

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2787 OF 2022

- 1) Kashinath S/o Rama Misal,
Age 70 Years, Occu. Agril.,
- 2) Bajirao S/o Kashinath Misal,
Age 45 years, Occu. Agril.,
- 3) Walmik S/o Kashinath Misal,
Age 42 years, Occu. Agril.,
- 4) Prabhakar s/o Kashinath Misal,
Age 40 years, Occu. Agril.,

... Petitioners
(Orig. Claimants)

Versus

- 1) The Union of India,
Through General Manager,
Central Railway, Chhatrapati
Shivaji Terminus,
Administrative Building,
Mumbai-400 001.
- 2) The Deputy Chief Engineer,
(Construction) Central Railway,
Pune-411 001.
- 3) The Deputy Collector,
Land Acquisition, (J.P. No.2),
Beed, District Beed.

... Respondents
(Orig. Respondents)

...

Mr. D. A. Bide, Advocate for Petitioners
Ms. Sudha Chintamani, Standing Counsel for Respondent Nos.1 & 2
Mr. P. G. Borade, AGP for Respondent No.3

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 08th JUNE, 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by

the consent of the parties.

2. This petition is filed under Articles 226 and 227 of the Constitution of India, seeking following prayers:-

"C] By issuing appropriate writ, order or directions the orders dated 03/05/2021, 10/05/2021, (Exh. "D") 25/10/2021, 27/10/2021 and 07/01/2022 (Exh. "E") passed by the learned Civil Judge, Senior Division, Beed below Exh.1 in L.A.R. No.508/2015 may kindly be quashed and set aside.

D] By issuing appropriate writ, order or directions the order below Exh.28 dated 13/07/2021 (Exh. "F") as well as the order below Exh.30 dated 27/10/2021 (Exh. "G") in L.A.R. No.508/2015 by the learned Civil Judge Senior Division, Beed may kindly be quashed and set aside."

3. Land of the petitioners bearing Gut Nos.560, 559, 561 and 562, at village Khokarmoha, Tq. Shirur (Kasar), District Beed, admeasuring 0.93 R, along with fruit bearing trees, was acquired for construction of 'Ahmednagar-Beed-Parli (v) New Railway Line'. Award is passed under Section 18 of the Land Acquisition Act, 1894 (for short 'the said Act'). Being dissatisfied with the quantum of compensation, petitioners filed L.A.R. No.508/2015 seeking enhancement of compensation. By the impugned order dated 10/05/2021 passed below Exhibit-1, reference Court held that petitioner No.1 Kashinath Misal's name is not shown in the E-Statement of the award and as such, he is not entitled for claim mentioned in the reference. Thereafter, by subsequent order dated 25/10/2021 passed below Exhibit-1, the reference Court held that

petitioner No.1 Kashinath Misal is not considered as claimant in the reference and the claim of remaining petitioner Nos.2 to 4 shall be considered to the extent of their share only.

4. Then, by order dated 07/01/2022, passed below Exhibit-1, the reference Court directed petitioners to specify the share of petitioner Nos.2 to 4 in the property Gut Nos.56, 559 and 561 of village Khokarmoha and asked them to file amendment petition. In response, petitioners filed application Exhibit-28 contending that their reference to the extent of acquired land Gut No.560, ad-measuring 0.27 R, Gut No.559, ad-measuring 0.18 R, Gut No.561, ad-measuring 0.28 R and Gut No.562, ad-measuring 0.20 R, be treated as valid. By the impugned order dated 13/07/2021, passed below Exhibit-28, the application of petitioners is rejected. Application Exhibit-30 filed by the petitioners for review of the order passed below Exhibit-28, is also rejected on 27/10/2021. These orders are impugned in the present petition.

5. Heard learned advocate for petitioners, learned Standing Counsel for respondent Nos.1 and 2 and learned Assistant Government Pleader for respondent No.3. Perused the memo of writ petition, annexures thereto, the impugned orders and affidavit-in-reply filed by respondent No.3.

6. After going through record and the impugned orders

this Court is of the view that while passing the impugned orders reference Court has exceeded it's jurisdiction.

7. Name of petitioner No.1 appears in the Statement-E of Award at Sr. No.34, in respect of Gut No.560. From the final payment receipt placed on record at page No.63, it is clear that petitioner No.1 has received final payment in respect of 0.27 R acquired land out of Gut No.560. Record further reveals that in the reference filed by petitioners, the Collector has submitted report to the reference Court, under Section 19 of the said Act. In the said report also name of petitioner No.1 is mentioned as owner of the acquired land out of Gut Nos.560, 559, 561 and 562.

9. It is, therefore, clear that reference Court has ignored this record while passing the impugned order and arriving at conclusion that petitioner No.1's name is not reflected in E-Statement at Sr. No.54. In fact, at Sr. No.54 0.20 R land is shown to be acquired from Gut No.562 and names of sons of petitioner No.1 Kashinath i.e. Bajirao, Walmiki and Prabhakar are mentioned along with Anjanabai Shripati and Gangubai Dilip. In the light of above documents, the finding of reference Court that petitioner No.1 cannot be a claimant in the reference and he is not entitled to file claim, is perverse and unsustainable.

10. In *Ram Kumar and Others Vs. Union of India (UOI) and*

Others, (1991) 2 SCC 247, the Hon'ble Apex Court observed:-

"Under Section 18 of the Land Acquisition Act, 1894 the only requirement for the person interested who had not accepted the award was to move a written application to the Collector requiring that the matter be referred for the determination of the Court. One of the grounds for the accepting the award was the amount of compensation. Once such application was moved it was the duty of the Collector to make a reference to the Court. Under section 19 of the Act while making the reference the Collector was required to state for the information of the Court the particulars as mentioned in clauses (a) to (d) of sub-section (1) of Section 19 of the Act. Thus it was the duty of the Collector to mention not only the situation and extent of land but even particulars of any trees, buildings or standing crops thereon. The agriculturist whose land is acquired may not be fully conversant with the Khasra No. or area as entered in the Revenue records and the Union of India or the State acquiring such land should not be allowed to take any advantage of such ignorance of the agriculturists. Once an application is moved for making a reference under section 18 of the Act it becomes the duty of the Collector to send full information to the Court regarding the entire land acquired and it is thereafter the duty of the Court to decide the matter in accordance with law."

11. It is clear from the above observations that in the report under Section 19, Collector is required to give information to the Court as to the particulars mentioned in clause (a) and (d) of Sub-section (1) of Section 19 of the said Act. Since in the report name of petitioner No.1 is reflected and further considering the fact that respondents at no point of time objected status of petitioner No.1 as claimant, the impugned orders of the reference Court are erroneous and unsustainable.

12. The impugned orders passed by the reference Court are unsustainable on the ground that they are beyond the scope of jurisdiction of reference Court under Section 18 of the said Act. Under Section 18, the Court to which reference is made by the Collector at the instance of claimant, is to consider the claimant's objection to the measurement of land, amount of compensation and persons to whom it is payable or apportionment of compensation among the persons interested. In absence of any objection by the respondents, there was no occasion for reference Court to delete name of petitioner No.1 as a claimant and further to direct that claims of petitioner Nos.2 to 4 shall be considered only to the extent of their share.

13. Reference Court has clearly exceeded its jurisdiction while passing the impugned orders. In the result, writ petition is allowed in terms of prayer clause 'C' and 'D'.

(NITIN B. SURYAWANSHI, J.)

