remaining 9 R (remaining 9 R from 17 R) in land Gut No.47. The present dispute now is relatable to 9 R land in Gut No.47.

3. The authorities below have come to the conclusion that the said respondents are owners of 16 R land each, however compensation to them has been paid for 13 R land and each one of them is entitled for compensation for land of 3 R and according to respondents authorities they have directed disbursement of the compensation to the said respondents Nos.4 to 6. The Joint Measurement Chart dated 07/02/2018 indicate that the respondent Nos.4 to 6 had 16 R land each and petitioner had 38 R and 8 R land. The petitioner has received compensation of entire 46 R land.

4. The learned Sub Divisional Officer cum Land Acquisition Officer, Kalamnuri passed the order in Marathi Language, of which English Transalation reads as under :-

Upon verifying all the documents, papers filed in this matter and arguments submitted in the case following points come to notice.

1. Said matter is in relation with the dispute of Gut No. 47 situated at Mauje Waranga Phata, Tq. Kalamnuri, Dist.

Hingoli.

2. Objectitioner Prabhakar Bhagwan Thorat, r/o Tondapur has raised objection in this matter.

3. Notice u/s 3A has been published on 11/05/2017 in this matter. Accordingly area of 95.60 R land has been shown to be acquired.

4. As per the Joint Measurement Report No. 63/2017 dated 07/02/2018 of Mauje Waranga Phata total 48 R land i.e. 16 R each as mentioned in Sr. Nos. 1, 2 and 3 in the name of the respondents and total 46 R i.e. 38 R and 8 R each as mentioned in Sr. Nos. 4 and 5 in the name of the petitioners, in all total 94.00 R land has been acquired from Gut No. 47.

5. Notice u/s 3D has been published on 11/05/2018 and accordingly following names are shown for the acquired 94 R land i.e. 1) Gautam Dagadu Thorat, 2) Pratap Dagadu Thorat, 3) Prabhakar Bhagwan Thorat Natural Guardian mother Yashodabai, 4) Uttam Dagadu Thorat, 5) Pratap Dagadu Thorat, Uttam Dagadu Thorat, Guatam Dagadu Thorat, Prabhakar Bhagwan Natural Guardian mother Yashodabai.

6. The objectioner appears to have not objected the notice u/s 3 D.

7. Thereafter, on 04/10/2018 the award regarding Mauje Waranga Phata has been declared by this office. Accordingly 13 .00 R land of each Sr. Nos. 1) Pratap Dagadu Thorat, 2) Uttam Dagadu Thorat, 3) Gautam Dagadu Thorat, 38 R land of Sr. No. 4) Prabhakar Bhagwan Natural Gaurdian mother Yashodabai and as per 3D published on 11/05/2018 area of 17.00 R land of Sr. No. 5) i.e. Pratap Dagadu Thorat, Uttam Dagadu Thorat, Prabhakar Bhagwan Natural Gaurdian mother Yashodabai all shown as common possessors, in all total

94.00 R land has been acquired.

8. The petitioner/applicant has informed through his objection petition dated 18/01/2019 that, Nanded-Hingoli road passes through his farm land due to which his farm land is divided into two parts. Out of which one part of the farm land at Gut No. 47 is towards east direction and in that 17.00 R land is possessed by the applicant. Therefore, if land at Gut No. 47 which is subjected to be acquired for the National Highways is not re-measured then the applicant may be at irreparable loss.

9. Said objection petition has been forwarded to the Land Records office, Kalamnuri by this office vide O. NO. 2019/LA/SH No. 161/Desk dated 04/08/2020 for re-measurement.

10. As per the report No. Land Acquisition/Reinquiry/Waranga Phata/2021 dt. 06/08/2021 of Dy. Superintendent, Land Records, Kalmnuri, from Gut No. 47 area of 38.00 R land in the name of applicant as per statement and 13.00 R land out of each 16.00 R land in the name of cousins of the applicant has been compensated and out of that Pratap Dagadu Thorat 03.00 R, Uttam Dagadu Thorat 03.00 R and Gautam Dagadu Thorat 03.00 R in all total 09.00 R land and 08.00 R land of the applicant in all total 17.00 R land is being acquired. By the report it is also submitted to this office that, as per the statement, the quantum of compensation for the said lands to the applicant and his cousins as per the area as shown against their names above would be proper.

11. The compensation to the applicant for the land acquired to the extent of 08.00 R has been paid already on the basis of

the report of the L.R. Kalamnuri dt. 11/10/2022.

12. Notice u/s 3 A has been published in Hindi and English on 11/05/2017 in this matter and said notification has been published on 18/08/2017 through 1) Dainik Lokmat 2) Times of India and objections if any are required to be submitted within the prescribed period of 21 days from the date of publication. No objection has been received against the award of the applicant and non-applicant about Gut No. 47.

13. Notice u/s 3 D has been published in Hindi and English on 11/05/2018 in this matter and said notification has been published on 07/06/2018 through 1) Marathwada Neta (Marathi) 2) Times of India (English) and objections are invited from the concerns by the notification u/s 3G and no objection has been received on the award of the applicant and non-applicant about Gut No. 47.

Taking into consideration the above facts, I, Kranti Dombé, Sub-Divisional Officer Cum Land Acquisition Officer, Kalamnuri, hereby pass the following order in this matter u/section 3 H (3) of the National Highways Act 1956.

ORDER

1. The objection petition of the applicant is hereby rejected.
2. As per the report No. LA/RE/Waranga Phata/2021 dt. 06/08/2021 of Land Records, Kalamnuri regarding the compensation of the acquired land at Gut No. 47, Mauje Waranga Phata, Tq. Kalamnuri, the compensation to the non-applicants is being paid for total 09.00 R land i.e. Pratap Dagadu Thorat 03.00 R, Uttam Dagadu Thorat 03.00 R and Gautam Dagadu Thorat 03.00 R.
3. Both the parties are hereby informed that, the

procedure of taking over the possession of land will be conducted as per rules as per section 3 E of the National Highways Act 1956.

4. Both the parties be informed accordingly. File be transferred to the record room.

5. From perusal of record, it is apparent that the petitioner has filed a suit claiming declaration of ownership of the said land and interim relief has been refused in the said suit. In the year 2018 joint measurement was carried out and that 16 R land each was shown at Sr.No.1, 2, and 3 in the possession of respondent Nos.4 to

6. At Serial No.4 is shown in the possession of the petitioner holding land of 38 R and at Serial No.5 only 8 R shown in the possession of the petitioner.

6. Even after re-inquiry and re-measurement by report dated 06/08/2021 the same position is maintained. In view of the same, the respondent authorities are entitled to disburse the compensation to the respondent Nos.4 to 6 to the extent of 9 R land.

7. I do not see any error committed by the respondents authorities in granting the compensation to the said respondents.

The petitioner has not been able to demonstrate a prima facie case of title in his favour qua the 9 R land before the Civil Court. The petitioner has taken compensation of his 46 R of land and the authorities cannot withhold the compensation of the respondent Nos.4 to 6 when the possession of 9 R land is to be taken from the said respondents.

(ARUN R. PEDNEKER, J.)

vj gawade/-.