

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

**WRIT PETITION NO. 9175 OF 2014
WITH
CIVIL APPLICATION NO. 5436 OF 2016
(for amendment)
WITH
CIVIL APPLICATION NO. 10513 OF 2014
WITH
CIVIL APPLICATION NO. 15098 OF 2015
(for intervention)**

Agricultural Produce Market Committee .. Petitioner
Jadhavwadi, Aurangabad,
Through its Secretary,
Nana s/o. Asaram Adhane,
Age. 57 years, Occ. Service,
R/o. Vishnu Nagar, Behind Akashwani,
Aurangabad, Tal. & Dist. Aurangabad.

Versus

1. The State of Maharashtra .. Respondents
Through its Secretary,
Revenue Department, Mantralaya,
Mumbai.
2. The Hon'ble Minister,
Revenue Department,
Maharashtra State, Mantralaya,
Mumbai.
3. The Special Land Acquisition Officer,
Jayakwadi Project, Aurangabad.
4. The District Collector, Aurangabad.

5. The District Deputy Registrar,
Co-operative Societies, Aurangabad.
6. Shrinivas s/o. Ramnath Khatod,
Age. Major, Occ. Business,
R/o. Shantiniketan Colony,
Samartha Nagar, Aurangabad,
Tal. & Dist. Aurangabad.
7. Laxman s/o. Khemchand Daylani
Age. Major, Occ. Business,
R/o. Behind Kandharkar Hospital,
Balaji Nagar, Aurangabad,
Tal. & Dist. Aurangabad.
8. Subhashchandra s/o. Bansidhar Lahoti
Age. Major, Occ. Business,
R/o. Mahesh Nagar, Jalna Road,
Aurangabad, Tal. & Dist. Aurangabad.
9. Kantilal s/o. Hiralal Kasliwal,
Age. Major, Occ. Business,
R/o. Behind Satish Motors,
Chintamani Colony, Samarth Nagar,
Aurangabd, Tal. & Dist. Aurangabad.
10. Vallabh s/o. Nandlal Bagla
Age. Major, Occ. Business,
R/o. Behind Bagla Provisions,
Gulmandi, Aurangabad,
Tal. & Dist. Aurangabad.
11. Premraj s/o. Fakirchand Mantri,
Age. 68 years, Occ. Business & Agri.,
R/o. 90, Shreya Nagar, Aurangabad,
Tal. & Dist. Aurangabad.
12. Arvind s/o. Nilkanth Bhale,
Age. Major, Occ. Business,

R/o. Sharda Colony, Paithan Gate,
Near Union Bank, Aurangabad,
Tal. & Dist. Aurangabad.
(Since deceased through
his legal heirs)

12A. Vrushali w/o. Arvind Bhale,
Age. 55 years, Occ. Housewife,
R/o. Plot No.14, Shardaashram Colony,
Aurangabad, Dist. Aurangabad.

12B. Pushkar s/o. Arvind Bhale,
Age. 26 years, Occ. Service,
R/o. As above.

12C. Jai w/o. Ajeet Pathak,
Age. 30 years, Occ. Housewife,
R/o. Soham, Plot No.9/3,
Kuldeep Housing Society,
Sector P-3, N-8, CIDCO,
Aurangabad, Dist. Aurangabad.

13. Nagesh Shenoy,
Age. Major, Occ. Business,
R/o. Near Hotel Supriya,
Aarth Complex, Samarth Nagar,
Aurangabad, Tal. & Dist. Aurangabad.
(Since deceased through
his legal heirs)

13A. Usha w/o. Nagesh Shenoy,
Age. 60 years, Occ. Housewife,
R/o. Revati Housing Society,
Itkheda, Aurangabad,
Tal. & Dist. Aurangabad.

13B. Prasad s/o. Nagesh Shenoy,
Age. 30 years, Occ. Service,
R/o. As above.

Mr. S.S. Thombre, Advocate for the petitioner.
Mr. P.S. Patil, A.G.P. for respondent/State.
Mr.P.M. Shah, Sr. Counsel with Mr. L.D. Vakil and Mr.
S.P. Shah, Advocate for Respondent Nos.7,8,9 & 10.
Mr. S.B. Vavre, Advocate for respondent Nos. 11, 12A to
12C & 13A to 13B

WITH
WRIT PETITION NO. 8552 OF 2015
WITH
CIVIL APPLICATION NO. 5435 OF 2016
(for amendment)

Agriculture Produce Market Committee .. Petitioner
Aurangabad, Through its Secretary,
Vijay s/o. Ashruba Sirsath,
Age. 40 years, Occ. Service as
Secretary, R/o. As above.

