

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

**Writ Petition No. 9606 of 2011**

1. Gram Panchayat, Pithorisirasgaon,  
Through its Sarpanch,  
Eknath s/o. Dadabhau Devgire,  
Age : 45 years.
  2. Baban s/o. Namdev Kakde,  
Age : 45 years,  
Occupation : Agriculture &  
Member of Gram Panchayat,  
R/o. Shobhanagar,  
Taluka : Ambad,  
District : Beed.
- .. Petitioners.

**versus**

1. The State of Maharashtra,  
Through Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai - 32.
2. Collector, Jalna,  
District : Jalna.
3. The Tahsildar,  
Taluka : Ambad,  
District : Jalna.
4. Subhash s/o. Keshavrao Kakde,  
Age : 33 years,  
Occupation : Service,  
Tahsildar, Taluka : Ambad,  
District : Jalna.
5. Sheshrao s/o. Bhanudas Kakde,  
Age : 55 years,  
Occupation : Agriculture,  
R/o. Dadhegaon,  
Taluka : Ambad, District : Jalna.

6. Eknath s/o. Bhanudas Kakde,  
Age : 20 years,  
Occupation : Agriculture,  
R/o. Dadhegaon,  
Taluka : Ambad,  
District : Jalna.
7. Arjun s/o. Bhanudas Kakde,  
Age : 25 years,  
Occupation : Agriculture,  
R/o. Dadhegaon,  
Taluka : Ambad,  
District : Jalna.
8. Machindra s/o. Baburao Kakde,  
Age : 35 years,  
Occupation : Agriculture,  
R/o. Pithorisirasgaon,  
Taluka : Ambad,  
District : Jalna.

.. Respondents.

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*Mr. Shambhuraje V. Deshmukh, Advocate, for the  
petitioners.*

*Mrs. M.A. Deshpande, Asst. Government Pleader, for  
respondent nos.1 to 3.*

*Mr. B.R. Kedar, Advocate, for respondent no.4.*

*Mr. Kshitij Surve, Advocate, holding for  
Mr. Hemant Surve, Advocate, for respondent nos.5 to 7.*

*Mr. S.B. Parnere, Advocate, for respondent no.8.*

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

**DATE : 25TH JANUARY 2016**

**COURT'S ORDER** *(Per S.V. Gangapurwala, J.) :*

1. Vide the present Writ Petition, prayer is made to set aside the orders passed on 3-12-2010 in Writ Petition No. 1612 of 2010 and also order 26-8-2011 in Writ Petition No. 1770 of 2011. It is submitted by the learned Counsel for the petitioners, that it was misrepresented in the earlier Writ Petition that the property of the present respondents is not acquired. The earlier Writ Petitions were decided only on the basis of affidavit filed by the Tahsildar stating that the said lands were not acquired. However, record would show that even award has been passed.

2. In the present Writ Petition, the Sub-Divisional Officer has filed affidavit in reply thereby clearly stating that the following lands have been acquired vide award dated 9-7-1970. Copy of the said award is also placed on record.

| Name of owner.      | Survey No. | Area                |
|---------------------|------------|---------------------|
| 1. Bhanudas Bhivsen | 14/1       | 10 Acres 12 Gunthas |
| 2. Kesu Bhivsen.    | 14/2       | 6 Acres 16 Gunthas  |
| 3. Babu Natha.      | 14/3       | 3 Acres 20 Gunthas  |
| 4. Hari Ramji       | 186/1      | 15 Acres 28 Gunthas |

3. The learned Counsel for respondent nos.5 to 8 submit that the total amount of compensation has not been received by the persons from whom the land is acquired. As such, the acquisition even as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, stands lapsed.

4. We have gone through the orders passed earlier. The order dated 3rd December 2010, in Writ Petition No. 1612 of 2010 reads as under :-

"1. The petitioners have filed the present petition, for a direction to the respondents, not to claim ownership over land Gut No. 25 of village Pithori Sirasgaon (Taluka : Ambad, District : Jalna), and for an order of restraint, restraining the respondent no.3 from mutating the name of the State Government in ownership column of 7/12 extract.

2. In the affidavit in reply filed by the respondent no.3 Tahsildar, it is categorically stated that the land in question, Gut No.25, is owned by the present petitioners and the State Government has not acquired the same.

3. In that view of the matter, the petition is disposed of, with a direction, that in ownership column of 7/12 extract, in respect of land in Gut No.25 of village Pithori Sirasgaon (Taluka : Ambad, District : Jalna), the name of the State Government shall not be entered and, that the names of the petitioners be entered, as per the Panchanama."

5. Pursuant to the said order, order is passed in Writ Petition No. 1770 of 2011, on 26th August 2011, which reads as under :-

"1. Learned Counsel for the petitioner states that in view of the communication dated 24th June 2011, addressed by the Tahsildar, Ambad, which is produced on record (marked "X" for identification purposes), the grievance of the petitioner does not survive. The Writ Petition is disposed of as such.

2. In view of disposal of the Writ Petition, Civil Application No. 9746 of 2011 stands disposed of accordingly. "

6. Upon perusal of the aforesaid orders, it is manifest that the said orders are passed on the basis of affidavit filed by the Tahsildar stating that the said lands are not acquired.

7. In the present petition, award has been placed on record along with affidavit of the Sub-Divisional Officer clearly stating that in respect of lands of respondent nos.5 to 8, award has already been passed. In the affidavit, it has been stated about payment of compensation amount also to the claimants. According to the learned Counsel for respondent nos.5 to 8, as entire amount of compensation has not been paid to these respondents or their predecessor nor the said amount is deposited in the Court, the proceedings stand lapsed.

8. The same is not the subject matter of issue in the present petition. The petition is filed limited to the extent of earlier orders passed

in Writ Petitions. As in the earlier Writ Petitions, the petitioners had not brought to the notice of the Court, that the award has been passed and said Writ Petitions are decided on the basis of erroneous affidavit filed by the Tahsildar stating that the said lands have not been acquired, the orders passed by this Court in earlier Writ Petitions deserve to be set aside.

9. In the result, the petition is allowed.

(a) The order dated 3-12-2010 in Writ Petition No. 1612 of 2010 and order dated 26-8-2011 in Writ Petition No. 1770 of 2011 are set aside.

(b) The present respondent nos.5 to 8 are at liberty to take up appropriate proceedings regarding lapsing of acquisition, in case, they had not received the entire amount of compensation as per the earlier award.

10. The Writ Petition stands disposed of accordingly.

**( A.M. BADAR )**  
**JUDGE**

**( S.V. GANGAPURWALA )**  
**JUDGE**

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