

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 503 OF 2013

The Agricultural Produce Market Committee, Nagpur through its Secretary
-Vs-

The State of Maharashtra, Department of Urban Development and Town Planning, Mantralaya,
Mumbai through its Secretary and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S. P. Dharmadhikari, Sr.Adv. with Mr.C.A. & Mr.S.A. Dharmadhikari, Advs.
for petitioner.
Mr. N.R. Patil & Ms. P D. Rane, AGPs for respondent Nos.1 to 3.
Mr. M.G. Bhangde, Sr. Adv. with Mr. R.M. Bhangde, Mr.A.S. Kilor, Mr.A.M. Quazi,
Advs.for respondent Nos.4 to 8.

CORAM : SMT. VASANTI A. NAIK &
PRASANNA. B. VARALE, JJ.

DATE : 05.12.2015.

By this petition, the Agricultural Produce Market Committee, Kalmana seeks a declaration that the provisions of Section 11(2) of the Land Acquisition Act, 1894 and the Land Acquisition Rules (Maharashtra), 1993 are not applicable to the land acquisition proceedings initiated under the provisions of the Maharashtra Regional & Town Planning Act, 1966. The petitioner has challenged the communication of the Deputy Collector and the Special Land Acquisition Officer, Nagpur dated 04/05/2012 directing the petitioner to deposit a sum of Rs.12,04,40,720/- in terms of the provisional award. The petitioner seeks a direction to the Special Land Acquisition Officer to pass an award in terms of the agreement dated 28/06/2005 read with the Resolutions of the Market Committee, dated 26/07/2003, 22/10/2003 and 28/06/2005.

Few facts giving rise to the petition are stated thus :

In the year 1981, the Nagpur Improvement Trust agreed to allot 126 acres of land for Kalmana market project which includes the lands of the respondent Nos.4 to 6. By a notification, dated 18/06/1981, the user of the land in Khasra No.94, with which we are concerned, was changed from industrial purpose to commercial purpose in the development plan of the Nagpur city. An agreement was executed between the petitioner-Market Committee and the Nagpur Improvement Trust on 08/07/1981. Though the possession of 110.88 acres of land was handed over to the petitioner-Market Committee, land admeasuring 15.27 acres in Khasra No.94 could not be delivered as it was not in the possession of the Trust. In the Draft Development Plan, dated 17/03/1994, the land in Khasra No.94 was reserved for the Market Committee but the modified development plan was published by the Trust on 30/11/1995 thereby permitting the user of the land in Khasra No.94 for residential purposes. The petitioner-Market Committee raised an objection to the change of user. A writ petition was also filed by the petitioner-Market Committee in 1997 bearing Writ Petition No.339 of 1997, challenging the modified development plan. During the pendency of the writ petition, on 21/09/2001, the State Government restored the user of the land in Khasra No.94 for the Market Committee. It is the case of the Market Committee that by a proposal, dated 26/07/2003, the respondent Nos.4 to 6 offered their land to the petitioner-Market Committee on payment of Rs.5,00,000/- per acre. According to the petitioner, the respondent Nos.4 to 6 agreed to release the land mentioned in the said communication in favour of the Market Committee @ Rs.5,00,000/- per acre, if the remaining land was released in favour of the respondent Nos.4 to 6. A Resolution was passed by the Market Committee on 26/07/2003 that 9.56 acres of land of the respondent Nos.4 to 6 would be acquired @ Rs.5,00,000/- per acre and 5.81 acres of land could be retained by the respondent Nos.4 to 6. It is the case of the petitioner that in view of the

