

WRIT PETITION NO. 10072 OF 2013

Mr. Tejpal Ingle for the Petitioner.
Mr. V.S.Gokhale, AGP for Respondent Nos.1 to 3.

**CORAM : A.S.OKA AND
C.V.BHADANG, JJ.**
DATE : April 21, 2015

Notice for final disposal was issued by
this Court on 8 April 2015.

2) The challenge in this petition under Article 226 of the Constitution of India is to the acquisition proceedings under the Land Acquisition Act, 1894 (for short "said Act"). The Notification under Section 4(1) dated 26 September 2011 was published on 30 November 2011. The declaration dated 5 March 2012 under Section 6 of the said Act was lastly published on 2 April 2012. The Award under Section 11 of the Act was made on 31 May 2012.

3) The petitioner is claiming to be the owner of the land bearing Gat No.191 admeasuring 87.5 Ares situated at Manghaonwadi, Taluka Hatkanangale, District Solapur. The land admeasuring 8.16 Ares out of the land bearing Gat No.191 (for short "said land") is the subject matter of the acquisition. The case made out in the petition is that except for a notice of survey, the petitioner did not receive any notice under the said Act in respect of the disputed acquisition. The case made out in the petition is that the petitioner became aware of the acquisition proceedings for the first time when a notice under Section 12(2) read with Section 16 of the said Act dated 31 May 2012 was served upon him.

4) The petitioner obtained various documents in relation to the impugned acquisition under the Right to Information Act, 2005. The contention of the petitioner is that individual notice under Sub Section (1) of Section 4 of the said Act as well individual notice under Section 9(3) (4) of the said Act was never served upon him. The submission of the learned counsel appearing for the petitioner is

that urgency clause under the said Act was not applied and the enquiry under Section 5A was not dispensed with. The submission of the petitioner is that the entire acquisition proceedings in relation to the said land stands vitiated. The learned counsel appearing for the petitioner invited our attention to what is set out in the affidavit of Ashwini Balasaheb Jirange, Sub Divisional Officer, Ichalkaranji, Kolhapur. He pointed out that it is an admitted position that notices under Sub Section-1 of Section 4 and Sub Section (3) of Section 9 were not served. He also pointed that admittedly the possession receipt is not signed by the petitioner.

5) The learned AGP appearing for the respondents invited our attention to the annexures to the affidavit in reply. Relying upon Sub Section (3) of Section 45 of the said Act, he urged that petitioner was not found at the time of service and therefore, notice was affixed on the conspicuous part of the said land subject matter of acquisition. He urged that admittedly the petitioner is not a resident of the village in which the acquired land is

situated and therefore, recourse was rightly taken to Sub Section (3) of Section 45 of the said Act.

6) We have considered the submissions. We have perused the impugned award. It is not the case made out in the affidavit in reply that urgency clause was invoked and an enquiry under Section 5A of the said Act was dispensed with. The name of the petitioner was appearing in the revenue record in relation to the said land and therefore, service of personal notice as per Sub Section(1) of Section 4 of the said Act to the petitioner was mandatory. It will be necessary to make a reference of the affidavit in reply of Ashwini B. Jirange. In Para 4 to 7 of the said affidavit, the Sub Divisional Officer has stated thus:-

"4. I state that land which is the subject matter of present writ petition i.e. Gat No.191, admeasuring about 8.16 Ares situated at Mangaonwadi, stands in the name of Balu Dhondiba Khot, Annasaheb Dhondiba Khot, Laxmi

Pratap, Sangeeta, Sandeep Mahadev Khot, Mangal Sadashiv Knot, Vinayak Sadashiv Khot, Petitioner Baban Annappa Knot, Balasaheb A. Khot, Bharat A. Khot, Kishan Datta Khot, the notices issued under Section 4(1) of the Land Acquisition Act were presently served on all the land owners of Gat No.191 except the petitioner. Hereto annexed and marked as Exhibit-2 is the copy of the statement showing that notices under Section 4(1) were received by the land owners, which have signed the statement.

5. I state that as the petitioner could not be personally served, the notices under Section 4(1) were served by way of affixing on the land. Hereto annexed and marked as Exhibit-3 is the copy of the report to the said effect dated 7.12.2011.
6. I state that similarly the notices issued under Section 9(3)

of the Land Acquisition Act were personally served on all other land owners of Gat No.19 except petitioner. Hereto annexed and marked as Exhibit-4 is the copy of the statement to that effect signed by the land owners.

7. I state that all land owners of Gat No.191 (except petitioner) have delivered possession and signed the possession receipt on 13.6.2012."

(underlined supplied)

7) In the affidavit, it is not stated that efforts were made by the Village Talathi who was entrusted the job of the service of notice to serve the notice personally to the petitioner. It is not the case made out that the Village Talathi made efforts to serve notice to the petitioner, but he could not be found. We have perused the report dated 7 December 2011 submitted by the Village Talathi at Page 40 to 42 of the reply. In the report, there is a vague statement that persons whose names are mentioned in the report were not found at the address of the village.

8) Learned AGP relied upon Section 45 of the said Act which reads thus:

"45. Service of notices.-(1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof, signed in the case of a notice under section 4, by the officer therein mentioned, and in the case of any other notice, by an order of the Collector or the Judge.

(2) Whenever it maybe practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid

or of the Collector or in the court house, and also in some conspicuous part of the land to be acquired

(4) Provided that, if the Collector or Judge shall s direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and (registered under sections 28 and 298 of the Indian Post Office Act, 1898 (6 of 1898) and service of it may be proved by the production of the addressee's receipt.

9) The only statement made in Paragraph 5 of the affidavit in reply is that the petitioner could not be personally served. Sub Section (3) of Section 45 can be invoked if the person to whom the notice was to be served is not found. It can be said that a person cannot be found only when some efforts are made to locate the person and to serve the notice. If such person cannot be found, the service will have to be made to a male adult member of his family and if no such male adult member is found, the notice

can be served by affixing a copy thereof on the outer portion of the door of the dwelling house of the person. It is only after exhausting those modes that a recourse can be taken to the mode of affixing the notice on the land.

10) There is nothing stated in the affidavit in reply that recourse was taken to all modes provided in Sub Section (3) of Section 45 of the Act. Even the service report of the Talathi does not indicate that recourse was taken to various modes under Section 45 of the Act. It is not stated that on a particular day an attempt was made to serve the notice to the petitioner, but he was not found. Thus, there is no service of notices to the petitioner both under Sub Section (1) of Section 4 and Sub Section (3) of Section 9 of the Act. Thus, the petitioner was prevented from raising objection in accordance with the provisions of the said Act for the purposes of an inquiry under Section 5A. Therefore, as far as the share of the petitioner in the said land is concerned, the acquisition proceedings from the stage of the declaration under Section 6 stand vitiated.

11) Accordingly, the petition must succeed and we pass the following order:-

a) The declaration under Section 6 of the said Act dated 5 March 2012 as well as the Award dated 31 May 2012 only to the extent of the share of the petitioner in the land admeasuring 8.16 Ares out of the land admeasuring 87.5 Ares bearing Survey No.191 situated at Mangaonwadi, Taluka- Hatkanangale, District Kolhapur is hereby quashed and set aside;

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b) We make it clear that the acquisition proceedings in relation to the rest of the lands covered by the said declaration as well as said Award shall continue to be legal and valid for all purposes;

c) We make it clear that it will be open for the respondents to proceed with the acquisition of the share of the petitioner in the said land in accordance with law;

d) Rule is made absolute partly in the above terms.

(C.V. BHADANG, J.)

(A.S. OKA, J.)