

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 7990 of 2022

Mahadu Potu Atram (Kolam) (Dead) through its legal heirs
Versus
Special Land Acquisition Officer, Collector, Yavatmal and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri K.S.Narwade, Advocate for the petitioner.
Ms. Shamsi Haider, AGP for the respondent no.1
Shri N.B.Ramteke, Advocate for the respondent nos.2-
A to 2-D and 3.

**CORAM : ANIL S. KILOR, J.
DATED : 18th APRIL, 2023.**

Heard.

2. In this writ petition, the challenge is raised to the order below Exhibit 1 dated 7th December, 2021, passed by learned Civil Judge (Senior Division), Kelapur in L.A.C. No. 294 of 2016 to the extent that the reference Court has observed that to safeguard legal rights and interest of other remaining non-applicants in case approached to competent forum, the applicant/Special Land Acquisition Officer will have to take bank security/guarantee to the extent of

proportionate amount and interest paid in excess share to concern non-applicants, if any, in light of compromise decree drawn by the First Appellate Court in Regular Civil Appeal No. 6 of 2003.

3. At this stage, it is necessary to refer clause (3) of the impugned order dated 7th December, 2021 in L.A.C. No. 294 of 2016, which read thus:

“3. The applicant / Special Land Acquisition Officer, Benefited Zone, Yavatmal shall pay amount to concerned non-applicants in terms of its final Award dated 10.08.2015 made in acquisition File No. 71/27/96-97/1-28-A/10-11 of village Sibla, Tq. Zari-Jamani, Dist. Yavatmal under Section 28A of the Land Acquisition Act 1894, subject to taking bank security / guarantee to the extent of proportionate amount and interest paid towards excess share, if any in terms of compromise decree drawn by Hon’ble First Appellate Court (Additional District Judge, Kelapur) in R.C.A. No.06/2003.”

4. Undisputedly, the impugned order was passed on 7th December, 2021 and during this period, till date no proceeding has been filed by the respondents by approaching the competent forum claiming their rights and interests in the amount of compensation in the light of compromise referred herein above.

5. Further, admittedly, no proceeding has been filed by the respondents challenging the dismissal of reference under Section 30 of the land Acquisition Act, on the ground that it is not tenable.

6. Once the Court has reached to the conclusion that reference is not tenable, further directions by the reference Court to the Special Land Acquisition Officer to take security/guarantee to the extent of proportionate amount and interest paid towards excess share to petitioners, if any, in terms of compromise decree drawn by First Appellate Court in Regular Civil Appeal No. 06 of 2003, is unwarranted.

7. Learned reference Court has hereby exceeded its jurisdiction by issuing directions in a proceeding which was held to be not tenable. Accordingly, I pass the following:

- i) The writ petition is allowed;
- ii) Order clause (3) of the impugned order dated 7th December, 2021 passed by learned Civil Judge (Senior Division) Kelapur in L.A.C.No. 294 is hereby quashed and set aside.

8. At this stage, learned counsel for the respondent nos. 2 to 4 seeks liberty to file appropriate proceeding as permissible under the law before the appropriate forum.

9. Liberty as prayed for by the respondent nos. 2 to 4 is granted.

[ANIL S. KILOR, J.]

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