

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1161 OF 2013

1. Omprakash S/o. Kisanlal Kakani,
Age : 60 Years, Occu. : Agril. And Business,
R/o. : Old Mondha, Nanded,
District : Nanded
2. Kalawati W/o. Omprakash Kakani,
Age : 57 Years, Occu. : Household,
R/o. : Old Mondha, Nanded,
District : Nanded
3. Govindprasad S/o. Lekchand Mantri,
Age : 51 Years, Occu. : Agril. And Business,
R/o. : Old Mondha, Nanded,
District : Nanded
4. Kaualya W/o. Lekchand Mantri,
Age : 48 Years, Occu. : Household,
R/o. : Old Mondha, Nanded,
District : Nanded
5. Shaikh Ayub S/o. Shaikh Ali,
Age : 48 Years, Occu. : Agril. And Business,
R/o. : Gandhi Chowk, Degloor, Nanded,
District : Nanded
6. Md. Farooq S/o. Md. Osman,
Age : 43 Years, Occu. : Agril. And Business,
R/o. : Opp. To Aundhakar Krishi Seva Kendra,
Dhanegaon, Nanded, District : Nanded
7. Pratap S/o. Datram Shinde,
Age : 51 Years, Occu. : Agril.,
R/o. : Kausallya Nagar, Dhanegaon,
Nanded, District : Nanded
8. Krishnnabai Ganpatarao Malwatkar,
Age : 75 Years, Occu. : Household,
R/o. : Mahaveer Chowk, Pundlikwadi,
Nanded, District : Nanded
9. Laxmikant Ganptrao Malwatkar,
Age : 52 Years, Occu. : Agril. And Business,
R/o. : Mahaveer Chowk, Pundlikwadi,

Nanded, District : Nanded

10. Chhaya W/o. Deelip Malwatkar,
Age : 45 Years, Occu. : Household,
R/o. : Mahaveer Chowk, Pundlikwadi,
Nanded, District : Nanded
11. Govind Ganptarao Malwatkar,
Age : 48 Years, Occu. : Agril. And Business,
R/o. : Mahaveer Chowk, Pundlikwadi,
Nanded, District : Nanded
12. Jayshree W/o. Govind Malwatkar,
Age : 42 Years, Occu. : Household,
R/o. : Mahaveer Chowk, Pundlikwadi,
Nanded, District : Nanded
13. Dilip S/o. Ganpatrao Malwatkar,
(since died through Karta HUF)
Nikhil S/o. Dilip Malwatkar,
Age : 24 Years, Occu. : Agril. And Business,
R/o. : Mahaveer Chowk, Pundlikwadi,
Nanded, District : Nanded
14. Veena W/o. Laxmikant Malwatkar,
Age : 48 Years, Occu. : Household,
R/o. : Mahaveer Chowk, Pundlikwadi,
Nanded, District : Nanded

.. **Petitioners**

Versus

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai – 32.
2. The Divisional Commissioner,
Aurangabad
3. The Collector,
Nanded
4. The Special Land Acquisition Officer,
(Building and Transport), Nanded

.. **Respondents**

Shri S. B. Talekar, Advocate for Petitioners.
Miss S. S. Raut, A. G. P. for Respondents.

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

DATE : 22ND JUNE, 2016.

ORAL JUDGMENT (Per S. V. Gangapurwala, J) :-

1. Rule.
2. Rule returnable forthwith. With the consent of parties taken up for final hearing.
3. The Notification U/Sec. 4 was issued on 14.03.2008 in respect of acquisition of the petitioners land from Gut No. 27, 38, 39, 22-A and 24-B.
4. Subsequently, the declaration U/Sec. 6 of the Land Acquisition Act, 1894 was issued on 28.01.2010. The petitioners filed Writ Petition bearing No. 6974 of 2011 on the ground that the public purpose sought to be achieved by the acquisition has no bearing, considering the situation of the land proposed for acquisition and also alleged malafides. The said writ petition was disposed of on 06.07.2012 on the ground that the petitioners have also raised their objections and enquiry U/Sec. 5-A is not yet held and liberty was given to the petitioners to approach this court again after the said enquiry is over. The present petition is filed on the premise that after the declaration is issued U/Sec. 6 of the Land Acquisition Act, 1894 on 28.01.2010 the award has not been passed within a period of 2 years from the date of declaration U/Sec. 6 of the Land Acquisition Act, 1894, as such, in view of Section 11-A of the Land Acquisition Act, 1894 the acquisition stands lapsed.

5. Mr. Talekar, the learned counsel for the petitioners submit that, Section 11-A of the Act of 1894 is mandatory in nature and if, award is not passed within a period of 2 years from the date of declaration U/Sec. 6 of the Act of 1894 the acquisition stands lapsed. The learned counsel submits that, the respondents have not taken over the possession of the land and the possession still vest with the petitioners. According to the learned counsel, the respondents are trying to take recourse to the interim order passed in Writ Petition No. 2763 of 2010. The said interim order was qua the petitioners therein. The petitioners of the Writ Petition No. 2763 of 2010 had filed the writ petition challenging the acquisition proceedings to the extent of their lands. The prayers in the said writ petition were also specific. The said writ petition was dismissed in May, 2012. The petitioners therein had approached the Apex Court by filing Special Leave Petition and the Apex Court had passed an interim order qua the petitioners therein to maintain the status quo as on the said date. According to the learned counsel, there was no restraint upon the respondents from proceeding with the acquisition as far as the land of the present petitioners are concerned or in respect of all the lands except the petitioners in Writ Petition No. 2763 of 2010 and those who are before the Apex Court.

