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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3842 OF 2022

Pratap Gulab Davkar and Another

PETITIONERS

VERSUS

The Deputy Collector, Land Acquisition & Others RESPONDENTS

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Mr. Hrishikesh V. Tungar, Advocate for the petitioners

Mr. P. G. Borade, AGP for respondent No.1 - State

Mr. Vishal A. Bagal, Advocate for respondent No.2

Mr. Bhushan B. Kulkarni, Advocate for respondent No.3.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 26th SEPTEMBER, 2023

ORDER :

1. Leave to correct prayer clause.
2. Learned advocate representing respondent No.3 submits that contesting respondent is respondent No.2 and, therefore, he does not wish to file reply.
3. Order passed by Reference Court below Exhibit-15 in Land Acquisition Reference No. 265 of 2012, thereby rejecting application filed by petitioner under Order 26, Rule 9 of the Civil Procedure Code, for appointment of Court Commissioner, to measure land survey No. 14 of village Mouj, Taluka and District-

Beed, is impugned in the present petition.

4. Petitioner filed Regular Civil Suit No. 111 of 2011 praying for injunction, thereby restraining respondents – defendants from distributing land acquisition compensation till the suit property, Gut No. 14 is measured. In view of reference having been made by Collector for apportionment of compensation amount, the suit was withdrawn by petitioners.

5. In the reference, petitioner filed application Exhibit-15 for appointment of Court Commissioner, to measure land survey No. 14 and to ascertain how much area of land belonging to parties under dispute is acquired, with a direction to Commissioner to prepare map of acquired area between parties under dispute and to submit report accordingly. The said application is opposed by respondent – non applicant No.2. Reference Court has rejected the application holding that the prayer made by petitioner is beyond the scope of section 30 of the Land Acquisition Act and, therefore, it has no jurisdiction to decide the dispute raised by petitioner in respect of measurement of the suit land. This order is impugned in the present petition.

6. Heard learned advocate for petitioners and learned

advocates for respondents. Perused the memo of writ petition, annexures, impugned order and the citation relied on by learned advocate for petitioner.

7. Admittedly, the dispute between the parties is in respect of apportionment of compensation amount for which reference is made by the Collector. In the suit filed by petitioner, injunction was sought not to distribute compensation amount till the acquired portion of Gut No. 14 is measured. In the plaint, a specific pleading was made that Gut No.14 be re-measured and then only compensation amount may be distributed. Considering the fact that Reference Court has to decide about apportionment of compensation amongst claimants, those who are entitled to it, Reference Court ought to have allowed the application filed by petitioner for measurement of land survey No. 14.

8. Learned advocate for petitioners has rightly relied on section 53 of Land Acquisition Act, which provides that provisions of the Civil Procedure Code shall apply to all proceedings before Court under Land Acquisition. In view of this section, Reference Court has power to appoint Commissioner in accordance with Rule 9 of Order 26 of the Civil Procedure Code.

9. In *"Janu Gaunkar and Others Vs. Luis Fernandes and*

Others” rendered in First Appeal No.78 of 2000 dated 6th March, 2009, learned Single Judge of this Court has held that, to decide dispute between the parties finally and effectively, Reference Court ought to have appointed commissioner to measure the properties of the parties. This decision supports the case of petitioners.

10. Since the impugned order is passed by ignoring the provisions of section 53 of the Land Acquisition Act, the finding recorded by Reference Court that it has no jurisdiction to appoint Court Commissioner while deciding Reference under Section 30 of the Land Acquisition Act, is unsustainable. In the result, following order

ORDER

- a. Writ petition is allowed.
- b. Impugned order dated 19th December, 2019 passed by learned 2nd Joint Civil Judge, Senior Division, Beed below Exhibit-15 in LAR No.265 of 2012 is quashed and set aside.
- c. Application Exhibit-15 is allowed.

[NITIN B. SURYAWANSHI]
JUDGE