Versus

1. The District Collector, Aurangabad. .. Respondents
2. The Special Land Acquisition Officer,
Jayakwadi Project, Aurangabad.
3. Gulab Khan Man Khan
Age. 55 years, Occ. Business,
R/o. Survey No.10, Jadhavwadi,
Aurangabad.
4. Shaikh Abdul Habib Amin
Age. 40 years, Occ. Business,
R/o. Survey No.10, Jadhavwadi,
Aurangabad.
5. Sachin s/o. Bhausing Bainade,
Age. 35 years, Occ. Business,

R/o. Survey No.10, Jadhavwadi,
Aurangabad.

6. Pratap s/o. Malhari Jonwal,
Age. 34 years, Occ. Business,
R/o. Survey No.10, Jadhavwadi,
Aurangabad.

Mr. S.S. Thombre, Advocate for the petitioner.
Mr. P.S. Patil, AGP for respondent No.1
Mr. Mukul Kulkarni, Advocate for respondent No.3.
Mr. M.R. Sonawane, Advocate for respondent Nos. 3 to 6.

WITH
WRIT PETITION NO. 8554 OF 2015
WITH
CIVIL APPLICATION NO. 5437 OF 2016
(for amendment)
CIVIL APPLICATION NO. 3323 OF 2016
(for amendment)

Agricultural Produce Market Committee .. Petitioner
Aurangabad, Through its Secretary,
Vijay s/o. Ashruba Sirsath,
Age. 40 years, Occ. Service as
Secretary, R/o. As above.

Versus

1. The District Collector, Aurangabad. .. Respondents
2. The Special Land Acquisition Officer,
Jayakwadi Project, Aurangabad.
3. Satyaprakash Ramanand Arya
Through GPA holder,
Chiranjivlal Nanakram Bajaj,
Age. 55 years, Occ. Business,

R/o. Sindhi Colony, Jalna Road,
Aurangabad.

4. Parshvnath Realtors Pvt. Ltd.,
Through its Director,
Chiranjivlal Nanakram Bajaj,
Age. 55 years, Occ. Business,
R/o. Sindhi Colony, Jalna Road,
Aurangabad.

Mr. S.S. Thombre, Advocate for the petitioner.

Mr. P.S. Patil, AGP for respondent No.1.

Mr. V.J. Dixit, Sr. Counsel with Mr. L.D. Vakil, Advocate
for respondent Nos. 3 & 4.

**CORAM : A.V.NIRGUDE &
V.L. ACHLIYA, JJ.**

RESERVED ON : 22.04.2016

PRONOUNCED ON : 06.05.2016

COMMON JUDGMENT : [PER : A.V. NIRGUDE, J.] :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned Counsel appearing for the parties.

2. In all these three petitions, the facts are almost similar. The respondents/owners of the land and the lands involved in these petitions are different but subject matter of same acquisition proceeding. Therefore, three different petitions are before this Court.

3. All these writ petitions are filed in respect of lapsing of land acquisition proceedings of certain lands of village Jadhavwadi, Tq. & Dist. Aurangabad. On 20th April, 1983, Notification under section 4 of the Land Acquisition Act was published proposing acquisition of 96 Hectares land in Jadhavwadi and adjoining area. All the lands which are subject matter of all these writ petitions were proposed to be acquired. Most of the owners of the land made representation to the State Government on 24th October, 1985, seeking deletion of their lands from acquisition. In respect of land of petition No. 9175 of 2014 on 18th February, 1986, Hon'ble Revenue Minister granted stay to further proceedings of the land acquisition and prevented dispossession of most of the owners from the petition lands. Despite stay, the Land Acquisition Officer continued with acquisition proceedings and pronounced Award on 26.06.1987. On 29th February, 1988, the Hon'ble Minister passed an order deleting petition land from the acquisition. Being aggrieved by the said decision, the petitioner APMC filed writ petition on 29th March, 1988. The owners of the land also filed writ petition seeking issuance of notification deleting the petition lands from acquisition. On 14th August, 2001, the APMC's petition was allowed and the owners' petitions were dismissed.

