

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9265 OF 2018

Shivaji S/o Trimbak Bhujang
Age: 56 years, Occu: Agri.,
R/o. Kinhala, Tq. Badnapur,
Dist. Jalna

... **PETITIONER**

Versus

1. The State of Maharashtra
Through its Secretary
for Rehabilitation Ministry,
Mantralaya, Mumbai-32
2. Deputy Collector/Spl. Land Acquisition
Officer (Gaothan), Jalna Dist. Jalna
3. The Executive Engineer,
Minor Irrigation, Project,
Jalna, Dist. Jalna
4. Shri Mahadu S/o Dhondiba Khamate
Age: 77 years, Occu. Agri.,
R/o. Dhabadi, Tq. Badnapur,
Dist. Jalna

... **Respondents**

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Mr. B. R. Kedar, Advocate for Petitioner
Mr. P. S. Patil, AGP for Respondent Nos. 1 and 2
Mr. R. C. Patil, Advocate for Respondent No.3
Mr. S. S. Randive, Advocate for Respondent No.4

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CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.

RESERVED ON : 04.11.2023
PRONOUNCED ON : 10.11.2023

JUDGMENT (Per: Y. G. Khobragade, J.) :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the respective parties.

2. Heard Adv. B. R. Kedar, learned counsel for the petitioner, Adv. P. S. Patil, learned, AGP for R-1 & 2, Adv. R. C. Patil, learned counsel for the Respondent No.3 and Adv. S. S. Randive, learned counsel appearing for Respondent No. 4 .

3. By the present petition under Article 226 of the Constitution of India, the Petitioner has prayed for issuance of writ of Mandamus directing the Respondents' not to take forcible possession of his land admeasuring 80 R Gut No. 143 situated at village Hiwara (Dhabadi), Tq. Badanapur, Dist. Jalna, without following due process of law. The Petitioner further prayed for issuance of directions against the Respondents to restore vacant possession of his above said land. **OR** in alternative prayed for issuance of directions against the Respondents to acquire his land afresh by following due process of law under the provisions of Right To Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement

Act, 2013 and to pay compensation including all statutory benefits and rental compensation.

4. Having regard to the submission canvassed on behalf of both sides as well as the short written notes of argument filed on behalf of the petitioner, we have gone through the record.

5. The case of the petitioner is that, initially the Respondent No. 4 Shri Mahadu Dhondiba Khamte, was the owner of the land admeasuring 1 Hector and 35 Ares from Gut No. 143, out of which 80 R land toward north-south strip of Gut No. 143 was purchased by one Shri Fakirba Wanarse on 06.05.2005 for consideration of Rs. 58,000/-. Accordingly, mutation entry No. 590 was effected in revenue record in the name of Fakirba Wanarse, reflects in 7/12 extract. Subsequently, on 22.05.2006, the Petitioner purchased 80 R land north-south side strip of Gut No. 143 through the Registered Sale Deed dated 22.06.2006. Accordingly, mutation entry no. 616 was effected in the name of the petitioner in revenue record, in the year 2008. On 01.02.2007, the State Government issued the Notification u/s 4 of the Land Acquisition Act, 1894 for acquisition of petitioner's land for rehabilitation of project affected persons,

however, the Respondents have wrongly shown the name of Respondent No. 4 in revenue record, though the petitioner's name was already mutated in the revenue record.

6. It is further contended that, though the respondents shown requirement of 90 R land out of Gut No. 143, but on 12-3-2008, the Respondents issued a notification u/s 6 of the Act. On 10.01.2011 the Award u/s 11 has been passed by the Special Land Acquisition Officer, but neither the notification u/s 4, nor in declaration u/s 6 nor in the Award, the name of the petitioner has appeared. However, record shows that acquisition of land to the extent of 90 R out of Gut no. 143. It is further contended that, though, the respondent no. 4 sold 80 R land out of Gut no. 143 and said land purchased by the petitioner and even the name of the petitioner was recorded in the revenue record, but no compensation was paid to him. Further, it is the contention of the petitioner that, since the respondents authorities failed to take possession of the acquired land within period of 2 years and 10 months from the date of declaration u/s 6 of the Act, therefore, the petitioner along with others have filed Writ Petition No.4453 of 2013 before this Court. So also, the petitioner has filed independent Writ Petition No. 827 of 2014, which was subsequently

withdrawn by him. The Petitioner submits that, during pendency of the former writ petition, the respondents reduced the area of the land owned by him in Gut no. 143 from 80 R to 45 R and the Respondents took forcible/ illegal possession of his land, without initiating acquisition proceeding in the month of February, 2016. Therefore, action on part of the Respondents is illegal, arbitrary and in violation of Art. 300-A of the Constitution of India.

