

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.4594 OF 2013

- 1) Srinivas Radhakishan Malani,
Age-69 years, Occu:Agriculture,
- 2) Subhash Radhakishan Malani,
Age-65 years, Occu:Agriculture,
At present-Khara Kuwa,
Aurangabad,
- 3) Jugalkishor Radhakishan Malani,
Age-62 years, Occu:Agriculture,
- 4) Nandkishor Radhakishan Malani,
Age-57 years, Occu:Agriculture,
- 5) Kamalkishor Radhakishan Malani,
Age-50 years, Occu:Agriculture,

All R/o- Yashwant Nagar, Paithan,
Tq-Paithan, Dist-Aurangabad.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32,
- 2) Deputy Director of Town Planning,
Dist-Aurangabad,
- 3) The District Collector,
Aurangabad,

- 4) The Special Land Acquisition Officer, Jaikwadi Project No.1, Aurangabad,
- 5) The Municipal Council, Paithan, Through its Chief Officer, Near Main Road, Paithan, Tq-Paithan, Dist-Aurangabad.

...RESPONDENTS

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Mr. Ajit B. Kale Advocate for Petitioners.
Mr. P.S. Patil, A.G.P. for Respondent Nos.1 to 4.
Mr. M.D. Joshi Advocate for Respondent No.5.

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**CORAM: R.M. BORDE AND
A.I.S. CHEEMA, JJ.**

DATE : 18TH NOVEMBER, 2015

ORAL JUDGMENT [PER R.M. BORDE, J.] :

1. Heard.

2. Rule. Rule made returnable forthwith.
With the consent of the parties, Petition is taken up for final disposal at admission stage.

3. The Petitioners are praying for quashing

and setting aside the Award dated 15th November 2000 declared by the Land Acquisition Officer, Respondent No.4 herein. The property belonging to the Petitioners, situate at Paithan, has been earmarked for a weekly market and shopping center under the Final Development Plan prepared for Paithan Town and is designated as Reservation Site No.55 in the Plan. The Municipal Council approached the Collector with a request to initiate the land acquisition proceedings for acquisition of the property under reservation, belonging to the Petitioners. A declaration as contemplated under Section 126 of Maharashtra Regional and Town Planning Act equivalent to Section 6 of the Land Acquisition Act, 1894 was issued on 24th February 1997. It is also not a matter of dispute that Special Land Acquisition Officer, in observance to the procedure prescribed under the Land Acquisition Act, 1894 drawn the Award on 15th November 2000. It is the contention of the Petitioners that although the Award has

been drawn on 15th November 2000, the Petitioners have not been communicated in respect of the Award nor the acquisition authority called upon the Petitioners to receive an amount of compensation by transmitting notice under Section 12(2) of the Land Acquisition Act, 1894. The Petitioners thus contend that though the Award is said to have been drawn on 15th November 2000, the factum had neither been communicated to the Petitioners nor the amount of compensation has been paid. As such the mere act of drawing of Award by the Special Land Acquisition Officer on 15th November 2000 cannot be construed as a declaration of Award as contemplated under Section 11 of the Land Acquisition Act, 1894. The Petitioners contend that even after lapse of fifteen years of the date of drawing of the Award, they have not been paid amount of compensation and as such the proceedings in respect of acquisition shall be deemed to have lapsed.

4. The contentions raised by the Petitioners in the Petition, have been contested by the Planning Authority on several grounds. It is contended that the Petitioners have approached Civil Court by presenting a suit and also this Hon'ble Court by presenting a writ petition and having failed in their attempt to get a suitable declaration, have again approached this Court with the instant Petition, which does not deserve to be entertained. It is contended by the Planning Authority that the reservation made in the Final Development Plan in respect of the property belonging to the Petitioners, has not been lifted and as such the Planning Authority has every right to acquire the property and utilize the same for the public purpose. It is further stated that the Planning Authority is willing to pay the amount in consonance with the Award passed by the Special Land Acquisition Officer in the year 2000 and as such the prayer made by the Petitioners in the instant Petition in respect of declaration of the

Award being void, does not deserve to be considered.