agreement between the petitioner-Market Committee and the respondent Nos.4 to 6, the respondent Nos.4 to 6 applied to the State Government for change of user of 3.32 acres of land in Khasra No.94. The State Government, by the notification dated 26/07/2006 permitted the change of user to residential purpose. On 08/03/2004, the Collector and the Special Land Acquisition Officer directed the petitioner-Market Committee to deposit Rs.50,00,000/- towards the acquisition of the land of the respondent Nos.4 to 6 and on 22/03/2004 the Committee deposited the said amount with the Collector. On 12/08/2004 the Section 4 Notification was issued and Section 5A notices were also served on the respondent Nos.2 to 4. In the meanwhile, the respondent Nos.4 to 6 issued communications to the petitioner-Market Committee, asking it to acquire only 9.56 acres of land from Khasra No.94. On 28/06/2005, a joint application was made by the petitioner-Market Committee and the respondent Nos.4 to 6 to the Land Acquisition Officer in respect of acquisition of 9.56 acres of land @ Rs.5,00,000/- per acre. On 31/11/2005, the term of the Market Committee expired and due to disputes, an administrator took over the charge of the petitioner-Market Committee. The respondent Nos.4 to 6 filed their objections under Section 5A on 22/12/2011 and on 29/12/2011, the petitioner-Market Committee filed the reply to the said objections. On 02/02/2012, the petitioner-Market Committee requested the Land Acquisition Officer to make an award in terms of the agreement, based on the proposal of the respondent Nos.4 to 6 dated 26/07/2003 and the Resolution of the Market Committee. On 04/05/2012, the Collector informed the petitioner-Market Committee about the provisional award and asked the Committee to deposit a sum of Rs.12,08,40,720/- towards the acquisition of the land. The petitioner has challenged the said communication and has sought a direction to the Deputy Collector and the Special Land Acquisition Officer to make an award in terms of the

agreement between the parties, under Section 11 (2) of the Land Acquisition Act.

Shri S.P. Dharmadhikari, the learned Senior Counsel for the petitioner-Market Committee submitted by referring to the proposal of the respondent Nos.4 to 6, dated 26/07/2003, the Resolution of the Committee, dated 26/07/2003, the notification of the State Government de-reserving the land to the extent of 3.32 acres, dated 26/07/2006 and the order of the Hon'ble Chief Minister, dated 01/07/2006 under the Urban Land (Ceiling and Regulation) Act, 1976 that the respondent Nos.4 to 6 cannot resile from the agreement for the acquisition of 9.56 acres of land at the rate of Rs.5,00,000/- per acre. It is submitted that land is acquired under Section 126 (1) (a) of the Maharashtra Regional and Town Planning Act, by an agreement, by paying the agreed amount. It is stated that the respondent Nos.4 to 6 had agreed that their land could be acquired @ Rs.5,00,000/- per acre and hence, the provisions of Section 11 (2) of the Land Acquisition Act that are applicable to the State of Maharashtra and the Land Acquisition Rules (Maharashtra) would not apply to the acquisition under Section 126 (1) (a) of the Maharashtra Regional and Town Planning Act. It is stated that the agreement between the parties, dated 26/07/2003 was not only acted upon by the respondent Nos.4 to 6 but the respondent Nos.4 to 6 have also secured the benefit of the said agreement by getting 3.32 acres of land de-reserved from the development plan and by obtaining sanction for the Talegaon-Dabhade scheme. It is stated that once a Notification is issued, the parties can enter into an agreement and compensation is not liable to be determined under Section 23 of the Land Acquisition Act. It is stated that in the case like the one in hand, neither would the provisions of Section 11 (2) of the Land Acquisition Act (Maharashtra amendment) be applicable, nor would the Land Acquisition Rules (Maharashtra) apply. It is stated that an agreement would not be required to be recorded in the