7. In support of his submissions, learned counsel for the petitioner relied on the case of **Pune Municipal Corporation -Vs- Harakchand, 2014 (3) SCC 183** which was also followed in the case of **Shivaji Shamrao Patil -Vs- Special Land Acquisition Officer, 2017 Legal Eagle 472**. wherein it has been held that, under Section 24(2) land acquisition proceedings initiated under 1894 Act, by legal fiction, deemed to have lapsed where award has been made five years or more prior to commencement of 2013 Act and if the possession of land is not taken or compensation has not been paid. Then the legal fiction section 24 (2) comes into operation as soon as the condition stated therein are satisfied. The applicability of Sec. 6 of General Clauses Act, being subject to Sec. 24 (2) of the Act, 2013.

8. The learned counsel for the petitioner further canvassed that, the Respondent authorities have acquired 4 H 46 R land out of 6 H 74 R land from Gut No. 143, out of which though the respondent no. 4 was initially owner of only 1 H 35 R. However, the Respondent no. 4 sold 80 R land to Fakirba. Subsequently, the petitioner purchased said land from Fakirba much prior to the publication of notification u/s 4 of the Act, 1894. So also, name of the petitioner was mutated in revenue record including 7/12 extract, but name of the petitioner was not shown in the notification while proceeding for acquisition of his land was going on and the Respondents have illegally acquired his land. Therefore, action on part of the Respondents in violation of Article 300-A of the Constitution of India.

9. Mr. R. C. Patil, learned counsel appearing for the Respondent No. 3 acquiring body canvassed that, for the construction of the Dam, the land admeasuring 4 H 46 R out of Gut No. 143 was required and after considering the holders of land on the day of publication of notification dated 25.02.2007 as well as considering the mutation entries in 7/12/ extract as on said date, the land acquisition proceeding was initiated and after completion of due acquisition proceeding, on 10.01.2011, the Special Land Acquisition

Officer passed an Award u/s 11 of the Land Acquisition Act, 1894. Accordingly, the Respondent No. 2 deposited the entire amount of Rs.24,17,944/- toward compensation including other expenses in the year 2011 and the concerned land owners have already withdrawn the compensation amount. Since the Petitioner's land has not been acquired, therefore, there is no necessity to pay the compensation to him. It was further submitted that, though the petitioner had filed W .P . No. 4453 of 2013 alleging that, his land was acquired forcibly, but said petition came to be disposed of on 29.01.2020. The petitioner did not challenge the Award dated 10.01.2011 passed by the Special Land Acquisition Officer, but the petitioner had prayed for quashing and setting aside of the Notification U/s 6 under the Land Acquisition Act, 1894. Further, the petitioner was having full knowledge much prior to 08.05.2009 about acquisition of the land and payment of appropriate compensation much prior to coming into force of Act, 2013. Therefore, the petitioner is not entitled for any relief, hence, prayed for dismissal of the petition.

10. Needless to say that, on 22.06.2006, the Petitioner purchased 80 R land from Northern – Southern side strip of Gut No.143 from Fakirba Wanarse and Fakirba Wanarse, had purchased

said land from Respondent No.4 – Mahadu Dhondiba Khamate on 06.05.2005. The Respondent No.2 issued a notification under Section 4 of the Land Acquisition Act, 1894 on 12.03.2008, intending to acquire the land 0.83 R, 0.90 R, 0.82 R, 0.86 R, 0.92 R, 0.14 R, out of Gut No.143. On 12.03.2006, Respondent No.2 has issued the notification under u/s 6 of Land Acquisition Act, 1894 and acquired the land shown in notification published under Section 4 of the Act for public project. The Respondent No.2 – Special Land Acquisition Officer passed an award on 10.01.2011. As per the award, the Land Acquisition Officer determined the compensation in respect of the acquired land as under:-

गावाचे नांव	गट नंबर	7/12 प्रमाणे एकूण क्षेत्र हे.आर.	7/12 प्रमाणे एकूण आकार रू. पै.	हेक्टरी आकार	संपादीत क्षेत्र हे. आर.	ग्रुप क्र.	
हिवरा दाभाडी	110	1.76	3.00	1.70	0.05	2	बबू रामभाऊ
	139	3.07	5.30	1.73	0.73	2	गणेश राऊबा
	140	3.58	6.20	1.73	0.72	2	हरणाबाई बाबुराव, संध्याबाई बाळाजी
	141	3.00	2.60	0.87	2.12	1	श्रंगनाथ, पुनमचंद, रमेश पि. लालचंद
	142	1.50	1.30	0.87	0.51	1	रंगनाथ लालचंद
	142	1.50	1.30	0.87	0.42	1	सेनाबाई भिका
	143	6.74	8.70	1.29	0.82	2	वर्धमान रमेश, विलास पुनमचंद रमेश लालचंद
	143	6.74	8.70	1.29	0.90	2	महादू धोंडीबा