5. In order to appreciate the grievance raised by the Petitioners in the instant Petition, it is not necessary for this Court to look into the history of the litigation and the occurrences of various events during the intervening period between 1997 to 2015. It is not a matter of dispute that the Award has been drawn by the Special Land Acquisition Officer on 15th November 2000 and subsequent thereto neither the Planning Authority nor the State Government have offered the amount of compensation to the Petitioners nor have issued any notice as contemplated under Section 12(2) of the Land Acquisition Act, 1894 calling upon the Petitioners to receive the amount of compensation. The contention raised by the Petitioners that mere act of drawing of an Award without extending an intimation in that regard to the claimants/Petitioners or offering the amount

of compensation cannot be equated with declaration of award within contemplation of Section 11 of the Land Acquisition Act, 1894 deserves acceptance. In this context, reliance can be placed on the Judgment delivered by the Supreme Court in the case of **Raja Harish Chandra Raj Singh vs. The Deputy Land Acquisition Officer and another**, reported in AIR 1961 Supreme Court 1500(1). In Paragraph No.5 of the Judgment, the Supreme Court observed thus:-

"5. In the dealing with this question it is relevant to bear in mind the legal character of the award made by the Collector under S.12. In a sense it is a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. It is a decision, inter alia, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer no further proceeding is

required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer, S. 18 gives him the statutory right of having the question determined by Court, and it is the amount of compensation which the Court may determine that would bind both the owner and the Collector. In that case it is on the amount thus determined judicially that the acquisition proceedings would be concluded. It is because of this nature of the award that the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for his acceptance.

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. Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus considered the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his

office; it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words 'the date of the award' occurring in the relevant section would not be appropriate."

6. The Division Bench of this Court in the matter of **Vijay s/o Kashinath Shinde and others vs. State of Maharashtra and others**, reported in **2013(3) Mh.L.J. 566**, on placing reliance on the Judgment of the Supreme Court in the matter of **Raja Harish Chandra Raj Singh's case**, cited supra, has adopted a view that drawing of an award by the Land Acquisition Officer without giving intimation of the same to the party concerned or calling upon the claimants to receive the amount of compensation by issuing notice under Section 12(2) of the Land Acquisition Act, 1894 cannot be equated with a declaration of an award within contemplation of Section 11(2) of the Land Acquisition Act, 1894. The

declaration of an award must be simultaneously/immediately accompanied by offer by the State or the acquiring body, of the amount of compensation so determined under the Award. Mere drawing of an award without offering the amount of compensation to the claimants cannot be construed as an Award within the meaning of Section 11(2) of the Land Acquisition Act, 1894.

7. In the instant matter, the Special Land Acquisition Officer has drawn the Award in the year 2000 and thereafter the matter was kept in cold storage. Neither the State Government nor the Special Land Acquisition Officer offered the amount of compensation to the claimants/Petitioners and as such mere drawing of an Award by the Special Land Acquisition Officer and keeping the same in his cupboard cannot be said to be an act of declaration of an Award within contemplation of Section 11(2) of the Land Acquisition Act, 1894.

8. Section 24 of the Land Acquisition Act, 2013 provides that in the event of declaration of an Award, five years or more prior to the date of enforcement of the Act of 2013, if the possession of the property has not been taken or the amount of compensation has not been paid, the whole proceedings in respect of acquisition shall stand lapsed. For consideration of grievances raised by the Petitioners in the instant Petition, without dealing with the issue of applicability of the provisions of the Act of 2013, it has to be construed that duty is cast upon the acquisition authorities to take steps and conclude the proceedings within reasonable period. The failure of the Respondents to pay the amount of compensation to the claimants/Petitioners for a long period of fifteen years after drawl of the Award in the year 2000, cannot be said to be reasonable act. On the touchstone of principle of 'reasonableness' also, since the Respondents have

failed to pay the amount of compensation to the Petitioners for fifteen years from the date of drawl of the Award, the Award drawn on 15th November 2000 deserves to be quashed and set aside, to the extent of the Petitioners and the same is accordingly quashed and set aside. It would be open for the Planning Authority or the Respondents to take steps for acquisition of the land by either entering into private negotiations with the Petitioners or by initiating fresh proceedings under the provisions of law.

9. Rule is accordingly made absolute. There shall be no order as to the costs.

[A.I.S. CHEEMA, J.]

asb/NOV15

[R.M. BORDE, J.]