

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10033 OF 2013**

Sou. Kusum Ramchandra Jagtap & Anr.	...Petitioners
<i>Versus</i>	
State of Maharashtra, through Chief Secretary & Ors.	...Respondents

**WITH
WRIT PETITION NO. 10035 OF 2013**

Dipak Abasaheb Kalokhe	...Petitioner
<i>Versus</i>	
State of Maharashtra & Ors.	...Respondents

Mr. P.K. Hushing, for the Petitioners.
Mr. V.S. Gokhale, AGP, for Respondent Nos. 1 to 3.

**CORAM: A. S. OKA & G.S. PATEL, JJ.
DATED: 22nd December 2015**

PC:-

1. Heard the learned counsel appearing for the Petitioner. Writ Petition No. 10033 of 2013 has been filed by Sou Kusum Ramchandra Jagtap and Subhash Shrihari Jagdale for challenging the acquisition of the lands, more particularly described in paragraph no. 2 of the Writ Petition No. 10033 of 2013. The

acquisition was under the Land Acquisition Act, 1894 (for short “the said Act of 1894”). The Award under Section 11 is dated 23rd September 1996. In a statement annexed to the Award, the 1st Petitioner, Kusum Ramchandra Jagtap and Subhash Shrihari Jagdale have been held entitled to receive the compensation. The 2nd Petitioner is the son of Saraswati Shrihari Jagdale.

2. In the aforesaid Writ Petition, a specific case has been made out that the Petitioners did not receive compensation in terms of the said Award dated 23rd September 1986. By amending the Petition by incorporating paragraph XXV-A, a specific ground was urged that the amount of compensation was not paid to the Petitioners and was not deposited in accordance with the provisions of law. It is also contended that the possession of the acquired land was not handed over. Even this case is specifically made out in paragraph nos. 8 and 9 of the Petition before its amendment.

3. The amendment was carried out by specifically relying upon Sub-Section (2) of 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”). An Affidavit in Reply was filed by Mr. Sahebrao Manik Gaikwad, Deputy Collector (Land Acquisition) No. 19, Pune. In the said Affidavit, it is contended that the compensation amount has been received by Mr. Shrihari Gajanan Jagdale. On the last date, a compilation of documents was placed on record by the learned

AGP. The first document in the compilation is an application made by the 1st Petitioner and one Saraswati Shrihari Jagdale (mother of the 2nd Petitioner). By the said application dated 25th June 1992, a specific prayer was made by both of them for grant of compensation under the Award dated 23rd September 1986 by stating that the amount was lying deposited in the Treasury. A photocopy of the Power of Attorney dated 30th June 1971 executed by the said Saraswati Shrihari Jagdale in favour of her husband Shrihari Gajanan Jagdale is also a part of the said compilation. The compilation also contains a photocopy of the Power of Attorney dated 25th September 1989 executed by the 1st Petitioner in favour of Shrihari Gajanan Jagdale. The compilation contains a copy of the statement recorded by the Special Land Acquisition Officer No. 19, Pune of the said Shrihari Gajanan Jagdale in which he has stated that on the basis of the Power of Attorney executed by the 1st Petitioner and the mother of the 2nd Petitioner, he may be allowed to receive the compensation. Further documents forming part of the compilation record that a total sum of Rs.1,04,976.00/- was received by Shrihari Gajanan Jagdale, out of which a sum of Rs.38,295.92/- was the compensation payable in respect of the land bearing Survey No. 204 Hissa 1/1 and a sum of Rs.66,680.03/- was the compensation payable in respect of Survey No. 205, Hissa No. 1B.

4. The compilation shows that the entire amount of compensation payable to the 1st Petitioner and the 2nd Petitioner's

mother was received by the said Shrihari Gajanan Jagdale on the basis of a Power of Attorney executed by the 1st Petitioner and the 2nd Petitioner's mother.

5. The learned counsel appearing for the Petitioners stated that he has forwarded the said compilation to the Petitioners but he has not received instructions from the Petitioners.

6. The entire Petition proceeds on the footing that the 1st Petitioner and the 2nd Petitioner's mother has not received any compensation under the Award dated 23rd September 1986. In fact, the aforesaid compilation shows that the compensation has been received by their Constituted Attorney way back on 28th July 1992.

7. As far as Writ Petition No. 10035 of 2013 is concerned, this Petition has been filed by Mr. Dipak Abasaheb Kalokhe and others, who are claiming to be the legal representatives of Abasaheb Kalokhe, again challenging the same Award dated 23rd September 1986. The said Writ Petition has been filed by the 2nd Petitioner in Writ Petition No. 10033 of 2013 as the Constituted Attorney of the Petitioners.

8. The aforesaid compilation shows that even the said Abasaheb Kalokhe is the signatory to the application dated 25th June 1992 wherein he demanded compensation as per the Award dated 23rd September 1986. We must note here that the said compilation

contains a Power of Attorney dated 7th November 1984 executed by the said Abasaheb Kalokhe in favour of Shrihari Gajanan Jagdale. The document shows that on 20th July 1982, even the compensation payable to the said Abasaheb Kalokhe was received by the said Shrihari Gajanan Jagdale. The learned counsel appearing for the Petitioners states that the compilation was sent to the Petitioners. However, he has not received any instructions. As stated earlier, the Petition has been filed by Subhash Shrihari Jagdale (2nd Petitioner in Writ Petition No. 10033 of 2013) who happens to be the son of the said Shrihari Gajanan Jagdale who received compensation on behalf of the said Abasaheb Kalokhe as his Constituted Attorney.

9. The learned counsel appearing for the Petitioners submitted that time may be once again granted to him to seek instructions from the Petitioners in both the Petitions.

10. The compilation to which we have made a reference, was tendered on 8th December 2015. Thereafter, the Petition was adjourned to 15th December 2015 and again time was granted till today. In fact, the Petitioners while filing the Petition ought to have brought to the notice of their Advocate the fact that their Constituted Attorney had received the entire compensation. Thus, the Petitioners are guilty of suppression of facts which are very material to the adjudication of the dispute in these Petitions. In view of the suppression of material facts, the Petitioners in both the

Petitions are disentitled to any relief. The specific contention in both the Petitions in support of the plea based on Sub-Section (2) of Section 24 of the said Act of 2013 is that they have not received compensation. Therefore, the Petitioners cannot be allowed to invoke writ jurisdiction under Article 226 of the Constitution of India and both the Petitions deserve to be dismissed.

11. Considering the finding recorded above, we direct the Petitioners in each Petition to pay costs quantified at Rs.7,500/- to the State of Maharashtra.

12. Accordingly, we pass the following order:

- (a) Both Petitions are rejected;
- (b) The Petitioners are directed to pay costs quantified at Rs. 7,500/- in each Petition to the State of Maharashtra within a period of eight weeks from today.

(G. S. PATEL, J.)

(A. S. OKA, J.)