

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

WRIT PETITION NO. 8828 OF 2013

Raosaheb Dhondiba Mohite and
others

.. Petitioners

Versus

The State of Maharashtra and others

.. Respondents

Shri Ajeet B. Kale, Advocate for Petitioners.

Shri B. V. Virdhe, A.G.P. for Respondent Nos. 1 to 4.

Shri Anand Chaware, Advocate for the Respondent No. 5.

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

DATE : 28TH SEPTEMBER, 2016.

PER COURT :

. We have heard Mr. Kale, the learned counsel for petitioners, the learned Assistant Government Pleader for the respondent Nos. 1 to 4 and Mr. Chaware, the learned counsel for the respondent No. 5/acquiring body.

2. Mr. Kale, the learned counsel for petitioners submits that, petitioners are purchasers of house properties situated in gut Nos. 90 and 83, which were previously owned by Govind Tatya and Mangalbai Ghanwat. The petitioners have purchased the said properties in the year 2000, 2003, 2007 and 2009. The said

properties are purchased from the purchasers, who had purchased from the original owners. The names of the petitioners were also recorded in the Gram Panchayat record for the said houses. The same were also appended to the registered sale deeds executed in their favour. The learned counsel submits that, the petitioners since the date of registered sale deeds are in possession of the said properties. The petitioners at no material point of time were issued with any notice U/Sec. 4 and 9 of the Land Acquisition Act. According to the learned counsel, even the Deputy Superintendent of Land Records, Mantha in its letter written to the Deputy Collector (Land Acquisition) has clarified that, an area to the extent of 1.36 hector would not come under acquisition and for that the state would be required to pay more amount of compensation. According to the learned counsel, even while passing final award, the area has been corrected subsequently. If the acquisition would have been pursuant to the original proceedings, the problem would not have arisen. According to the learned counsel, the petitioners got the knowledge of proceedings only after notice is issued to the petitioners by Sub Divisional Officer on 18.01.2012. The learned counsel submits that, the petitioners are not encroachers, but the legitimate purchasers of the property. The petitioners since the date of registered sale deeds are in continuous and unobstructed possession of their property. The award passed is illegal. The learned counsel has also made

submissions with regard to the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 including lapsing of award U/Sec. 24 of the Act.

3. The learned Assistant Government Pleader submits that, the possession of the land under acquisition has been taken by the Deputy Collector (Land Acquisition) and necessary Taba Pawati has been executed by the concerned persons. According to the learned A. G. P. the procedure for land acquisition has been scrupulously followed and the petitioners at no material point of time have raised any objection to the acquisition proceedings. The amount of compensation for the property acquired has also been paid to the legitimate persons. Now, they cannot challenge the award.

4. Mr. Chaware, the learned counsel for the respondent No. 5 submits that, original owners had challenged acquisition proceedings by filing writ petition before this Court. Same was disposed of. Subsequently one of the owner had challenged the award by filing Writ Petition No. 2375 of 2012. The same is dismissed vide order dated June 18, 2012. According to the learned counsel, in view of the judgment of the Apex Court in the case of Municipal Corporation Greater Bombay Vs. Industrial Development Investment Co. reported in *AIR*

1997 SC 462, such challenge to the award is not tenable.

5. We have considered the submissions canvassed by learned counsel for respective parties. We are not entering into the controversy as to whether award stands lapsed in view of Sec. 24 of the Act of 2013. In the letter dated 04.10.2010 issued by the Deputy Superintendent Land Records, Mantha, some discrepancies have been pointed out. There are rival contentions of the parties. The petitioners have relied on the registered instrument of sale deed executed in their favour and according to petitioners they are residing since the date of registered sale deeds. The Gram Panchayat documents are also annexed with registered sale deeds which are produced on record showing that the names of the petitioners are recorded in the Gram Panchayat record. Whereas according to respondents the petitioners have subsequently encroached upon the acquired land.

6. To resolve the said dispute it will be appropriate to direct re-measurement of the properties to the extent of gut Nos. 90 and 83. It appears that, twice measurements have been carried out prior to the acquisition proceedings. There appears to be difference in area under acquisition in both the measurement statements.

7. In view of the above, to resolve the issue, it would be proper

to direct re-measurement of gut Nos. 90 and 83 so that exact position would come to the light with regard to the purchased property and the land affected in actual acquisition.

8. The petitioners shall bear the charges of re-measurement. The measurement shall be carried out expeditiously and preferably within a period of six (6) months from the date of deposit of measurement charges by petitioners. Upon the measurement report been received liberty to the parties to take such steps as may be permissible in the law. The petitioners are entitled to take up whatever remedies available to them.

9. It is made clear that, as we have directed re-measurement, we have not considered the contentions of respective parties on merits. They are kept open. The writ petition is disposed of. No costs.

[K. L. WADANE, J.]

[S. V. GANGAPURWALA, J.]