

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

WRIT PETITION NO.8894 OF 2018

DAGUBAI BHIMSING GIRASE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. Ajeet B. Kale
AGP for Respondents: Mrs. M.A. Deshpande
Advocate for Respondents : Mr. Anil M. Gaikwad

...

**CORAM : MANGESH S. PATIL AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 13.02.2023

ORDER :

Heard both the sides.

2. The petitioners are claiming determination of compensation in respect of the fruit bearing trees, in respect of which in an award passed under Section 11 of the Land Acquisition Act, 1894, for want of a report from the District Horticulture Officer, the Special Land Acquisition Officer had expressly mentioned that the fruit bearing trees were not being valued and no compensation in that regard was being determined. It was also mentioned in the award that the compensation in respect of the fruit bearing trees would be determined whenever the report would be received after passing of the award.

3. Admittedly, for whatever reason, no further order/award has been passed so that the petitioner can be paid the compensation for the fruit bearing trees.

4. The stand of the Government in the affidavit-in-reply is that pursuant to the objection raised by the petitioner in respect of his land Gut No.258/1, during the course of Panchanama it was found that there were 500 mango saplings, perhaps to justify inaction on the part of the Special Land Acquisition Officer or the State to compensate the petitioner for the trees/saplings.

5. It is being stated by the respondent No.5 - acquiring body on the basis of the affidavit-in-reply that considering the fact that only 14 of the land holders out of 138, have accepted the compensation vide communication dated 12.03.2019 address to the Collector it has proposed to drop the acquisition. Admittedly, the petitioner is one amongst those 14.

6. The petitioners claim that they have moved a reference under Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 but the Collector is not taking further steps of forwarding it to the authority on the ground that the trees have not been valued and the petitioners cannot claim enhanced compensation by resorting to that provision.

7. The aforementioned discussion boils down to the fact that though the award expressly states that the compensation in respect of fruit bearing trees would be awarded subsequently after receipt of valuation by the Horticulture Department, the petitioners have not been paid any compensation thereafter. On the other hand, even if they now intend to raise the issue in a reference under Section 64, the Collector is not

forwarding it for the aforementioned reason.

8. The petitioners can go nowhere. Neither they are being paid compensation for the fruit bearing trees or the saplings nor are they being permitted to rake up this issue in a reference under Section 64. If the Collector is of the opinion that no compensation is awarded for the fruit bearing trees, then it would be appropriate that in view of the factual scenario as discussed herein above, the petitioners are paid compensation first, whereupon they would be able to raise the issue in a reference under Section 64, or else, the Collector should not obstruct the reference preferred by the petitioners under Section 64 and leave them with the option of raising an issue regarding non-payment of compensation in respect of the fruit bearing trees in that proceeding.

9. We dispose of the writ petition by directing the respondent Collector to either pay the compensation to the petitioners in respect of the fruit bearing trees as is mentioned in the award or else forward the reference preferred by them under Section 64, as expeditiously as possible and in any event he shall take such decision within six weeks.

(S.G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)