

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5701 OF 2012

Shri Eknath Parbati Jawle & Ors. .. Petitioners
Vs.
The State of Maharashtra & Ors. .. Respondents

Mr.Vagish Mishra a/w. Mr.A.A. Khan i/b M.Tripathi & Co. for the petitioners.

Mr.V.S. Gokhale, AGP for respondent nos.1 to 3 & 5.

Mr.Khushnood Akhtar i/b Mr.Rajiv Jadhav for the respondent no.4.

**CORAM : A.S. OKA,
K.R. SHRIRAM, JJ.
DATED : 25TH AUGUST, 2015**

P.C.

1 Heard the learned counsel appearing for the petitioners, the learned counsel appearing for the respondent no.4 and the learned AGP for the respondent nos.1 to 3 and 5. The learned counsel for the petitioners states that he has no instructions regarding the withdrawal of this petition.

2 By this petition under Article 226 of the Constitution of India, the petitioners have challenged an Award made under Section 11 of the Land Acquisition Act, 1894 (for short “the said Act”). A Notification under Section 4(1) of the said Act was issued on 13th March 1980. A declaration under Section 6 of the said Act was published on 12 March 1983.

3 The Award which is impugned in this petition was made by the Special Land Acquisition Officer on 1st August 1985. In the year 1992, the petitioners filed a civil suit for challenging the acquisition. On 6th April 2009, the civil suit was dismissed for default which was never restored. During the pendency of the suit, there was an ad-interim order directing the parties to maintain status-quo. The case made out in the petition is that in April 2012 that the petitioners became aware of the order of dismissal of the civil suit. Thereafter, the petitioners were served with the notice of eviction on 13th June 2012. The present petition was filed on 26th June 2012 for challenging the Award dated 1st August 1985.

4 The challenge to the Award dated 1st August 1985 is mainly on the ground that the Award was not made within a period of two years from the date on which the declaration under Section 6 of the said Act was published.

5 This petition came up before a Division Bench of this Court on 11th March 2015. It will be necessary to quote the order passed by the Division Bench on that day. The said order read thus :

1 When we were just about to dismiss the writ petition on the ground of delay and laches, as the petition is filed 27 years after the passing of the award u/s 11 of the Land Acquisition Act, the learned Counsel for the petitioner made a statement that the appeal filed by the

petitioners before the State Government has been allowed and the land of the petitioners is released from the clutches of the acquisition.

2 We prima facie do not find any merit in the submission made on behalf of the petitioners. It is most unlikely that the land of the petitioners is released from the clutches of the acquisition after the award is passed in 1986 as it is the case of the State Government that the land is already allotted to Respondent No.4 and the petitioners are obstructing the possession of the respondent No.4, on the said land. ***Though a submission is made on behalf of the petitioners that there is no delay in approaching this Court, we find that the submission has no merit as the award was passed by the Special Land Acquisition Officer in the year 1985 and the petitioners had filed the suit challenging the acquisition, in the year 1992. Since the suit is not maintainable, it cannot be said that the petitioners were bonafide prosecuting the matter before a wrong forum. Even assuming that the suit is maintainable, the petitioners had filed the same belatedly, that is more than 6 years after the passing of the award. The suit has been dismissed on 6.4.2009 and the present writ petition has been filed on 26.6.2012.***

In the aforesaid background, we adjourn the matter at the request of the learned Counsel for the petitioners to 16.3.2015 so that the petitioners can make a statement for withdrawal of the writ petition, in case the land is released from the clutches of acquisition.

(emphasis added)

6 It appears that on 15th June 2015, the petitioners filed civil application

No.1839 of 2015. Prayers (a) and (b) of the said application read thus :

(a) *to clarify the order dated the 11th March 2015 to the effect that said order has been passed for granting time to the petitioners and not on merits of the petition.*

(b) Without verifying order, if any, on the Appeal filed by the Applicants before the Hon'ble Revenue Minister, Government of Maharashtra, the petitioners ought not be directed to withdraw the petition on the basis of such order.

7 By an order dated 15th July 2015, a Division Bench of this Court dismissed the said application. While dismissing the said application, the Division Bench directed the petitioners to pay costs of Rs.2 lakhs to the respondent no.4 by observing that the civil application was filed by the Petitioners for protracting the proceedings.

8 On plain reading of the order dated 11th March 2015, from the reasons recorded therein, it appears that the Division Bench was inclined to dismiss the petition *in-limine* and only because the learned counsel appearing for the petitioners prayed for adjournment that the writ petition was adjourned to 16th March 2015 to enable him to take instructions regarding withdrawal of the said writ petition. The adjournment was sought on the ground that the land is released from the clutches of acquisition.

9 There is a reply filed by Shri Shankar Baburao Gonjari, Rehabilitation Officer, Satara on behalf of the respondent no.2. In the reply, it is pointed out that Section 11A of the said Act was brought on the statute book on 24th

September 1984. The Award was made well within a period of one year from the date on which the Section 11A was brought on the statute book. The same affidavit records that the respondent no.4 who is a project affected person has been allotted the acquired land of the petitioners.

10 As narrated earlier, a civil suit was filed by the petitioners in the year 1992 for challenging the impugned Award dated 1st August 1985 made under Section 11 of the Land Acquisition Act . The said civil suit was filed nearly 7 years after the impugned Award under Section 11 of the said Act was made. The civil suit for challenging the acquisition was not maintainable. There was an interim order of status-quo passed in the year 1992. The said suit was dismissed for default on 6th April 2009 which was never restored and the present petition was lodged on 26th June 2012. This is a case of gross unexplained delay on the part of the petitioners. Moreover, to get over the observations made by the Division Bench of this Court in the order dated 11th March 2015, immediately after the change of assignments, i.e., on 16th March 2015 that civil application no.1839 of 2015 was filed by the present petitioners. As stated earlier, the said civil application has been dismissed and the petitioners have been directed to pay costs of Rs.2 lakhs to the respondent no.4.

11 For the reasons which are recorded in the order dated 11th March 2015, we are of the view that there is absolutely no merit in the petition and the same deserves to be dismissed only on the ground of delay. Considering the conduct of the petitioners of filing the aforesaid civil application no.1839 of 2015 with a view to get over the order dated 11th March 2015, this Court was inclined to impose exemplary costs. However, we are not passing an order of imposing costs at this stage as the petitioners were already saddled with the costs of Rs.2 lakhs as per the order passed by the Division Bench on 15th July 2015.

12 The writ petition stands rejected.

13 At this stage, the learned counsel appearing for the petitioners seeks continuation of ad-interim relief granted on 28th June 2012. Considering the conduct of the petitioners which is reflected from what is recorded in this order and as well as the order dated 15th July 2015 passed in civil application no.1839 of 2015, the prayer made by the learned counsel appearing for the petitioners for stay is rejected.

(K.R. SHRIRAM, J.)

(A. S. OKA, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Order/Judgment.