

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9009 OF 2013

Madanlal Lalchand Jain

Age: 55 Years, Occupation: Agriculture,

R/o: Viral Vihar, Nandurbar,

District: Nandurbar.

... Petitioner

Versus

1. The State of Maharashtra,
Through its Chief Secretary,
Mantralaya, Mumbai.
2. The Divisional Commissioner (Revenue),
Nasik Division, Nasik Road (Maharashtra)
3. The Collector, Nandurbar District,
Nandurbar.
4. The Special Land Acquisition Officer and
the Dy. Collector (Land Acquisition),
Nandurbar
(Copy of respondent Nos. 1 to 4 to
be served on the Government Pleader,
High Court of Judicature at Bombay,
Bench at Aurangabad)
5. The Managing Director,
The Maharashtra State Electric
Distribution Company Ltd.,
Prakashgarh, Bandra (East),
Mumbai 400051.
6. The Chief Engineer (Civil),
Maharashtra State Electric
Distribution Company Ltd.,
Prakashgarh, Bandra (East),
Mumbai 400051.
7. The Chief Engineer (R-APDRP),
Maharashtra State Electric
Distribution Company Ltd.,
Prakashgarh, Bandra (East),
Mumbai 400051.

... Respondents

...

Advocate for Petitioner : Mr. J.R. Shah
AGP for Respondent Nos. 1 to 4: Smt. S.A. Dhumal
Advocate for Respondents 5-7 : Mr. S.M. Godsay

...

CORAM : R. M. BORDE & V.K. JADHAV, JJ.

Dated: March 25, 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 for final disposal at admission stage.

3. The petitioner is questioning the legality and validity of declaration under section 6 issued by the respondent Nos. 1, 3 and 4 on 17.8.2013 for acquisition of land S.No.251/A/2 admeasuring 3702 sq. meters situate at Nandurbar. The acquisition proceedings are initiated by respondents for and on behalf of respondent Nos. 5 to 7 to facilitate establishment of 33/11 KV power station. It is not necessary to go into factual details recorded in the petition since the petitioner has objected to section 6 declaration on the ground of non observance of the provisions of section 6 (1) proviso (ii) of the Land Acquisition Act, 1894. The petitioner contends that a notification under section 4 was

issued on 13.10.2011. The local publication of section 4 notification, which is the last mode of publication contemplated u/s 4 was issued on 27.1.2012. Thus, the date of local publication of notification under section 4 shall have to be taken into consideration for examining as to whether the declaration under section 6 of the Land Acquisition Act is within the prescribed time frame. The petitioner contends that, the declaration under section 6 of the Land Acquisition Act in the official gazette is made on 17.8.2013. The publication of the notification in the official gazette was followed by its publication in the local news paper and local publication contemplated under section 6 (2) of the Act. The petitioner contends that, since declaration u/s 6 is issued after a period of one year from the date of local publication of section 4 notification, said declaration issued u/s 6 shall have to be quashed and set aside. Resultantly, the proceedings initiated by respondent No. 1 for acquisition of land shall also have to be quashed.

4. An affidavit-in-reply has been presented by the Tahsildar in the office of the Divisional Commissioner, Nasik on behalf of respondent No.2. It is contended by respondents that, a corrigendum was issued to section 4 notification correcting the area under acquisition on 13.3.2013 and from

such date of publication of corrigendum, declaration issued under section 6 on 17.8.2013 shall have to be treated to be within prescribed period of limitation. The argument advanced by respondents deserves to be rejected for more than one reason. On perusal of the notification published in the official gazette on 7/13.3.2013, it is noticed that the corrigendum issued is in respect of section 6 declaration and said publication is not referable to section 4 notification. Even if assuming that reference to section 6 declaration in the notification is a typographical error, still the respondents cannot be permitted to contend that the corrigendum would save the limitation. The corrigendum is issued for correcting the contents of section 4 notification which shall relate back to the date of publication of notification. The petitioner placing reliance on the judgment of the Supreme Court in the matter of **Mohan and another Vs. State of Maharashtra and others, reported in (2007) 9 SCC page 431** contends that, the corrigendum issued to section 4 notification is referable to date of publication of section 4 notification. It is to be noted that, in view of section 6 (1) explanation 1, the period during which any action or proceeding to be taken in pursuance to the notification issued under section 4, sub-section (1) remains stayed by an order of the Court is only

required to be excluded. Thus, law permits exclusion of period spent in prosecuting litigation in the court raising challenge to section 4 notification and not the period required for issuing the corrigendum correcting a notification under section 4. Thus, arguments advanced by the respondent urging to exclude the period between the date of issuance of section 4 notification and the date of issuance of corrigendum to section 4 cannot be accepted. In any case, the date of issuance of corrigendum to section 4 notification cannot be equated with the date of issuance of notification under section 4. It thus transpires that declaration issued by respondent/State under section 6 on 17.08.2013 is clearly beyond prescribed period provided under section 6 (1) proviso (ii) of the Act of 1894 and as such, said declaration deserves to be quashed and set aside and the same is accordingly quashed and set aside. It would be open for the respondents to initiate fresh proceedings for acquisition of land in accordance with the Act of 2013.

5. Writ Petition is thus allowed. Rule is accordingly made absolute. There shall be no order as to costs.

(V.K. JADHAV, J.)

(R. M. BORDE, J.)

...

aaa/-