presence of the Special Land Acquisition Officer and an agreement, like the one dated 26/07/2003 would be enough. It is submitted that the provisions of Section 11 (2) of the Land Acquisition Act, for the State of Gujarat are akin to the provisions of the Land Acquisition Rules (Maharashtra) and in similar set of facts the Hon'ble Supreme Court has held in the judgment, reported in 1996 (4) SCC 174 (Ishwarlal Premchand Shah v. State of Gujarat) that if an agreement is executed between the landholders and the acquiring body, it would not be necessary to execute the agreement in Form No.14. It is submitted that the parties like the respondent Nos.4 to 6 cannot be permitted to resile from the agreement when they have secured the benefit from the agreement by getting the sanction for the Talegaon-Dabhade scheme and by securing the de-reservation of the land to the extent of 3.32 acres. It is stated that though the cash value i.e. compensation @ Rs.5,00,000/- per acre remains to be released in favour of the respondent Nos.4 to 6, the respondent Nos.4 to 6 have received a part of the consideration in the form of release of 3.32 acres of land from reservation and the sanction of the Talegaon-Dabhade scheme. In the aforesaid set of facts, a direction is sought by the petitioner-Market Committee to the Deputy Collector and the Special Land Acquisition Officer to make the award under Section 11 (2) of the Land Acquisition Act.

Shri M.G. Bhangde, the learned Senior Counsel appearing for the respondent Nos.4 to 6 submitted that though by the Resolution, dated 26/07/2003 the petitioner-Market Committee had agreed to acquire 9.56 acres of land @ Rs.5,00,000/- per acre, by a subsequent Resolution, dated 19/03/2004, the petitioner-Market Committee decided to acquire 12.85 acres of land instead of 9.56 acres. It is stated that the agreement between the parties, dated 26/07/2003, if any, stood cancelled by the Resolution dated 19/03/2004. It is stated that when the Section 4 Notification was issued on 02/06/2004, an

intention to acquire 5.20 hectares of land i.e. 12.85 acres was expressed. It is stated that after the Market Committee deposited a sum of Rs.50,00,000/- with the Special Land Acquisition Officer on 22/03/2004, a corrigendum to the Section 4 Notification was issued and the area was reduced from 5.20 hectares to 3.82 hectares. It is submitted that the Special Land Acquisition Officer prepared a draft of the Section 6 Notification and submitted it to the Commissioner on 23/08/2005 for appropriate action. It is stated that the draft notification was however returned to the Special Land Acquisition Officer on 29/10/2005 after recording that the acquisition was initiated under the Maharashtra Regional and Town Planning Act and not the Land Acquisition Act. It is submitted that the land acquisition proceedings lapsed after the draft notification was returned to the Special Land Acquisition Officer. It is submitted that despite the claim of the petitioner-Market Committee that it sought to acquire only 9.56 acres of land in terms of the agreement, the Administrator of the Market Committee wrote to the Special Land Acquisition Officer that the entire land should be acquired. It is stated that the aforesaid action on the part of the petitioner-Market Committee shows that the petitioner-Market Committee had resiled from the agreement, if at all there was any. It is stated that a notification under Section 126 (2) of the Maharashtra Regional and Town Planning Act was published on 22/11/2007 for the acquisition of 3.82 hectares of land and the respondent Nos.4 to 6 had challenged the said notification in Writ Petition No.4203 of 2008, in which the petitioner-Market Committee was arrayed as respondent No.4. According to the learned Senior Counsel, by the reply of the Market Committee, the petitioner-Market Committee denied the ownership of the respondent Nos.4 to 6 on the land that was sought to be acquired and instead, claimed that the land stood vested in the State Government in the year 1978, in view of the provisions of the Urban Land (Ceiling and Regulation) Act. It is

