

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3553 OF 2024

Kanchan Vilas Kulkarni and Ors. .. Petitioners

Versus

Land Acquisition Officer,
Cum Sub-Divisional Officer and Ors. .. Respondents

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- Ms. Manisha Devkar a/w. Mr. Shankar Katkar, Advocates for Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 15, 2024.

P.C.:

- 1.** Heard Ms. Devkar, learned Advocate for Petitioners.
- 2.** The Writ Petition is filed by three Writ Petitioners namely Kanchan Vilas Kulkarni, Sanjay Prabhakar Badave and Vilas Haribhau Kulkarni. It impugns the order dated 15.12.2023 which is a hand written order on the face of an Application filed by the Petitioner Nos.1 and 2 dated 11.01.2021 before the District Court.
- 3.** In the first instance, Application dated 11.01.2021 has remained pending on the record and file of the District Court, Solapur for the last three years. All that the impugned order states is that the Applicants therein who are Petitioners before me are represented by a Power of Attorney who has been appearing before the District Court

repeatedly for the last four years and has been raising grievance about not disbursing the amount of compensation which has been deposited by the Competent Authority under the National Highways Act, 1956 (for short "**the said Act**") pursuant to acquisition of land belonging to Petitioner Nos.1 and 2. Therefore this Court is concerned with the delay that is writ large on the face of the record itself. When lands are acquired under the power of eminent domain and compensation is fixed and deposited, the Competent Authority is required to act swiftly, in the present case compensation under Section 3H of the said Act is determined on 01.01.2019 followed by order dated 07.08.2020 of deposit of the amount of Rs.2,46,87,000/- by the Competent Authority. For the past four years, despite the said order being in place the amount has not been disbursed and held in Court. Reasons stated in the Application by the Petitioners deserve immediate attention. Hence this Court has taken immediate cognizance so that no further delay shall accrue in the present case. It is seen that the parties who are entitled to the compensation are Vilas Haribhau Kulkarni, Kanchan Vilas Kulkarni, Sanjay Prabhakar Badave, Tatyasaheb Sandipal Varade, Manager Bharatiy State Bank Branch Ghodeshwar and Suhas Haribhau Kulkarni as stated in the order. It is seen that in the order dated 01.02.2019 which is at Exhibit "B" - page No.31 name of Suhas Haribhau Kulkarni is not mentioned as one of the persons interested and pursuant to his taking objection his name now stands included as

one of the persons interested in the subsequent order dated 07.08.2020.

4. Ms. Devkar would submit that in so far as the Manager, State Bank of India, Branch, Ghodeshwar is concerned, the said Bank has already issued a No Dues Certificate which is appended at page No.44 of the Writ Petition. I have perused the said Certificate. All that the learned District Court is required to see and confirm is the original “No Dues Certificate” issued by the State Bank of India and confirm that the said Bank shall have no share in the compensation. Hence, the learned District Court is directed by this Court to immediately ascertain the original “No Dues Certificate” from State Bank of India, Ghodeshwar Branch and confirm the same.

5. In so far as Tatyasaheb Sandipan Varade is concerned, Ms. Devkar has drawn my attention to the written statement filed by Tatyasaheb Sandipan Varade before the District Court. In that written statement, Tatyasaheb Sandipan Varade has fairly stated that he is entitled for proportionate compensation of Rs.41,14,500/- only in view of the fact that he is the purchaser of a portion out of the acquired land. All details of his claim are stated in his written statement. This written statement is filed on 23.08.2023. Learned District Court is therefore required to ascertain the claim of Tatyasaheb Sandipan Varade on the face of the averments made by him in paragraph Nos.6

and 7 of his written statement, see the original document of his purchase from his custody and determine his claim after calling say from other co-claimants. This all is required to be done in so far as the claim of Tatyasaheb Sandipan Varade is concerned and the District Court is therefore directed by this Court to undertake this exercise immediately. Needless to state that the enquiry undertaken by the District Court to ascertain and determine the claim of Tatyasaheb Sandipan Varade shall be done strictly in accordance with law after hearing the parties concerned in the present matter since there is a dispute about the exact area and measurement which has been sold to Tatyasaheb Sandipan Varade as expressed by the parties.

