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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14111 OF 2016**

Jaychand Shantilal Surana and Anr ... Petitioners

vs.

The State of Maharashtra and Anr ... Respondents

Mr. Ashutosh M. Kulkarni, for the Petitioners.

Mrs M.S. Bane, AGP, for Respondent No.1-State.

Mr Mandar V. Limaye, for Respondent No.2.

**CORAM : R. D. DHANUKA AND
GAURI GODSE, JJ.**

DATED : 29 MARCH, 2023

P.C. :-

1. Rule. Learned AGP waives service to Respondent No.1.
Rule is made returnable forthwith. By consent of the parties, the
Petition is taken up for final hearing.

2. By this Writ Petition filed under Article 226 of the
Constitution of India, the Petitioner seeks Writ of Mandamus
against the Respondent No. 2 to restore the affected portion
admeasuring 1314.64 Sq. mts to its original status or in
alternative pass an order and direction to the Respondent No.2
to acquire the affected portion by following due procedure as
contemplated under the provision of Right to Fair Compensation

and Transparency in and Acquisition, Rehabilitation and Resettlement Act, 2013 and to Award the compensation to the Petitioners by completing the entire procedure of acquisition in time bound manner.

3. The Respondent No.2 has filed an Affidavit in Reply in this Petition which is affirmed on 13th December 2019. In paragraph 6 of the said Affidavit, it is stated that as per sanctioned development plan; originally a 15 mt road has to be constructed in South-North direction. However, the Respondent No.2, Council has constructed a road admeasuring 782.5 sq mtrs in the East-West direction which connects to Solapur road. It is further stated that the Petitioner has also demanded compensation towards the land admeasuring 532.01 sq. mtrs. The Respondent No.2 is not liable to pay compensation for the unused land admeasuring 532.01 sq. mtrs

4. Respondent No.2 had agreed to grant T.D.R as a compensation for the affected portion of land. The matter appeared before this Court on 16th December 2022 when this Court recorded the statement made by Respondent No.2 in the Affidavit in Reply dated 13th December 2019 and also recorded the statement made by Mr Kulkarni, learned counsel for the Petitioner that his client is not agreeable to accept TDR and

seeks compensation.

5. This Court accordingly directed Respondent No.2 to file Affidavit in Reply as to whether Respondent No. 2 is agreeable to acquire the affected portion by following due process of law and to pay compensation under the provisions of the said Act 2013 or not. It is not disputed that the said portion of the land admeasuring 782.5 sq mtrs of which the Respondent No.2 has constructed road belongs to Petitioner and the said portion is being used as road.

6. In our view, Respondent No.2 cannot refuse to pay compensation or to acquire the said portion of the land on which road admeasuring 782.5 sq mtrs has been already constructed in East-West direction admittedly.

7. We accordingly direct the Respondent No.2 to commence acquisition proceedings in respect of the said portion of land of which the said road admeasuring 782.2 sq mtrs is constructed by Respondent No.2 within two weeks from today and shall complete the process of acquisition under the provision of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Settlement Act, 2013.

8. In so far as the grievance made by the Petitioner in respect

of the land admeasuring 532.01 sq mts which is in possession of the Petitioner, according to the Petitioner, it is not usable in view of the Respondent No.2 having constructed road admeasuring 782.5 sq mtrs. As and when proceedings are initiated by the Respondent No.2 for acquiring the said portion of the land on which road admeasuring 782.5 sq mtrs is constructed, the Petitioner had liberty to raise objection and seek compensation in respect of the said land admeasuring 532.5 sq mtrs.

9. We are informed that the Respondent No.2 has not paid the Petitioner compensation even in respect of the portion of land on which 15 mtrs road is constructed by Respondent No.2. Respondent No. 2 is directed to make payment. Respondent No.2 to make award in respect of 15 mtrs of road which is admittedly used and also in land on which 15 mtrs road is constructed by Respondent No.2.

10. Writ Petition is disposed of in the aforesaid terms. Rule is made absolute. No order as to costs.

11. Parties to act on the authenticated copy of the order.

(GAURI GODSE, J.)

(R. D. DHANUKA, J.)