

WRIT PETITION NO. 8699 OF 2015

versus

Mr. S.P. Shah, Advocate holding for
Mr. A.N. Sikchi, Advocate for petitioner
Mr. S.M. Ganachari, AGP for respondent No. 1
Mr. S.S. Tope, Advocate for respondent No. 2

Order :-

1. Mr. Shah, learned counsel for petitioners submits that the petitioners are owners of CTS No. 12361 situated at Sanjaynagar, Aurangabad. Said land is part of old Survey No. 40 (new Survey No. 49). The petitioners were initially tenants on said land old Survey No. 40. They were dispossessed. By virtue of the orders of the court they were put in possession in January 1976. Subsequently, the petitioners purchased said property from its original owner vide registered sale-deed dated 29-10-1979. Learned counsel for petitioners submits that name of the petitioners are also mutated in relevant PR card as owners. According to learned counsel, respondents have constructed tank on the land of the petitioners without acquiring said property nor had paid compensation to the petitioners in respect of said land.

2. Learned counsel further submits that the petitioners cannot be dispossessed from the land without due process of law. The respondents are bound to acquire the land or pay compensation to the petitioners in respect of said land, utilized for the construction of the tank. Learned counsel submits that only because the petitioners approached to this court belatedly that may not be a ground to non suit the petitioners. Learned counsel for petitioner relies on the judgment of Supreme Court in the case of *Tukaram Kana Joshi and others through Power of Attorney Holder Vs. Maharashtra Industrial Development Corporation and others* reported in (2013)1 SCC 353.

3. According to the learned counsel, right to property is constitutional right and now it is brought within the contours of human rights. Learned counsel submits that it is not open for the respondent - State to take the plea of delay and laches nor they are entitled to take plea of adverse possession. It is immaterial whether tank is constructed by Maharashtra Jeevan Pradhikaran or respondents are using said tank, as such, learned counsel urged to direct the respondents – authorities to take up acquisition proceedings.

4. Mr. Tope learned counsel for respondent - Municipal Corporation submits that said tank was constructed by Maharashtra Jeevan Pradhikaran and the same was subsequently handed over to the Corporation. The Corporation itself come into existence in 1982, responsibility of providing water to the city earlier was of Maharashtra Jeevan Pradhikaran. The petitioners submitted application claiming compensation for the first time on 02-11-2011 and thereafter on 10-12-2012 and the same were replied by the Corporation by letter dated 29-11-2013 rejecting the claim of the petitioners. Respondent -Corporation

has not taken possession of the said land from the petitioners.

5. The learned counsel further submits that the disputed portion is not properly confirmed by the petitioners and CTS No. 12361 is not having any subdivision. There are various transactions in respect of said CTS Number. The petitioners are seeking compensation for the area admeasuring 1024 Sq. mtrs from CTS No. 12361, the same is disputed portion. The petitioners approached to this court belatedly.

6. We have considered the submissions canvassed by the learned counsel for respective parties. Even as per petitioners, the petitioners' father for the first time became owner of the property CTS No. 12361 vide registered sale deed dated 29-10-1979. Tank is constructed prior to 1975-76 as is clear from the *panchanama* relied by petitioners themselves. As such, when tank was constructed on the said land the petitioners were not owners nor possessors of said land. Original owners, who have sold the property to the petitioners also never claimed compensation for the said land. When the petitioners' father purchased the property in the year 1979, tank was already constructed on the said site. It appears that the petitioners have also dealt with said property subsequently by executing registered sale-deeds in favour of various persons. The father of the petitioners, who had purchased the property from the original owners in the year 1979 during his life time never claimed any right over the portion of the land, on which tank is constructed.

7. After the death of their father, it is for the first time the petitioners are claiming said right that too in the year 2011. The petitioners have approached this court after forty years of the said tank being constructed. At the time when tank was constructed the petitioners or their father were

not owners of the property and original owner at no point of time raised any grievance with regard to same. The petitioners' father, who had purchased property from survey No. 40 (new Survey No. 49) had never raised any grievance with regard to the land under said tank during his life time. The Apex Court in the case of *Tukaram Kana Joshi (Supra)* as relied by the petitioners, has held that it is a legal obligation of the authorities to complete acquisition proceedings and to pay requisite compensation within stipulated period as per the statutory procedure. In said judgment, notification under section 4 was already issued. Judgment of the Apex Court cannot be read as Euclid Theorem. It is to be read in the context in which it has been delivered. Considering factual matrix as narrated by petitioners in the petition that their father nor the petitioners were the owners of the property, when tank was constructed and original owner had not made any grievance nor father of the petitioners during his life time had made any grievance, it would not be permissible for the petitioners to make grievance for the same after lapse of forty years.

8. Writ petition, as such, stands dismissed. No costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

MTK