The owners thereupon approached the Supreme Court and for some time an interim order passed by the Supreme Court prevented their dispossession. While such order was in force, land in Writ Petition No. 9175 of 2014 was sold to respondent Nos.6 to 13 in Writ Petition No. 9175 of 2014. The Supreme Court, further dismissed the owners' appeal but granted them liberty to seek appropriate order under section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (henceforth referred to as the "New Act"). On or about 25th September, 2014, the respondents in all the petitions filed applications to the Collector seeking declaration that earlier acquisition award in respect of their lands stood lapsed. Upon hearing all the parties, including APMC, the Collector allowed their applications and passed the impugned order. Against this order, the petitioner-APMC filed these three petitions.

4. The question that is involved in this case is – whether previous land acquisition award of 21st April, 1989 stood lapsed, on account of provisions of Section 24 of the New Act?

5. We have narrated the facts of the case, which are not in dispute. Although the award was passed in

1989, the Land Acquisition Officer did not take possession of the petition land. He was prevented to do so due to orders passed by the Government or the Courts. The New Act came into force on 1st January, 2014. Section 114 of the New Act repealed the Land Acquisition Act, 1894, under which the earlier proceedings were taken. Section 24 of the New Act reads as under :

"24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases –

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),-

(a) where no award under section 11 of the said Land Acquisition act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(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 by 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."

6. The provisions of Section 24 is now required to be applied to the facts of this case. This section provides that despite repeal of provisions of the Land Acquisition Act would save some of the proceedings that were initiated prior to 1st January, 2014 under the Land Acquisition Act. Sub-section (2) provides that under certain circumstances, proceedings under the Land Acquisition Act should be deemed to have lapsed. What are such circumstances which would cause lapsing of the land Acquisition Proceedings? Firstly, if no award under section 11 of the Land Acquisition Act is made; secondly, if an award under section 11 has been made, five years or more earlier from 1st January, 2014 and the physical possession of the land has not been taken or compensation has not been paid, in such situations provisions of the New Act would apply for determination of the compensation amount. In this case, neither compensation was paid nor the possession was taken. In view of the facts of this case, the Collector recorded his finding that the earlier proceedings should be deemed to have lapsed.

7. Learned Counsel for APMC strenuously argued that in the facts and circumstances of the case, it cannot be said that Special Land Acquisition Officer did not obtain physical possession of the land. He said that the SLAO was prevented from taking possession. He pointed out

that first preventive order was passed on 7th July, 1989. It remained in force due to pendency of litigation till 26th August, 1914. He, therefore, said that the case would not fall within the mischief of sub-section (2). We are not in agreement with this submission. Sub-section (2) does not provide any exception to the rule. It does not provide in what circumstances, this Rule will not apply. Therefore, it would be enough to show that despite passing of award five or more years, prior to 1st January, 2014, possession for whatever reason was not taken from the owner. If this is proved, then section 24 of the New Act will apply and the land acquisition proceedings initiated earlier would stand lapsed.

8. Learned Counsel for the respondent placed reliance on this point on the judgment of the Supreme Court in the case of **Shree Balaji Nagar Residential Association Vs. State of Tamil Nadu And Others, (2015) 3 SCC 353.** Similar plea in the reported judgment is recorded that possession could not be taken due to order of stay or injunction was granted by the Court. It was urged before the supreme Court that such period should be excluded. The Supreme Court recorded that section 24 itself does not exclude any period during which the land acquisition proceeding might have remained stayed on account of the stay or injunction granted by any Court.

In the same Act, the proviso to section 19(7) in the context of litigation for publication of declaration, such concession was given. However, section 24 does not indicate exception to rule, therefore, such exceptions based on facts and circumstances of the case cannot be granted by the Court. The relevant provision of the judgment on this point can be quoted as under :-

"10. There is no dispute that the writ petitions were filed even before the making of award and interim orders have operated against the State of Tamil Nadu and, therefore, the State was not at fault in not taking physical possession of the lands concerned under acquisition. But the intention of the legislature in enacting Section 24(2) of the 2013 Act will have to be culled out from its wording and on the basis of other relevant provisions of this Act and the relevant case law for deciding whatever the period of stay/injunction is required to be excluded in computing the five years' period or not.

11. From the plain reading of Section 24 of the 2013 Act it is clear that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any Court. In the same Act, the proviso to Section 19(7) in the context of limitation for publication of declaration under Section 19(1) and the Explanation to Section 69(2) for working out the market value of the land in the context of delay between preliminary notification under Section 11 and the date of the award, specifically provide that the period or period during which the acquisition proceedings were held up on account of any stay or injunction by the order of any Court be excluded in computing the relevant period. In that view of the matter it can be safely concluded that the legislature has consciously omitted to extend the period of five years indicated in Section 24(2) even if the proceedings had been delayed on account of an order of stay or injunction granted by a Court of law or for any reason.