stated that the denial of ownership of the respondent Nos.4 to 6 and the claim of the petitioner of vesting of the land in the State Government clearly shows that if at all there was an agreement for the acquisition of the land under Section 126 (1) (a) of the Maharashtra Regional and Town Planning Act, the petitioner-Market Committee had backed out from the same and had denied the ownership of the respondent Nos.4 to 6. It is stated that in the reply to the objections of the respondent Nos.4 to 6 before the Special Land Acquisition Officer, the stand of the petitioner-Market Committee was the same as that in the reply to Writ Petition No.4203 of 2008. It is stated that in the reply to the objections of the respondent Nos.4 to 6, the petitioner-Market Committee denied the ownership of the respondent Nos.4 to 6. It is submitted that having denied the ownership of the respondent Nos.4 to 6, the petitioner cannot seek enforcement of the agreement, dated 26/07/2003 or 28/06/2005 by seeking an award under Section 11 (2) of the Land Acquisition Act. It is submitted that the Administrator of the petitioner-Market Committee had also asked the Special Land Acquisition Officer on 21/02/2006 and 27/02/2006 to acquire the entire land i.e. 12.85 acres when the parties had agreed for acquisition of 9.56 acres. It is submitted that the aforesaid communications clearly show that the agreement dated 26/07/2003 was not acted upon by the petitioner-Market Committee. It is lastly submitted that there is an inordinate delay in seeking the enforcement of the agreement, dated 26/07/2003. It is submitted that though the notification under Section 126 (2) of the Maharashtra Regional and Town Planning Act was published on 22/11/2007, the writ petition is filed on 17/01/2013. It is stated that the delay has not been explained. It is stated that if there was really an agreement between the petitioner-Market Committee and the respondent Nos.4 to 6 for the acquisition of the land, the petitioner should have filed the petition within a reasonable time from the issuance of the notification under Section

126 (2) of the Maharashtra Regional and Town Planning Act. The learned Senior Counsel sought for the dismissal of the writ petition.

Shri Patil, the learned Assistant Government Pleader appearing on behalf of the State Government and the Land Acquisition Authorities, made the submissions on similar lines. It is submitted that in the circumstances of the case, the petitioner-Market Committee cannot seek the declaration as prayed and also cannot seek a direction to the Deputy Collector and the Special Land Acquisition Officer to make an award in terms of the agreement dated 26/7/2003 or the joint application dated 28/06/2005. It is submitted that the contract between the parties was not concluded on 26/7/2003, as the subsequent communications, the legal proceedings and the acquisition proceedings show that neither of the parties desired to abide by the agreement dated 26/7/2003. It is stated that in the circumstances of the case, a provisional award was passed by the Special Land Acquisition Officer and the petitioner-Market Committee was directed to deposit a sum of Rs.12,04,40,720/-. It is submitted that in the circumstances of the case, the relief sought by the petitioner should not be granted.

On hearing the learned counsel for the parties and on a perusal of the documents annexed to the writ petition and the affidavit-in-reply, filed on behalf of the respondent Nos.4 to 6, it appears that a direction cannot be issued to the Special Land Acquisition Officer to pass an award under Section 11(2) of the Land Acquisition Act, as claimed by the petitioner-Market Committee. No doubt, the respondent Nos.4 to 6 had by the communication, dated 26/07/2003 made a proposal that the land of the respondent Nos.4 to 6, excluding the area that was liable to be released in favour of the respondent Nos.4 to 6 could be acquired at the rate of Rs.5,00,000/- per acre. In pursuance of the proposal of the respondent Nos.4 to 6, dated 26/07/2003, the

petitioner-Market Committee passed a resolution agreeing the release of land admeasuring 5.81 acres in favour of the respondent Nos.4 to 6 and acquiring 9.56 acres of land at Rs.5,00,000/- per acre. In view of the resolution of the petitioner-Market Committee, dated 26/07/2003, the respondent Nos.4 to 6 applied to the State Government for releasing the land, to the extent of 5.81 acres, as the petitioner-Market Committee had agreed to purchase 9.56 acres of land. The application of the respondent Nos.4 to 6 was favourably considered by the State Government and land admeasuring 3.32 acres was de-reserved. It appears that in the meanwhile, a resolution was passed by the petitioner-Market Committee on 19/03/2004 that the entire land owned by the respondent Nos.4 to 6 would be acquired, as land admeasuring 15.37 acres was not available and on measurement, the land was found to be 12.85 acres. It appears that despite the change of mind of the petitioner-Market Committee, as could be depicted from the resolution, dated 19/03/2004, the petitioner-Market Committee and the respondent Nos.4 to 6 made a joint application to the Special Land Acquisition Officer, dated 28/06/2005 for making an award for acquisition of 9.56 acres of land from Survey No.94/1 at the rate of Rs.5,00,000/- per acre. An amount of Rs.50,00,000/- was deposited by the petitioner-Market Committee with the Special Land Acquisition Officer on 22/03/2005, towards compensation. It appears that the Section 4 Notification was issued in the matter of acquisition of land on 12/08/2004 and enquiry under Section 5A of the Land Acquisition Act was also conducted, though, the acquisition was not initiated under the provisions of the Land Acquisition Act. The Collector rightly returned the proceedings to the Special Land Officer, as the issuance of the Section 4 Notification and an enquiry under Section 5A of the Land Acquisition Act was not necessary in the acquisition proceedings initiated under the Maharashtra Regional and Town Planning Act. On 01/07/2006, the Hon'ble Chief Minister passed an order under