6. Miss Raut, the learned A. G. P. submits that, the prohibitory orders passed by this court was of general nature and the respondents were restrained from proceeding further or taking further steps pursuant to declaration U/Sec. 6 of the Land Acquisition Act, 1894. The said writ petition was dismissed in July, 2012. The petitioners in the said writ petition had approached the Apex Court and the Apex Court has passed an order as follows -

“that in the meantime the status quo as operating between the parties herein on this 19th Day of July, 2012 with regard to the subject matter of dispute which was before the High Court of Judicature of Bombay, Bench at Aurangabad in Writ Petition No. 2763 of 2010 shall be maintained.”

7. The learned A. G. P. further submits that, in view of the said order of the Apex Court the respondents could not have taken further steps pursuant to the declaration issued U/Sec. 6 of the Land Acquisition Act, 1894. The said interim order is still in force. The learned A. G. P. further contends that in view of explanation to Section 11-A of the said Act in computing the period of 2 years referred to in the said section the period during which any action or proceeding to be taken pursuance to the said declaration is stayed by an order of a court shall be excluded. In view of the above though the declaration U/Sec. 6 of the Land Acquisition Act, 1894 was issued on 28.01.2010 there was an interim order passed by this court on 29th March, 2010. Thereafter, the said interim order came to be vacated on 08th May, 2012 and on 19.07.2012 the interim order is passed by the Apex Court which is still in force as such Section 11-A will not operate.

8. We have considered the submissions canvassed by the learned counsel for respective parties.

9. There is no dispute that the declaration U/Sec. 6 of the Act of 1894 is issued on 28.01.2010 and the same is published in the Government Gazette dated 28.01.2010.

10. The petitioners in Writ Petition No. 2763 of 2010 had prayed as under -

“B] Hold and declare that, the Notification issued under section 6 of the Land Acquisition Act, 1894 published in Official Gazette dated 28.01.2010 and in daily news paper namely; ‘Satyaprabha’ dated 09.02.2010 to the extent of lands survey no. 19 admeasuring 2H 60R and land survey no. 22 admeasuring 5H 40R is illegal, arbitrary and violative of Article 14, 19(1)(g) and 300-A of the Constitution of India and also is against the provisions of Section 5-A of the Land Acquisition Act, 1894 and therefore same is liable to be quashed and set aside and for that purpose issue necessary orders.

D] Pending hearing and final disposal of this Writ Petition grant stay to the effect and operation of the Notification issued under section 6 of the Land Acquisition Act, 1894 published in Official Gazette dated 28.01.2010 and in daily news paper namely; ‘Satyaprabha’ dated 09.02.2010 to the extent of lands survey no. 19 admeasuring 2H 60R and land survey no. 22 admeasuring 5H 40R and for that purpose issue necessary orders”

11. Even, the order dated 08th May, 2012 passed in Writ Petition No. 2763 of 2010 also specifically says that the petitioners challenge declaration U/Sec. 6 of the Land Acquisition Act, 1894 published in Official Gazette dated 28.01.2010 to the extent of

land survey No. 19 admeasuring 2H 60 R and land survey No. 22 admeasuring 5H 40R.

12. As such, it would be abundantly clear that, the petitioners of Writ Petition No. 2763 of 2010 were prosecuting the lis in respect of property owned by them and also prayed for declaration that the Notification U/Sec. 6 of the Land Acquisition Act, 1894 is illegal, arbitrary to the extent of land survey No. 19 admeasuring 2H 60R and land survey No. 22 admeasuring 5H 40R. The petitioners therein had never sought for declaration in rem with regard to all the properties under acquisition vide the said declaration. The Apex Court has also passed the order of parties to maintain status quo in respect of the subject matter of the dispute which was before the High Court. The subject matter of the dispute before the High Court in Writ Petition No. 2763 of 2010 was to the extent of the land owned by the petitioners therein and no further.

13. In light of the above, there was no impediment for the respondents to proceed ahead pursuant to the declaration U/Sec. 6 of the Act of 1894.

14. Having failed to pass the award within 2 years from the date of declaration U/Sec. 6 of Land Acquisition Act, 1894 the rigors of Section 11-A would apply. Running of time qua the present petitioners could not have been arrested pursuant to the orders passed in proceeding taken up by the petitioners of Writ Petition No. 2763 of 2010 more particularly when the petitioners in Writ Petition No. 2763 of 2010 were prosecuting the lis to the extent of their property only and the order of the Apex Court was also with regard to the subject matter of dispute which was before

the High Court in Writ Petition No. 2763 of 2010. As stated above the dispute before this court in Writ Petition No. 2763 of 2010 was only with regard to the property owned by the petitioners therein i.e. of Gut No. 22 and Survey No. 19 that also to the extent of petitioners interest therein.

15. The fact remains that prohibitory orders qua the petitioners was never passed in any proceedings and as the award is not passed with regard to the land of petitioners within a period of 2 years from the date of declaration U/Sec. 6 of the Land Acquisition Act, 1894 the acquisition to the extent of petitioners would stand lapsed.

16. During the interregnum one of the petitioners i.e. petitioner No. 7 had approached the Minister (Revenue) and the Minister (Revenue) has passed an order to delete the land of petitioners admeasuring 92R from Gut No. 27 from acquisition. The said order is passed on 18th April, 2016.

17. Considering the aforesaid aspect of the matter the petition succeeds. Rule is made absolute in terms of prayer clauses "A" and "B". No costs.

[K. K. SONAWANE, J.]

[S. V. GANGAPURWALA, J.]

sam/June.16