6. In so far as the claim of Suhas Haribhau Kulkarni is concerned, Ms. Devkar has drawn my attention to the order dated 22.11.2021 passed by the State Government in an Application raising objection filed by Suhas Haribhau Kulkarni himself and more specifically paragraph No.8 of the said order which is appended at page No.33 of the Writ Petition. Perusal of the said order reveals that Suhas Haribhau Kulkarni has filed two Civil Suits. First Civil Suit is 149 of 2012. In that Suit, the learned Trial Court has passed an order below Exhibit "155" on the Application made by Suhas Haribhau Kulkarni. The Suit is filed for partition and separate possession. The said order is appended at page No.72 of the Writ Petition. The Application has been comprehensively rejected by returning a clear

finding therein that the Writ Petitioners before me who are Defendant Nos.7 and 8 therein have infact purchased their independent share and independent property and therefore the Plaintiff i.e. Suhas Haribhau Kulkarni cannot have any *prima facie* case against the said Defendants i.e. Petitioners before me. An appropriate finding is returned by the learned Trial Court in paragraph Nos.6 to 8 of that order. All that is now required to be done is to ascertain the veracity of the order dated 02.04.2019 passed in the Application filed below Exhibit "155", hear Suhas Haribhau Kulkarni on the same and pass appropriate orders as to whether Suhas Haribhau Kulkarni would be entitled to any share in the compensation or otherwise in respect of the acquired property. This exercise is required to be done immediately for which no further time shall now be granted since four years have already lapsed. Learned District Court is directed to immediately undertake this exercise and determine the share of Suhas Haribhau Kulkarni by giving him an opportunity to be heard by the Court and also after hearing the Writ Petitioners before me. This exercise of hearing the claim of Suhas Haribhau Kulkarni shall be completed as expeditiously as possible.

7. In so far as the other three contenders in the order dated 07.08.2020 are concerned, namely Tahasildar Mohol, Deputy Survey and Land Record Office, Mohol and Department of Forest, Mohol, the learned District Court is directed to immediately issue notices to them and call for their say, if any, of their claim in the compensation and

determine the same, adjudicate the same strictly in accordance with law.

8. Firstly it is seen that in the order dated 01.02.2019 which is referred to in the order dated 07.08.2020, the names of Suhas Haribhau Kulkarni; Tahasildar, Mohol; Deputy Survey and Land Record Office, Mohol and Department of Forest, Mohol are not mentioned therein. Hence in so far as the above four names are concerned, it is surprising as to how their names have been mentioned in the subsequent deposit order dated 07.08.2020. Hence the District Court shall also rule on this aspect.

9. In so far as the claim of the Forest Department in the order dated 07.08.2020 is concerned, Ms. Devkar has drawn my attention to the say dated 15.12.2023 and paragraph No.3 of that say is relevant. On reading of paragraph No.3, it is clearly seen that the Forest Department has confirmed that the acquired land out of Gat No.276/2 (earlier Gat No.276/B) (Old Survey No.62, 82, 113 and 114), there is reference to two specific notifications namely Notification dated 01.12.1885 reserving the land as forest, followed by a subsequent notification No.11974 dated 03.12.1914 whereby the said lands have been de-forested by the Forest Department itself and in that view of the matter, the Forest Department has waived their claim and have stated that the District Court shall pass orders as deemed fit in the

case. On the basis of their say, all that is required to be done is to consider this say and pass appropriate order that Forest Department has no claim in the compensation.

10. Ms. Devkar would submit that names of Tahsildar, Mohol and Deputy Survey and Land Record Office, Mohol have been stated in the order dated 07.08.2020 merely for logistical reasons i.e. for measurement of the land. According to the Writ Petitioners, the aforesaid two Statutory Authorities have no claim whatsoever in so far as the compensation which has been deposited after the acquisition of their Gat No.276/2 belonging to Writ Petitioners is concerned. District Court shall determine the claim of these parties, if any.

11. In view of the above, the following order is passed:-

- (i) The Petitioners shall appear before the learned District Court for hearing of LAR No.45 of 2020 alongwith authenticated copy of this order at 11:00 a.m. on 16th March, 2024 or thereafter and the learned District Court shall take immediate cognizance of the directions given to the District Court in paragraph Nos.4 to 10 herein above and determine the same within a period of eight (8) weeks from today positively;
- (ii) All questions and contentions of the parties are expressly kept open;

- (iii) Parties shall cooperate with the District Court and shall not take any unnecessary adjournments and the District Court shall grant adjournment only if it is utmost necessary; and
- (iv) Once the objections are determined, Petitioners shall be entitled to the amount of claim.

12. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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by AJAY
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Date: 2024.03.15
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