Section 20 read with Section 34 of the Urban Land (Ceiling and Regulation) Act and permitted the development of the land on Talegaon-Dabhade Scheme. Since the acquisition was initiated under the Maharashtra Regional and Town Planning Act, a Notification under Section 126(2) of the Maharashtra Regional and Town Planning Act was issued on 22/11/2007. The respondent Nos.4 to 6 challenged the said Notification in Writ Petition No.4203 of 2008, where the petitioner-Market Committee was also joined as a party. The case of the petitioner-Market Committee that it had entered into an agreement with the respondent Nos.4 to 6 on 26/07/2003 and that it always wanted to perform its part and secure an award from the Special Land Acquisition Officer under Section 11(2) of the Land Acquisition Act stands falsified by the reply filed by the petitioner-Market Committee, to the objections of the respondent Nos.4 to 6 under Section 5A of the Land Acquisition Act and the reply filed by the petitioner-Market Committee in Writ Petition No.4203 of 2008. When the respondent Nos.4 to 6 raised their objections to the acquisition of the land and the quantum of compensation payable to them towards the acquisition, the petitioner-Market Committee filed the reply to the objections on 13/05/2008. In the said reply, it is categorically stated by the petitioner-Market Committee that the respondent Nos.4 to 6 had been divested of the land under the provisions of the Urban Land (Ceiling and Regulation) Act in the year 1978 and that the said fact was deliberately concealed by the respondent Nos.4 to 6. It is further stated in the reply to the objections that if the proceedings under the Land Acquisition Act are continued, it would result in passing an award in favour of the respondent Nos.4 to 6 and they would be unjustly enriched by the award of compensation as they are not the owners of the land. It was emphasized that if the land acquisition proceedings are continued, it would result in making payment to the respondent Nos.4 to 6 towards the acquisition of land, which does not belong to them. It

was reiterated that the land that was sought to be acquired stands vested in the State Government from 1978 and hence, an enquiry should be made whether the proceedings should continue or not. The reply filed by the petitioner-Market Committee in Writ Petition No.4203 of 2008, filed by the respondent Nos.4 to 6 is on similar lines. In the preliminary submissions and the specific submissions made on behalf of the petitioner-Market Committee in the reply, it is stated that the respondent Nos.4 to 6 are not the owners of the land that was sought to be acquired and the land stood vested in the State Government in the year 1978. It is apparent from a perusal of the reply filed by the petitioner-Market Committee to the objections filed by the respondent Nos.4 to 6 before the Special Land Acquisition Officer and the reply in Writ Petition No.4203 of 2008 that the petitioner-Market Committee disputed the very title of the respondent Nos.4 to 6 to the land that was sought to be acquired. Not only was the ownership of the respondent Nos.4 to 6 disputed by the petitioner-Market Committee, but the petitioner-Market Committee also claimed the ownership of the land in the State Government from 1978. It appears from the reply filed by the petitioner-Market Committee, to the objections filed by the respondent Nos.4 to 6 in the enquiry under Section 5A that the petitioner-Market Committee was not desirous of paying compensation to the respondent Nos.4 to 6 towards the acquisition of the land. Though the matter was pending before the Special Land Acquisition Officer since the year 2005, no steps were taken by the petitioner-Market Committee to ensure that an award was made in terms of the agreement within a reasonable time. Not only did the petitioner-Market Committee not take any steps in the matter of making of award on the basis of the agreement, dated 27/06/2003 or 28/06/2005, but the petitioner-Market Committee denied the very title of the respondent Nos.4 to 6 to the land that was sought to be acquired and claimed that the same vested in the State Government. Only after the impugned communication was

