UNREPORTED

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

WRIT PETITION NO.5295 OF 2015

1. Barku Parasram Dhadi,
Age 65 years, Occ.Agril.,

2. Rambhau Shankar Kokande,
Age 42 years, Occ.Agril. … Petitioners.

Versus

1. The State of Maharashtra,
through the Secretary,
Revenue and Forest Department,
Mantralaya,Mumbai-32.

2. The Collector, Jalgaon,
District Jalgaon.

3.The Special Land Acquisition
Officer No.(l), Upper Tapi
Project, Hatnur, Jalgaon.

4. The Executive Engineer,
National Highway Division,
Jalgaon, Dist.Jalgaon.

5. The Joint Commissioner,
Income Tax Office,
Jalgaon. … Respondents.

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Mr.A.B.Kale, advocate for the petitioners.
Mr.S.M.Ganachari, A.G.P. for the State.

Mr.Alok Sharma, advocate for Respondent No.5.

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WITH
WRIT PETITION NO.10186 OF 2015

1. Vijaymala W/o Pralhad Mule,
Age 47 years, Occ.Agri.,
R/o Murumkheda,Tal.Mantha,
Dist.Jalna.

2. Ranjit S/o Marotrao Chavhal,
Age 35 years, Occ.Agril.
R/o as above. … Petitioners.

Versus

1. The State of Maharashtra,
through Collector,
Jalna.

2. Special Land Acqusition Officer,
Collector Office, Jalna.

3. Executive Engineer,
Minor Irrigation (Local Sector),
Jalna, Dist.Jalna.

4. The Income Tax Commissioner,
Income Tax Department,
Aurangabad.

5. The Income Tax Officer (T.D.S.)
Income Tax Department,
Jalna, Dist.Jalna. …Respondents.

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Mr.A.R.Kale, advocate for the petitioners.
Mr.S.M.Ganachari, A.G.P. for the State.
Mr.Alok Sharma, advocate for Respondent Nos.4 and 5.

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WITH
WRIT PETITION NO.5360 of 2013

1. Dnyanoba S/o Sheshrao Khakare,
Age 63 years, Occ.Agril.
R/o Malegaon (Kh), Tq.
Ahmedpur, Dist.Latur.

2. Bhanudas S/o Sheshrao Khakare,
Age 59 years,Occ.Agril.,
R/o as above. … Petitioners.

Versus

1. The State of Maharashtra,
through the District Collector,
Latur, Dist.Latur.

2. The Special Land Acquisition
Officer, Purna Project, Latur.

3. Income Tax Officer-3,
4, Swati Chambers, Ausa Road,
Latur, Dist.Latur. … Respondents.

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Mr.J.R.Patil, advocate for the petitioners.
Mr.S.M.Ganachari, A.G.P. for the State.
Mr.Alok Sharma, advocate for Respondent No.3.

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CORAM : S.V.GANGAPURWALA AND K.K.SONAWANE,JJ.

Reserved on : 05.8.2016
Pronounced on : 30.9.2016

JUDGMENT (Per S.V.Gangapurwala,J.)

1. Heard.

2. In all these petitions the land of the petitioners are acquired under the provisions of

the Land Acquisition Act, 1894. While making the payment of compensation, the land acquisition authorities have deducted from the amount payable as compensation the amount under TDS.

3. It is the contention of the learned counsel for the petitioners that the lands being agricultural lands, the Respondents could not have deducted TDS as amount received as compensation would be non-taxable. The learned counsel rely on Section 2(1A) of the Income Tax Act, 1961. The learned counsel submits that the principal amount of compensation as well as interest received on the said amount would also be exempted from income tax. Even otherwise, if it is held that the interest is taxable, still, the claimants/petitioners would be entitled for spreading over the amount for the period for which the payment was made. The learned counsel for the petitioners rely on the judgment of the Apex Court in the case of **“Commissioner of Income-Tax, Faridabad Vs. Ghanshyam (HUF)”** reported in **(2009) 8 SCC-412** and another judgment of the Apex Court in the case of **“Bikram Singh**

Vs. Land Acquisition Collector” reported in **1996 (7) Supreme 650.**

4. Mr.Sharma, learned counsel for the Respondents Income-tax Officer states that the agricultural lands are falling within the jurisdiction of Municipality in Writ Petition No.10186/2015 and W.P.No.5295/2015 and would not be entitled to the benefit of exemption. The learned counsel relies on the judgment of the Apex Court in the case of **“G.M.Omer Khan Vs. The Additional Commissioner of Income-Tax, A.P.Hyderabad”** reported in **AIR 1992 Supreme Court 107** and the judgment of Division Bench of this Court **dated 27.8.2013 in W.P.No.5402/2013 with connected Writ Petitions.** The learned counsel further submits that if according to the petitioners they are not liable to pay tax then they are required to file return claiming refund. According to the learned counsel the Writ Petitions also suffer from delay and laches, on this count also they are required to be dismissed.

5. We find that all these Writ Petitions are filed belatedly. In W.P.No.5360/2013, the award was passed by the Reference Court in 2003. The amount was paid after deducting TDS in the year 2004 and the present Writ Petition is filed in the year 2013 i.e. after lapse of nine (9) years, the amount under TDS being deducted. No explanation is forthcoming for such a long delay in filing the Writ Petition. It also appears that the amount of TDS deducted i.e. Rs.96,941/- (Rupees ninety six thousand nine hundred forty one) is not from the principal amount of compensation but from the interest.

6. In Writ Petition No.5295/2015, the petitioners in the deposition before the Reference Court in Land Acquisition Reference have themselves admitted that the land acquired is situated within the Municipal limits and they should be paid compensation considering the lands to be non-agricultural. In the said case also the amount was deducted in the year 2008 and the present Writ Petition is filed after lapse of seven (7) years in the year 2015. As the land

according to the petitioners' statement on oath before the Reference Court is situated within the Municipal limits, the said compensation amount would not be exempted from the income-tax.

7. In Writ Petition No.10186/2015, the TDS is deducted in the year 2010 and the petition is filed after five (5) years. In the award passed by the SLAO, it is stated that Murumkheda i.e. the village from which the land is acquired is situated within 6 Kms from Mantha Taluka. The petitioners contend that though Mantha is a Taluka, there was no Municipal Council at the time when the land was acquired. Be that as it may, we are not entering into the said debate as there is no proof of the same before us.

8. As observed, in W.P.No.5360/2013, the TDS appears to have been deducted not from the principal amount of compensation but only from the interest and as the Writ Petition is filed after nine (9) years, on the ground of delay and laches, we are not inclined to entertain the same. In Writ Petition No.10186/2015 and

W.P.No.5295/2015, the Writ Petitions are filed after 5 and 7 years after the income-tax being deducted. No plausible explanation is forthcoming for the inordinate delay in filing the Writ Petitions. Moreover, in W.P.No.5295/2015, the petitioners themselves had contended before the Reference Court that their land is situated within the Municipal limits.

9. Considering all the aforesaid aspects, we are not inclined to grant any relief to the petitioners. However, the petitioners may take up proceedings with the Income-Tax Department for claiming refund of the amounts of tax deducted at source as may be permissible in law under the provisions of the Income Tax Act. In case the petitioners take up appropriate proceedings, the time consumed in prosecuting the present Writ Petitions, shall be considered by the Income-Tax Department.

10. The Writ Petitions are accordingly

disposed of. No costs.

Sd/-	Sd/-
(K.K.SONAWANE,J.)	**(S.V.GANGAPURWALA,J.)**

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