

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.823 OF 2016

Maruti Gangaram Sonawane
and others

... PETITIONERS

VERSUS

The State of Maharashtra
and another

... RESPONDENTS

.....
Shri A.K. Gawali, Advocate for petitioners
Shri S.K. Kadam, A.G.P. for respondents
.....

CORAM: R.M. BORDE AND
 A.I.S. CHEEMA, JJ.

DATED: 20th January, 2016.

ORAL ORDER :

1. The petitioners are praying for issuance of orders under Section 24(2) of the Land Acquisition Act, 1894 (hereinafter referred to as the Act of 1894 for short), directing release of the property under acquisition in view of failure of the respondent/ State to take possession in spite of passing of the award five years or more prior to enforcement of the Act of 2013.

2. The agricultural property belonging to the petitioners has been acquired by taking recourse to the provisions of the Act of 1894. A notification under Section 4 of the Act of 1894 was issued on 29.11.1982 and after observing the procedure, award came to be passed determining the amount of compensation. The petitioners, being aggrieved by the amount of land value awarded under the award, approached the Reference Court seeking enhancement in the amount of compensation. The Reference Court allowed the Reference Application being Reference Application No.129/1987 by judgment and award dated 27.11.1998. The award in Reference Application No.129/1987 has been declared on the basis of the reasons recorded in Land Acquisition Reference No.127/1987, which was presented by a similarly placed claimant whose land has also been acquired under the same award.

3. It is not a matter of dispute that the petitioners have received the enhanced amount of compensation awarded by the Reference Court. The mutation entries in respect of the property were corrected and the name of the State Government is incorporated in the revenue record. The petitioners contend that, possession of the agricultural land has not been taken and as such, the Reference Court did not award the benefits under

Sections 28 and 34 of the Act of 1894 and the necessary observations are made in the judgment of the Reference Court. The petitioners received notice dated 16.12.2006, issued by the Tahsildar, Pathardi directing them to remove the encroachment committed by them over the property, alleging therein that even after acquisition of the property, they enforced their possession as encroachers. The petitioners were also directed that in the event of their failure to remove encroachment, they would be liable to pay fine prescribed in the notice. Although the notice was issued on 16.12.2006 directing the petitioners to remove encroachment committed by them on the land, no steps are taken by the petitioners and after lapse of nine years, the instant petition is presented claiming relief under Section 24(2) of the Act of 2013.

4. Since the petition raises disputed questions, those need not be gone into in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. Apart from this, it is the stand taken by the State Government, which is evident from the notice issued in 2006 that the status of the petitioners is that of encroachers and that since the petitioners have not approached any forum thereafter, for redressal of their grievance, instant petition presented after lapse of nine years

need not be entertained. The petitioners have approached this Court belatedly. The provisions of Section 24(2) of the Act of 2013 shall not be attracted in the instant matter since it is the claim of the State Government that the petitioners, in spite of receiving the amount, have illegally enforced their possession over the land, and the nature of their possession is that of encroachers.

5. In our considered view, the petition suffers from delay and laches apart from the fact that petitioners cannot be granted declaration as provided under Section 24(2) of the Land Acquisition Act since according to the State Government the nature of possession of the petitioners is that of encroachers. As observed above, in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, the disputed questions of fact need not be investigated. The petition is devoid of substance, hence stands rejected.

(A.I.S. CHEEMA, J.)

(R.M. BORDE, J.)