

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

WRIT PETITION NO. 4511 OF 2013

- 1] Balasaheb s/o Sampatrao Kadam
(Since deceased) through L.Rs.
1-A)Shakuntalabai wd/o Balasaheb Kadam
Age : major, Occ-household, and Agril
- 2] Bhagwan s/o Sampatrao Kadam
age major, occ-Agril
- 3] Vasant s/o Sampatrao Kadam
age major, Occ-Agril
- 4] Arun s/o Sampatrao Kadam
age major, Occ-Agril
All r/o Brahmawadkdi, Tq. Sailu
Dist.Parbhani. .. PETITIONERS

Versus

- 1] The State of Maharashtra
through Secretary
Irrigation Department,
Mantralaya, Mumbai
- 2] The Special Land Acquisition

Officer, Marathwada Agriculture
University, Parbhani, Tq.&Dist.Parbhani.

3] The Sub-Divisional Officer
Manjara Project Land Development
Sub-Division No.3, Jayakwadi camp
Parbhani, Tq. & Dist.Parbhani.

..RESPONDENTS

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Mr.V.D.Salunke, Advocate for petitioners
Ms.S.S.Raut, AGP for respondent State
Mr.B.R.Surwase,Adv. For respondent no.3

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**CORAM : S.V.GANGAPURWALA &
A.M.BADAR,JJ.**

DATED : 16TH FEBRUARY,2016

ORAL JUDGMENT [PER S.V.GANGAPURWALA,J.] :-

Rule. Rule made returnable forthwith. With consent of parties,
Petition is taken up for final hearing.

2] Mr. Salunke, learned counsel submits that the award dated 12/10/2010 is assailed on the ground that after declaration u/s 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act, award was not passed within two years. The learned counsel further submits that as yet the possession is with the petitioner. The respondents have not taken the possession and even in view of the provisions in the Act, more particularly Section 24(2), the award

lapses.

3] The learned AGP submits that declaration u/s 6 of the Land Acquisition Act was published on 22/5/2008 in the Government Gazette and in two daily news papers the same was published on 10/6/2008 and 13/6/2008. However, in the record, the publication so far as village Chawadi is concerned, does not appear and thereafter the notice u/s 9 is issued and served upon the petitioner on 10/6/2008. According to the learned AGP the award is passed, the same is legal and valid.

4] Mr.Survase, learned counsel appears for the acquiring body and submits that the possession of the land is not yet delivered to the acquiring body.

5] Section 11-A of the Land Acquisition Act 1894 reads as under :

“11-A] The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse.

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.”

6] Section 24(2) of the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 reads as under :

“24(2)Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

7] The following dates are undisputed.

(1) Declaration under Section 6 is published in the Gazette on 22/5/2008; (2) Declaration under Section 6 is published in two local

news papers on 10/6/2008 and 13/6/2008. There is no publication in village Chawadi as per the record and (3) The award is passed on 12/10/2010. If the aforesaid dates are considered, the award is passed after two years after declaration u/s 6 of the Land Acquisition Act. Nothing is brought on record that at the relevant time, any prohibitory orders were in force.

8] In view of Section 11-A of the Act, the acquisition proceedings shall lapse.

9] There is another facet to the present matter that though the award is passed on 12/10/2010, prior to five years, the possession has not yet been taken. Even in the affidavit respondent State accepts that the possession of the land acquired is still with the petitioner. In view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, possession is not taken for a period of 5 years after passing of the award, acquisition stands lapsed.

10] In light of the above, Rule is made absolute in terms of prayer clauses "B" and "C". Writ Petition is disposed of. No costs.

(A.M.BADAR,J.)

(S.V.GANGAPURWALA,J.)

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