

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).11795/2013

(From the judgement and order dated 27/02/2013 in WP No.11174/2012 of The HIGH COURT OF BOMBAY)

NASHIK MUNICIPAL CORP. Petitioner(s)

VERSUS

DILIP VASANTRAO SONAWANE & ORS. Respondent(s)

(With prayer for interim relief and office report)

Date: 03/12/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE GYAN SUDHA MISRA
HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE

For Petitioner(s) Mr. M.L. Patil, Adv.
Mr. Shivaji M. Jadhav, Adv.
Mr. Brij Kishor Sah, Adv.
Mr. Rahul Jain, Adv.

For Respondent(s) Mr. Shankar chillarge, Adv.
Ms. Asha Gopalan Nair, Adv.

Mr. Prasenjit Keswan, Adv.
Mr. Satyajit Saha, Adv.
Mrs V.D. Khanna, Adv.

UPON hearing counsel the Court made the following
O R D E R

This special leave petition is at the instance of the petitioner against the order passed by the High Court of Bombay in Writ Petition No. 11174/2012 dated 27.02.2013 by which the petition was disposed of practically accepting the contention of the respondent that the respondent-State should not have invoked the urgency clause under sub-Section (4) of Section 17 of the Land Acquisition Act, 1894 ('said Act' for short). This order was passed in view of the concession made by the State for the Nashik Municipal Corporation who is the beneficiary of the land which is sought to be acquired and the High Court did not record any finding that the urgency clause was wrongly applied as the concession was made by the State Government conceding to the fact that it will grant opportunity of hearing to the respondent-landholders and the petition was thus disposed of.

The petitioner-Corporation although had made the concession to the extent that it will grant opportunity of hearing to the respondents-landholders has challenged the order passed by the High Court and submitted that the concession was wrongly made by the AGP without instructions as he had no instructions to state that the State will not grant opportunity of hearing to the respondents-landholders. However, we cannot allow the petitioner to urge this before this Court, for if at all there is any substance in the plea, it was for the petitioner to file an application before the High Court for recall of the order on the plea that the AGP had no instructions to make a concession to that effect. However,

directing the petitioner to approach the High Court in this regard would unnecessarily result into delaying the process of acquisition which is for the purpose of setting up Oxidation and Pumping Station.

We, therefore, deem it appropriate to dispose of this special leave petition by directing the Respondent no. 10-State of Maharashtra to grant an opportunity of hearing to the respondents-landholders before issuing a final notification for acquisition of the land in question. This we are doing especially for the reason that the High Court itself has observed that it will always be open for the appropriate Government to take recourse to sub-Section (1) of Section 17 of the said Act. However, this observation of the High Court clearly result into contradiction. On the one hand if the correctness of recourse to the urgency clause under Section 17 of the said Act was not interfered with by the High Court, then under what authority of law it directed the respondent-State to grant opportunity of hearing to the respondents-landholders is not clear. However, the counsel for the respondents explained that this was done in view of the concession made by the State Government. As already stated, we do not deem it appropriate to enter into this controversy and record a finding as to whether the concession was rightly granted or not and in the interest of justice, we deem it appropriate to adopt the shorter course by directing the respondent no.10-State of Maharashtra to grant opportunity of hearing to the respondents-landholders within a period of two weeks from the date of receipt of a copy of this order and thereafter take steps in accordance with law. The respondents-landholders would be at liberty to file their objections within a period of two weeks.

Accordingly, the special leave petition be treated as disposed of.

(NAVEEN KUMAR)
COURT MASTER

(S.S.R. KRISHNA)
COURT MASTER