

NON-REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5017 OF 2022

Shirdi Nagar Panchayat, Shirdi

...Appellant

Versus

Appasaheb Narayan Chaudhari & Others

...Respondents

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 09.09.2021 passed by the High Court of Judicature of Bombay, Bench at Aurangabad in Writ Petition No. 5591/2018, by which the High Court has allowed the said writ petition and has directed the appellant herein – original respondent No.4 – Shirdi Nagar Panchayat, Shirdi to prepare the proposal for acquisition of the land in question, original respondent No. 4 – Shirdi Nagar Panchayat, Shirdi has preferred the present appeal.

2. At the outset, it is required to be noted that the private respondents herein filed a writ petition before the High Court and prayed for the following reliefs:

“(B) to direct respondents No. 1 to 4 to initiate acquisition proceedings in respect of land Gut No. 8 to the extent of 86 Are, Gut No. 217 to the extent of 54 Are and land Gut No. 218 to the extent of 66 Are situated at village Nandurki (Bk) Ta. Rahata, District Ahmednagar by issuing appropriate writ of appropriate writ, order or direction in the nature of writ or as the case may be.

(C) to direct respondent No. 1 to 4 to initiate acquisition proceedings and complete the same by passing award and grant compensation in respect of land Gut No. 8 to the extent of 86 Are, Gut No. 217 to the extent of 54 Are and land Gut No. 218 to the extent of 66 Are situated at village Nandurki (Bk) Ta. Rahata, District Ahmednagar by issuing appropriate writ of appropriate writ, order or direction in the nature of writ or as the case may be.”

2.1 It was the case on behalf of the private respondents herein – original writ petitioners before the High Court that the then Shirdi Gram Panchayat took possession of the land of the original writ petitioners for construction of a water storage tank so as to supply water to the residents of the said area. However, original respondent No. 5 laid down the pipeline and then handed over the entire completed project to the Gram Panchayat, the same was done without acquiring the land under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as the ‘Act’) and/or without paying any compensation under the Act.

2.2. That thereafter, the original writ petitioners filed the writ petition for the aforesaid reliefs in the year 2018. At this stage it is required to be

noted that the possession of the land in question was taken over and a tank was constructed and the pipeline was laid down as far back as in the year 1983 and the writ petition for the aforesaid reliefs came to be filed in the year 2018, i.e., after a period of 35 years.

2.3 By the impugned judgment and order and after following the decision of this Court in the case of ***Vidaya Devi v. State of Himachal Pradesh, reported in (2020) 2 SCC 569***, the High Court has allowed the said writ petition and has directed the appellant herein to prepare the proposal for acquisition.

3. An Additional Affidavit on behalf of the appellant herein – original respondent No.4 has been filed before this Court , by which it is now the case on behalf of Municipal Council (subsequently the Gram Panchayat has been converted into Municipal Council) that the possession of the land in question was taken for the purpose of construction of a tank by private negotiations and the agreed amount of compensation was paid, for which the extract of the cash book dated 12.11.1981 and the cash book for the month of May, 1983 and other documents are produced to show that approximately Rs. 1,21,000/- was paid to the original writ petitioners – respondent Nos. 1 & 2 herein and they received the amount of compensation.

4. Shri Neeraj Kishan Kaul, learned Senior Advocate appearing on behalf of the original writ petitioners has vehemently submitted that the documents which are now placed on record before this Court by way of an additional affidavit were not before the High Court and therefore the High Court had no opportunity to consider the same. Shri Kaul has submitted that the original writ petitioners are disputing having received any amount of compensation and that the land in question was acquired under the private negotiations. It is submitted that except the production of cash book, no other documentary evidence has been produced to show that the said amount of compensation was received by the original writ petitioners and/or any proceedings under the Act were initiated and/or any award/consent award was declared. It is therefore submitted that the original writ petitioners – private respondents herein had no opportunity to rebut the case now sought to be made out that the land in question was acquired under the private negotiations and that the original writ petitioners were paid the amount of compensation and/or the same was received by them.

5. Having heard Shri Sanjay Kharde, learned counsel for the appellant, Shri Neeraj Kishan Kaul, learned Senior Advocate appearing on behalf of the original writ petitioners and Shri Sachin Patil, learned counsel for the State and considering the additional affidavit filed on

behalf of the appellant and as it is the specific case on behalf of the appellant – Nagar Panchayat that the possession of the land in question was taken over and the land in question was acquired by private negotiations and the amount of compensation was already paid and for which some documents are produced on record, we are of the opinion that one opportunity ought to be given to the appellant herein – original respondent No. 4. This is in order to submit the case before the High Court as now sought to be made out and/or canvassed which is that the land in question was acquired by private negotiations and possession was taken over by private negotiations and further that the amount of compensation was paid as far back as in the year 1981/1983. As the documents which are now produced on record by way of additional affidavit and now the stand taken on behalf of the appellant in the additional affidavit goes into the root of the matter, we deem it appropriate and proper to remand the matter to the High Court to consider the writ petition afresh and after giving an opportunity to the original respondent No.4 – appellant herein to file additional counter affidavit along with supporting documents and thereafter to give the opportunity to the original writ petitioners to rebut the same.

6. In view of the above and for the reasons stated above, without further entering into the merits of the case and without expressing

anything on merits in favour of either of the parties on the stand now taken by the appellant – original respondent No. 4, the impugned judgment and order passed by the High Court is set aside. The matter is remanded to the High Court to consider Writ Petition No. 5591/2018 afresh in accordance with law and on its own merits and after giving an opportunity to original respondent No. 4 to file an additional counter affidavit with supporting documents and thereafter further giving an opportunity to the original writ petitioners to deal with the additional counter affidavit to be filed on behalf of original respondent No. 4. All contentions/defences which may be available to all the parties are kept open, to be considered by the High Court in accordance with law and on its own merits and on the basis of the mater that may be produced on record.

7. The present appeal is accordingly allowed/disposed of to the aforesaid extent.

However, in the facts and circumstances of the case, there shall be no order as to costs.

.....J.
[M.R. SHAH]

NEW DELHI;
AUGUST 05, 2022.

.....J.
[B.V. NAGARATHNA]