Such casus omissus cannot be supplied by the Court in view of law on the subject elaborately discussed by this Court in Padma Sundara Rao Vs. State of T.N."

9. Section 31 of the Land Acquisition Act provided that:-

31. Payment of compensation or deposit of same in Court- (1) On making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under Section 18 would be submitted.

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount.

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the appropriate Government instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

. Thus, section 31 of the said Act contemplates that after making an award under section 11, the Collector should tender payment of compensation to the owner of the land and should pay it to him. If he does not accept the amount, it is necessary for the Collector to deposit the amount of compensation in the Court, to which reference under section 18 would be submitted. In this case, none of the contingencies contemplated here had happened. The Collector did not offer the amount to the persons interested. Assuming they refused to receive it, the Collector admittedly did not deposit the amount in the Court. So, even if APMC had deposited the entire amount of compensation with Collector or SLAO, this would not amount to compliance of section 31 of the Land Acquisition Act.

10. The law in this context is elaborately discussed by the Supreme Court in the case of **Pune Municipal Corporation & Ors. Vs. Karakchand Misirimal Solanki & Ors., (2014) 3 SCC 183.** The facts of this case were almost similar. The amount of compensation was deposited in the Government Treasury. After passage of more than five years, as per the date of award, the Supreme Court held that such deposit would not amount to payment of compensation to the land owners/persons interested as contemplated by section 31. The Supreme Court further

held that the expression "paid" used in section 24(2) should include deposit of compensation in the Court and would not be limited to amount offered or tendered to land owners. The ratio of this judgment would also apply to the present case.

11. Learned Counsel for the petitioner thereafter asserted that the impugned order was passed by the Hon'ble Minister without having any jurisdiction. He asserted that there is no provision in the New Act which would allow the Hon'ble Minister to declare lapsing of land acquisition under section 24 of the New Act. We are not quite impressed with this submission. No doubt, the matter before the Hon'ble Minister was pending for deciding fate of the Land Acquisition Proceeding in terms of Section 48 of the Land Acquisition Act. The persons were interested in getting order from the Collector/Government to withdraw acquisition of the petition land, since the possession was not taken. Nonetheless, the finding recorded by the Minister is not erroneous. In the facts and circumstances of the case, the dispute between the parties was connected to provision of Section 24. The persons interested in the land were trying to getting the finding from the authority under Land Acquisition Act or under the New Act that the proceedings initiated earlier had lapsed. The

section which is quoted above creates a legal fiction about lapsing of the proceedings initiated earlier under the Land Acquisition Act in certain circumstances. It does not provide that a declaration is required from the competent authority. In other words, deeming fiction of lapsing of acquisition would automatically become effective. The circumstances on happening of events required are mentioned in the provision. After such fiction comes into effect, the land should automatically be released from the acquisition without passing of any order to that effect or without any specific Act, on the part of the parties. On this point the judgment of our Court in the case of **Perfect Machine Tools Co. Ltd. Vs. State of Maharashtra & ors., 2008(2) Mh.L.J.404** would be applicable. This Court in respect of similar provision of Section 127 of Maharashtra Regional and Town Planning Act, held that situation beneficial to owners comes into existence on its own and as a result of default or inaction in compliance by appropriate authority of statutory provision of certain provision to acquire such benefit of the provisions resulting from a legal fiction, it would be obligatory on the part of the beneficiary to comply with the requirements of the provisions directly. In other words, in this case all that is required to be shown by the respondent beneficiary is that the authorities failed to take over physical possession of

the land within five years of the date of passing of the award and effecting payment of compensation as contemplated under Sec.31 of the Land Acquisition Act.

12. In view of above discussion, all the writ petitions are dismissed. Rule discharged. No costs.

13. All the connected Civil Applications for amendment and intervention stand disposed of. The petitioner will be at liberty to file separate petition to challenge the vires of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

[V.L. ACHLIYA, J.]

[A.V.NIRGUDE, J.]

. At the request of Mr. S.S. Thombre, learned Counsel for the petitioner, the effect of earlier statement made by the respondents that they would not start any development on the petition lands, is continued for a period of 12 weeks from today.

[V.L. ACHLIYA, J.]

[A.V.NIRGUDE, J.]