

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

WRIT PETITION NO. 855 OF 2019

Mr.Dilip Haribhau Kale and Others ... Petitioners

versus

Mr. Santosh Namdeo Pingle and Others ... Respondents

.....

Mr.Jitendra M. Pathade with Mr.Krishna Nair and Ms.Priyanka Singh for the Petitioners.

Mr.Sanjiv Sawant with Mr.Samir Suryawanshi and Ms.Bhakti Wast for Respondent No.1.

Ms. R.A.Salunkhe, AGP for Respondent No.3 -State.

Mr.Adesh Jadhav i/b. Mr.Sandeep S. Ladda for Respondent No.5.

.....

**CORAM : NITIN JAMDAR AND
M.M.SATHAYE, JJ.**

DATE : 6 MAY 2024

P.C. :

. Heard the learned Counsel for the parties.

2. The Petitioners have challenged the order dated 21 May 2018 passed by Respondent No.3-the Competent Authority and Deputy Collector (Acquisition) No. 13, Pune. By this order, Respondent

No.3 has disposed of objections lodged by the Petitioners under Section 3H of the National Highways Act, 1956 (the Act of 1956) and has declined to make a reference to the Competent Court. Thereafter, the amount of compensation has been disbursed to Respondent No.1. Subject matter of this petition is non-agricultural plots from Gat No. 354/5 situated at Grampanchayat Mauje :Narayangaon, Taluka- Junnar, District – Pune.

3. It is the case of the Petitioners that Respondent No.1 is a developer who had agreed to construct certain row houses. For the said purpose, the agreements were entered into between the Petitioners and Respondent No.1 ranging from November 2011 to July 2012.

4. On 20 May 2016, a notification was issued by the Authority under Section 3A of the Act of 1956 for acquisition of the entire Gat No. 354/5. Notices were issued and, according to the Petitioners, award was declared on 26 April 2016. Thereafter, it is the case of the Petitioners that a supplementary award in respect of the construction based on valuation report bearing reference No. SLAO No. 13 EST No. 2 S.R. No. 04/2014 was issued. Since the Petitioners had a claim in respect of compensation under the supplementary award of June 2016, the Petitioners lodged objections under Section 3H of the Act of 1956 which is rejected by the impugned order.

5. It is the case of Respondent No.1 that the Petitioners had entered into an agreement with Respondent No.1 on 18 August 2016 referring to the Award of 26 April 2016 wherein the Petitioners have accepted certain amounts as full and final settlement. The learned Counsel for Respondent No.1 has taken a stand that in view of full and final settlement, the Petitioners cannot maintain this petition.

6. We have perused the impugned order passed by the Competent Authority. The Competent Authority noted that though the Petitioners have raised certain objections as regards the role of Respondent No.1, they have filed an affidavit of no-objection and an agreement is executed by the Petitioners that they are not claiming the amount of compensation. It is observed that in view of the settlement and that the amount of compensation has already been disbursed and therefore, it is not permissible for the Competent Authority to direct Respondent No.1 to bring back the money when the Agreement is in force.

7. The learned Counsel for the Petitioners submitted that the Petitioners were misled by Respondent No.1 by showing certain supplementary award which was fabricated and the Petitioners were unaware of the real supplementary award. It is based on this misrepresentation, the Petitioners have entered into an agreement of settlement with Respondent No.1.

8. The fact that there exists an agreement signed by the Petitioners is not in dispute. The issue raised by the Petitioners is of misrepresentation by Respondent No.1. As on today, neither the agreement executed by the Petitioners is terminated nor any declaration is given by the Competent Court that this agreement is executed by way of misrepresentation and that it cannot be acted upon. In clause 5.5 of the agreement dated 18 August 2016 entered into between the Petitioners with Respondent No.1, it is specifically stated that it is full and final settlement and no claim would be raised in respect of any enhanced compensation. In clause 5.7, it is stated that no dispute will be raised regarding compensation in future as well.

9. Therefore, once this agreement was placed before the Competent Authority, which is in force, the Competent Authority was not in error in proceeding to base its order of the same. The Petitioners' case is of the fraud and misrepresentation by Respondent No.1 - a private party. The Petitioners will have to take steps before the Competent Court for this declaration. In these circumstances, it is not possible to adjudicate the rival contentions raised in this petition regarding misrepresentation and fraud by Respondent No.1 which will require evidence.

10. Accordingly, we do not find interference in writ jurisdiction is warranted.

11. In case, the Petitioners have any remedy as against Respondent No.1, the same are kept open, subject to limitation etc.
12. The writ petition is accordingly disposed of.

(M.M.SATHAYE, J.)

(NITIN JAMDAR, J.)