served on the petitioner-Market Committee on 04/05/2012, directing it to deposit a sum of Rs.12,04,40,720/- towards compensation as per the preliminary award, the petitioner-Market Committee woke from the slumber to seek a direction to the Special Land Acquisition Officer to make an award under Section 11(2) of the Land Acquisition Act on the basis of the application dated 28/06/2005. Even assuming that the parties had entered into a solemn agreement for the acquisition of the land on 26/07/2003 on the basis of the proposal of the respondent Nos.4 to 6 and the petitioner-Market Committee's resolution or from the application dated 28/06/2005, it is clear from the reply filed by the petitioner-Market Committee to the objections of the respondent Nos.4 to 6 in the enquiry under Section 5A of the Land Acquisition Act and in Writ Petition No.4203 of 2008 as also the total inaction on the part of the petitioner-Market Committee to pursue the matter before the Special Land Acquisition Officer for making an award in terms of the agreement, that the petitioner-Market Committee had resiled from the agreement and had declined to perform its part. The judgment reported in **AIR (1996) 4 SCC 174 (Ishwarlal Premchand Shah v. State of Gujarat)** and relied on by the learned counsel for the petitioner-Market Committee is clearly distinguishable on facts and cannot be made applicable to the case in hand. In the said case, agreements were executed between the owners of the land and the Gujarat Industrial Development Corporation whereby the land owners had agreed to accept compensation at the rate of Rs.6,100/- per acre and the Corporation was permitted to enjoy continuous possession of the land till the process of acquisition was complete. By the subsequent agreements, the Gujarat Industrial Development Corporation agreed to pay higher compensation to the landholders i.e. at the rate of Rs.22,857/- per hectare, as five years had lapsed since the agreements were executed for acquiring the land at the rate of Rs.6,100/- per acre and the proceedings were not

completed. On the basis of the agreements executed between the parties i.e. the land owners and the Gujarat Industrial Development Corporation, that were not denied, the Hon'ble Supreme Court held that it was necessary for the Collector and the Special Land Acquisition Officer to make an award, as compliance with the formalities under Form-14 was not necessary. In the instant case the agreements are not executed as such, between the petitioner-Market Committee and the respondent Nos.4 to 6. On the basis of the proposal made by the respondent Nos.4 to 6 on 26/07/2003 and the resolution of the petitioner-Market Committee, dated 26/07/2003, it is sought to be conveyed that an agreement was effected between the parties on 26/07/2003. Even if, we assume that there was an agreement between the parties, as canvassed, the petitioner-Market Committee has resiled from the agreement and in such circumstances, no relief could be granted in favour of the petitioner, on the basis of the agreement. We find that the petitioner-Market Committee is blowing hot and cold by relying on the agreement, dated 26/07/2003 while making an application before the Special Land Acquisition Officer on 28/06/2005 for making an award for acquisition of 9.56 acres of land at the rate of Rs.5,00,000/- per acre and then denying the very title and ownership of the respondent Nos.4 to 6, in the enquiry under Section 5A of the Land Acquisition Act and in Writ Petition No.4203 of 2008. The relief sought by the petitioner-Market Committee cannot be granted and a direction cannot be issued to the Special Land Acquisition Officer to make an award under Section 11(2) of the Land Acquisition Act. The orders passed by the Hon'ble Chief Minister permitting the development of the land under the Talegaon-Dabhade Scheme and the order of the State Government de-reserving the land to the extent of 3.32 acres on the basis of the application made by the respondent Nos.4 to 6 to the concerned authorities would be of no assistance to the petitioner-Market Committee for seeking the relief claimed, when

the petitioner-Market Committee has subsequent to the passing of the said orders denied the very title of the respondent Nos.4 to 6.

In the circumstances of the case, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE

KHUNTE