

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

50 WRIT PETITION NO.14674 OF 2021

**EKNATH DASHRATH RAUT AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioners : Mr. Devidas R. Shelke
AGP for Respondent – State : Mr. A.R. Kale
Advocate for Respondent No.7 : Mr. Akash Gade

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**CORAM : NITIN W. SAMBRE AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 27-03-2023

PER COURT :

. Prayer is for issuance of directions to respondents to pay compensation to petitioner no.1 for 0.95 Hector land out of Gat No. 191 and 0.19 hector land out of Gat No.150 by initiating fresh proceedings under the Right to Fair Compensation in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'Act of 2013').

The facts necessary for deciding the petition are as under:

2. It is the case of the respective petitioners that they are owner of the land mentioned in the prayer clause and such land was subjected to acquisition. According to learned counsel for petitioners,

initially the land to the extent of 0.95 Hectar and 0.19 Hectar was subjected to acquisition. According to learned counsel for petitioners, same can be inferred from the joint measurement report. He would submit that as far as petitioner no. 2 is concerned, in subsequent measurements, his land is shown to be not requiring for the public project purpose, whereas petitioner no.1's land to the extent of 0.35 Hectar is shown to be only required.

3. Drawing support from the provisions of the Act of 2013, learned counsel for petitioners would urge that the authorities are not empowered to go for second or third joint measurement so as to reduce or delete the land area from the acquisition. He would as such urge that petitioners are entitled for the compensation as per the new Act thereby issuing directions to respondent authority to acquire the land in question.

4. According to learned counsel for petitioners even the acquisition proceedings conducted by respondent authority suffers from illegality as the panchnama drawn at the time of measurement does not reflect the genuine signature of petitioner no.1. Same appears to have been forged as could be inferred by verifying the same by naked eye. So as to substantiate the aforesaid claim, he has

drawn support from provisions of Section 73 of the Indian Evidence Act.

5. Learned counsel for respondent would urge that the acquisition is by private negotiations. According to him, petitioners have an alternate remedy in the matter. It is further claimed that respondents are not only disputing the contents of the petitioner about forged signature, but has specifically come out with the case that petitioner no. 2's land is not required for public cause.

6. In the aforesaid background what can be noticed is, when the claim of petitioner no.2 is that his land is also required to be acquired being affected by the construction of canal, there existed disputed question of facts, which in our opinion cannot be gone into writ jurisdiction. The claim of the petitioner is contrary to the measurement reports forwarded on 12th July 2019 and 10th November, 2020.

7. As far as petitioner no.1 is concerned, admittedly the compensation is determined. His contention that there was incorrect measurement or his land should have been acquired and the compensation be paid for the land to the extent of 0.95 hector, can be

gone into by the competent authority under Section 64 of the Act of 2013. Section 64 of the Act of 2013 provides for the reference to the authorities and sub-section (1) in categorical terms covers the case of petitioners.

8. In that view of the matter, since petitioner no.1 is also having alternate remedy, we do not see any cause to grant any discretionary relief in the matter. **The petition accordingly fails and stands dismissed.**

9. However, petitioners shall be at liberty to take recourse to the remedies as shall be advised in view of the aforesaid observations.

10. Though it is claimed by respondents that there is acquisition by private negotiations, however no such material is placed on record. Rather the communication referred to by respondent no. 7 speaks of the directions to the acquiring body to make available 80% of the advance compensation to be paid to the parties.

11. The fact remains that respondents have failed to

demonstrate that the acquisition is by private negotiation and in such an eventuality, the only option left with respondents is to acquire the land by taking recourse to the provisions of the Act of 2013. In this background, we expect that respondents shall be passing an award within the statutory period as has been provided under the Act of 2013.

(S.G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE , J.)

GGP