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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.434 OF 2012
WITH
CIVIL APPLICATION NO.2647 OF 2014
AND
CIVIL APPLICATION NO.817 OF 2015**

Mrs. Smita Mahadev Sathe	..Petitioner.
V/s.	
The Special Land Acquisition Officer and Ors.	..Respondents.
AND	
Sudhakar Gopal Kokare and Ors.	..Applicants.
AND	
Sanjay Shankar Telande and Ors.	..Applicants.

Mr.S.V.Sadavarte for the petitioner.
Mr.Saurabh Madhusudan Railkar for the applicant in CA No.817/15.
Mr.P.D. Dalvi i/b. Mr.D.V.Sutar for applicants in CA/2647/14.
Mr.V.S.Gokhale, AGP for respondent Nos.1 to 6.

**CORAM : A.S.OKA AND
V.L.ACHLIYA, JJ.**

DATED : 6TH OCTOBER, 2015

P.C. :-

1. Heard the learned counsel appearing for the petitioner, the learned AGP for the respondents and learned counsel appearing for the applicants in Civil Application No.817 of 2015 and Civil Application No.2647 of 2014.

2. Challenge in this petition under Article 226 of the Constitution of India is to the award made on 31st October, 1987

under Section 11 of the Land Acquisition Act, 1894 (for short 'the said Act of 1894'). The land subject matter of this petition is bearing Gat No.459 admeasuring 3 H and 63 Ares situated at Ichalkaranji, Taluka Hatkanangale, District Kolhapur. The area of 74 Ares out of the Gat No.459 (for short 'the said land') was notified for acquisition. It is not in dispute that the petitioner's father Narayan Vinayak Joshi was the owner of the acquired land.

3. The first submission of the learned counsel appearing for the petitioner is that on the basis of the objections raised by the tenants in the inquiry under Section 5A of the said Act of 1894, a decision was taken to delete the said land from acquisition. He pointed out the remarks on the report under section 5A of the said Act of 1894. He submitted that the acquisition could not have proceeded further and the award could not have been made. His second submission is that the declaration under Section 6 of the said Act of 1894 was not made within the time stipulated. His next submission is that the award under Section 11 is hit by section 11A of the Act of 1894. He pointed out that the possession of the said land was never taken over in accordance with the provisions of the said Act of 1894 and during pendency of this petition, a possession receipt was created for showing that the said land has been put in possession of one Motes Holes Pinto. He submitted that in the year 2007, an application was made by the petitioner for permitting

transfer of the said land. Accordingly, a permission was granted to the petitioner. He submitted that from 14th September, 2012, the possession of the petitioner over the said land has been protected by an ad-interim order. He would, therefore, urge that in view of sub-section (2) to Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the said Act of 2013') as the possession of the acquired land was never taken over till 31st December, 2013, the acquisition has lapsed. The learned counsel appearing for the applicants in Civil Application No.817 of 2015 supported the petitioner. The learned AGP supported the impugned award and pointed out that the petition suffers from delay and laches.

4. A Notification under sub-section (1) of Section 4 of the said Act of 1894 was issued on 30th June, 1983. A corrigendum was issued to the said Notification on 7th September, 1983 which was published on 13th October, 1983. The declaration under Section 6 was issued on 11th September, 1985. Therefore, the declaration under section 6 was made within the time stipulated by law. The declaration under Section 6 was lastly published 31st October, 1985. The said date will have to be excluded from the purposes of calculating the outer limit provided under section 11A of the said Act of 1894 for making an award. Therefore, the award under section 11 made on 31st October, 1987 is within the time stipulated

under section 11A.

5. It is not in dispute that the petitioner's father Narayan Vinajak Joshi was served with a notice under sub-section (1) of section 4 of the said Act of 1894 on 25th May, 1983. This fact is admitted by the petitioner in the affidavit in rejoinder filed by her Constituted Attorney. It is an admitted position that the petitioner's father did not raise any objection and an objection was raised only by the tenants. The affidavit in reply filed by Shri Suresh Dattatray Jadhav, Deputy Collector (Land Acquisition) No.12, Kolhapur discloses that a notice under section 12(2) of the said Act of 1894 was served to the petitioner's father. The said notice is of 18th January, 1996 and the acknowledgment of the petitioner's father appears on the rear side of the said notice (page 122). It is pointed out that the said Narayan Vinayak Joshi, the petitioner's father died in the year 1998. What is pertinent to note is that during his lifetime, the petitioner's father never challenged the acquisition on any ground though he was served with the notice of the award under section 12(2) of the said Act of 1894. Under the said notice, compensation was offered to the petitioner's father. The present petition is filed in the year 2012. Therefore, it is too late in the day to file a writ petition under Article 226 of the Constitution of India challenging the acquisition on the grounds which were available to the petitioner's father during his lifetime. As stated earlier, he was

served with the individual notice under sub-section (1) of section 4 as well as the notice under section 12(2). Though the petition deserves to be thrown out on the ground of delay, we have considered the submissions on merits.

6. We have perused the report under Section 5A of the Land Acquisition Act. The said report has seven columns. The fourth column records the objections. It records that the petitioner's father was absent but the tenants raised an objection. What is relied upon by the learned counsel appearing for the petitioner are the remarks of the acquiring body as well as the remarks of the Special Land Acquisition Officer. The Collector representing the acquiring body recommended that the acquisition be dropped. The Special Land Acquisition Officer has recorded that he was agreeable with the said suggestion. However, there is no order made either by the State Government or the Divisional Commissioner accepting the recommendations of the acquiring body and the Land Acquisition Officer. On the contrary, as stated earlier, the declaration under section 6 was issued on 11th September, 1985 which was never challenged by the petitioner's father during his lifetime.

7. Then comes the challenge based on sub-section (2) of section 24 of the said Act of 2013. We have carefully perused the averments made in the petition which runs into 11 paragraphs.

There is no specific averment made that the possession of the said land was not taken over in accordance with the provisions of the said Act of 1894. All that is contended is that the tenants, who are the applicants in the Civil Application No.817 of 2015 are in possession. Moreover, the entire petition proceeds on the footing that there was a decision taken to drop the acquisition proceedings in respect of the said land. Perhaps it was too late in the day to make an averment in the petition filed in the year 2012 claiming that the possession of the said land on the basis of award dated 31st October, 1987 was not taken over in accordance with the provisions of the said Act of 1894.

8. The learned counsel appearing for the petitioner is banking upon the ad-interim relief granted by this Court. Ad-interim relief was granted in terms of prayer clause (d).

“ Pending the hearing and final disposal of the petition, the Respondents be restrained by an order of injunction for initiating any sort of acquisition proceedings in respect of the land bearing Survey No.459 admeasuring 74 ares situated at Ichalkaranji, Tal. Hatknangale, District Kolhapur and to acquire the said land for the purpose of allotment to the project affected persons. ”

The said ad-interim did not protect the alleged possession of the petitioner over the said land.

9. The affidavit in reply discloses that possession of the acquired land has been handed over to the allottee on 18th February, 2012. It is also disclosed that the said allottee has subsequently transferred the said land.

10. Hence, we find that no case for interference is made out in writ jurisdiction under Article 226 of the Constitution of India. The petition is dismissed.

11. At this stage, the learned counsel for the petitioner prays for continuation of ad-interim relief. We must note here that even according to the case of the petitioner, the intervenors are in possession. Hence, no case is made out for continuation of ad-interim relief.

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)