

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

WRIT PETITION NO. 2862 OF 2016

1. Shantabai Baburao Dighe
(Died) Through legal heirs,
- 1-A Jyotsana Dattatrya Jagtap,
Age : 80 Years, Occu. : Nil,
- 1-B Vatsala Vasantrya Khilari,
Age : 76 Years, Occu. : Nil,
2. Sharad Dattatraya Jagtap,
Age : 59 Years, Occu. : Agril.,
All R/o Central Bank Colony,
Near Soot Girni At Po. Tal,
Shrirampur, Dist. Ahmednagar. .. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai - 32.
2. The Collector, Ahmednagar,
Dist. Ahmednagar.
3. The Special Land Acquisition Officer,
No. 19 having office at Ahmednagar
At Ahmednagar. .. Respondents

Shri S. K. Shinde, Advocate for Petitioners.
Shri B. A. Shinde, A.G.P. for Respondent Nos. 1 to 3.

**CORAM : S. V. GANGAPURWALA AND
K. K. SONAWANE, JJ.
DATE : 11TH APRIL, 2016.**

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

. The present petition is filed for quashing of the award. Mr. Shinde, the learned counsel for petitioners states that the award dated 08th March, 1996 is in contravention of Section 11-A of the Land Acquisition Act, 1894 (for short "L. A. Act"). This Court in a case of **Mahesh Shivaji Dighe and another V/s. State of Maharashtra and others** reported in **2004 (4) Mh. L. J. 614** has set aside the said award to the extent of petitioners therein. Subsequently this Court also in Writ Petition No. 1003 of 2013 has set aside same award in respect of petitioners therein. According to the learned counsel, petitioners are similarly situated and their lands are acquired pursuant to the same award. The learned counsel submits that, in Writ Petition No. 1003 of 2013 this Court had not restricted the said order to the petitioners therein.

2. The learned counsel for petitioners further submits that, the petitioners had filed reference U/Sec. 18 of the L. A. Act. The same was allowed. The petitioners filed execution proceedings. In the said execution proceedings, the State filed reply stating that the original award itself is cancelled, as such no question arises of paying any amount of compensation to petitioners. The

learned counsel submits that, the petitioners have given an undertaking to this Court in the petition itself stating that they are ready to deposit the amount of Rs. 4,09,656/- to the respondents. The learned counsel submits that, as per the record the possession is shown to have been taken by respondents, the physical possession is still with petitioners.

3. We had adjourned the matter on number of occasions at the request of the learned A. G. P. On 14th March, 2016, notice was issued to respondents. Thereafter on 28th March, 2016 by way of last chance one week was granted. Thereafter on 04th April, 2016 again the matter was adjourned to 11th April, 2016 with specifically recording that in case the respondents do not file the affidavit, the Court would be constrained to pass orders on the basis of their say in the Reference Court. The learned A. G. P. states that no instructions are received.

4. It is not disputed that the award which is assailed by petitioners in the present writ petition is the same which is set aside by this Court in a case of **Mahesh Shivaji Dighe and another V/s. State of Maharashtra and others** referred to supra and in Writ Petition No. 1003 of 2013.

5. The petitioners had filed the Reference which is allowed. In execution the petitioners sought enhanced amount of

compensation, however, the respondent/State filed its say stating that the award itself has been set aside by this Court in Writ Petition No. 1003 of 2013, as such the execution cannot proceed. When the State itself has taken stand that the execution proceedings cannot proceed as the award itself is quashed and set aside the respondents certainly would not take any different stand in the present matter.

6. The Division Bench of this Court in **Mahesh Shivaji Dighe and another V/s. State of Maharashtra and others** referred to supra and in Writ Petition No. 1003 of 2013 have subsequently held that the said award is in contravention of the Section 11-A of the L. A. Act. The said finding is based on the facts which have been considered by the Court. The land of the petitioners is also acquired vide the same award.

7. In light of that, the award dated 08.03.1996 is quashed and set aside to the extent of petitioners. The petitioners would not be entitled for any amount pursuant to the said award or pursuant to the award passed by the Reference Court in L. A. R. No. 155 of 2000. The petitioners shall refund the amount of Rs. 4,09,656/- along with interest at the rate of 6% per annum from the date of receipt of the said amount till payment to the respondents. The possession if has been taken by the respondents, then same shall be restored to petitioners.

8. The present order would not be an impediment for the respondents to take up fresh acquisition proceedings if it so desire. As far as mutation entry is concerned, the petitioners may take appropriate steps in that regard.

Rule is accordingly made absolute in above terms. No costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/April 16