	<u>143</u>	<u>6.74</u>	<u>8.70</u>	<u>1.29</u>	<u>0.82</u>	<u>2</u>	<u>लिंबाजी धोंडीबा</u>
	<u>143</u>	<u>6.74</u>	<u>8.70</u>	<u>1.29</u>	<u>0.86</u>	<u>2</u>	<u>रामभाऊ धोंडीबा</u>
	<u>143</u>	<u>6.74</u>	<u>8.70</u>	<u>1.29</u>	<u>0.92</u>	<u>2</u>	<u>तेजराव धोंडीबा</u>
	<u>143</u>	<u>6.74</u>	<u>8.70</u>	<u>1.29</u>	<u>0.14</u>	<u>2</u>	<u>नागोराव धोंडीबा</u>
	<u>144</u>	<u>5.20</u>	<u>6.75</u>	<u>1.30</u>	<u>3.17</u>	<u>2</u>	<u>धोंडीबा काळूबा</u>
	<u>144</u>	<u>5.20</u>	<u>6.75</u>	<u>1.30</u>	<u>0.70</u>	<u>2</u>	<u>किसन नारायण</u>
	<u>147</u>	<u>2.63</u>	<u>3.40</u>	<u>1.29</u>	<u>0.70</u>	<u>2</u>	<u>दादा भिका अ.पा.क. सोनाबाई</u>
				<u>एकूण</u>	<u>13.58</u>		

11. It appears that as per the award, on 0.90 R land out of 6.74 R land from Gut No.143 of the Respondent No.4 Mahadu Dhondiba Khamate has been acquired, but it does not appears that, the land of the Petitioner has been acquired. The Respondent No.3 has produced mutation entry dated 21.03.2012 on record. However, the said mutation entry does not reflect the name of the Petitioner. The Petitioner produced mutation entry dated 28.05.2008, wherein the name of the Petitioner was recorded being an owner of 0.80 R land out of Gut No.143 by virtue of the sale-deed dated 22.05.2006. The 7/12 extract issued on 27.05.2012 also reflects the entry in respect of the Petitioner for 0.80 R. However, the notification dated 01.02.2007 issued under Section 4 and notification dated 01.05.2008 issued under Section 6 of the Land Acquisition Act, 1894 does not appears in respect of acquisition of the Petitioner's land. Further the

award Dated 10.01.2011 passed by Respondent No.2 also does not reflect about acquisition of Petitioner's land. In these circumstances, no inference can be drawn that the Petitioner's land has been acquired for the public project.

12. No doubt, in case of *Tukaram Kana Joshi & Ors, 2013 (1) SCC 353* and in case of *Sukh Dutt Ratra & anr.,-Vs- State of Himachal Pradesh, 2002 Live Law (SC) 347*, relied on behalf of the petitioner, the Hon'ble Apex Court held that, forcible dispossession of a person of their private property without following due process of law is violative of both their human rights and constitutional right under article 300-A of the Constitution. Therefore, the petitioner requires to bring substantial material on record to show that, the Respondents State Authorities have dispossessed him illegally and forcibly acquired his land. The petitioner has failed to produce material on record to establish this aspect.

13. Needless to say that, earlier, the Petitioner had filed Writ Petition No.4453 of 2013, alleging that his land was acquired forcibly and no compensation was paid to him. But said petition came to be disposed off on 29.01.2020. The Petitioner has not challenged award

dated 10.01.2011 passed by the Special Land Acquisition Officer in said petition, however, the petitioner has prayed for quashing and setting aside of the notification published under Section 4 of the Land Acquisition Act, 1894. In the present petition, the Petitioner's prayer is similar in nature as of his prayer in earlier Writ Petition, which is already disposed off. Therefore, the present Petition is barred by principles of *res-judicata* and it is not maintainable.

14. Since the Petitioner claims that, the Respondent Nos. 1 and 2 have acquired his land forcibly and no compensation has been paid, so also, Respondent No.4 was shown as being the owner of Gut No.143. However, it is not the case of Petitioner that the entire amount of compensation determined under the award dated 10.01.2021 paid to Respondent No.4. Considering the grievance of the petitioner, it appears that, there is existence of a civil dispute and there are disputed question of facts which cannot be ascertained while exercising Writ jurisdiction under Article 226 of the Constitution of India. Therefore, this Court cannot adjudicate the issue of ownership of the acquired land as well as ownership of land between the Petitioner and Respondent No.4. The Petitioner has an alternate remedy before the competent Civil Court to seek

appropriate declaration in respect of 80 R land out of Gut No.143 and to claim compensation against Respondent No.4, if the compensation is paid to him under the award dated 10.01.2011.

15. In view of the above discussion, **the present Writ Petition is dismissed.** Accordingly, Rule is discharged.

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]

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