

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.9036 OF 2015**Namdeo S/o Kisan Gaikwad and one another Vs. The State of Maharashtra and others.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.A.L.Kanade, advocate for the petitioner.
Mrs.P.V.Diggikar, A.G.P. for the State.

**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**
Date : 05.12.2016.

PER COURT :

1. Heard.
2. Mr.Kanade, learned counsel for the petitioners submits that the land of the petitioners admeasuring 67 Ares from Gat No.464, situated at Kumbhari village is shown to have been acquired. According to the learned counsel, notice U/s 4(1) of the Land Acquisition Act, dated 21.3.2007 was never served upon the petitioners. The petitioners themselves received it after going to the office on 22.11.2007. Thereafter on 20.12.2007 filed objection to the acquisition, thereby putting forth various grounds challenging the acquisition. Again petitioners raised objection on 23.1.2009, 2.12.2009, 16.6.2010, 14.7.2010. The petitioners raised objection

with the Special Land Acquisition Officer and the Acquiring Body, however, no cognizance was taken of the complaints/objections filed by the petitioners and subsequently award came to be passed. As the procedure U/s 5(1) and 5A of the Land Acquisition Act, 1894, is not followed, the award passed is illegal and deserves to be quashed and set aside. The learned counsel submits that even the land of the petitioners which is acquired would not be useful for rehabilitation as there are chances that the water would over-flow in the said land. According to the learned counsel, the award be quashed and set aside.

3. Mr.Survase, learned counsel for the acquiring body and the learned A.G.P. submit that notice U/s 4 of the Land Acquisition Act came to be issued to the petitioners on 21.3.2007, however, the petitioners were not present on the site. The notice U/s 4 was also published in local newspaper on 1.3.2007 and 20.3.2007. Thereafter, Section 6 notification was published in official gazette on 31.7.2008 and in local newspaper on 4.1.2009 and 10.1.2009. Subsequently, award came to be passed on 14.8.2009. Except the petitioners all other persons from whom the lands were acquired under the award have received compensation amount. The possession is also taken by the Respondent and recital to that is made in the award.

4. We have considered the submissions canvassed by learned

counsel for respective parties.

5. The personal notice U/s 4 came to be issued to the petitioners on 21.3.2007. It appears that the said notice was not served upon the petitioners as it appears that the petitioners were not present. However, the award states that the notice U/s 4 was published in the official gazette on 28.12.2006 and in local newspaper on 1.3.2007 and on the site on 20.4.2007. The petitioners personally received notice on 22.11.2007 and thereafter objection came to be raised on 23.1.2009. When even declaration U/s 6 was published in the official gazette on 31.7.2008 and in local newspaper on 4.1.2009. Compliance of Section 4 of the Land Acquisition Act, has been made. The petitioners could have claimed right of hearing if the objection would have been raised within the time prescribed after publication of notice U/s 4. However, it appears that because of the absence of the petitioners on the site, the personal notice could not be served. However, Section 4 Notification is published in official gazette so also in two local newspapers and on the site. The land is already acquired under the award dated 14.8.2009. The present petition is thereafter filed in the year 2015. Considering the fact of publication of notice U/s 4 in the official gazette, the local newspaper and on the site the petitioners not being available, the grievance of the petitioners now can not be considered.

6. It is made clear that apart from the contentions discussed hereinabove, we are not considering any other contentions. In case the petitioners have any other right, the petitioners may prosecute the same.

7. The Writ Petition is dismissed. No costs.

(K . L . WADANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.05.12.2016.
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