

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

Writ Petition No. 2785 of 2013

District : Latur

Sayyed Sajid s/o. Sayyed Kabir,
Age : 40 years,
Occupation : Business,
R/o. Ahmedpur,
Taluka : Ahmedpur,
District : Latur.

.. Petitioner.

versus

1. The State of Maharashtra,
Through its Chief Secretary,
Mantralaya, Mumbai - 32.
2. The Collector,
Latur.
3. The Sub-Divisional Officer,
Udgir, District : Latur.
4. The Tahsildar,
Ahmedpur,
Taluka : Ahmedpur,
District : Latur.
5. The Municipal Council,
Ahmedpur,
Taluka : Ahmedpur,
District : Latur,
Through its Chief Officer.
6. The Regional Manager,
Maharashtra State Road Development
Corporation, Regional Office,
CIDCO, Aurangabad.

7. The Depot Manager,
Ahmedpur Depot,
Maharashtra State Road Development
Corporation, Ahmedpur,
District : Latur.

.. Respondents.

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Mrs. P.G. Sontakke, Advocate, for the petitioner.

*Mr. S.G. Karlekar, Asst. Government Pleader, for
respondent nos.1 to 4.*

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

DATE : 5TH FEBRUARY 2016

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

1. The petitioner has filed the present petition on the ground that the petitioner be paid compensation in respect of the land acquired vide award passed in the year 1964. Civil Application is also filed for amendment incorporating the relief that in view of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 **[For short, hereinafter referred to as “Act of 2013”]**, the acquisition of the year 1964 stands lapsed for non-payment of compensation.

2. Mrs. Sontakke, the learned Counsel for the petitioner, strenuously contends that the land bearing Survey No. 39/2/1 admeasuring 4 Acres 17 Gunthas; Survey No. 39/2/3 to the extent of 1 Acre 17 Gunthas

and Survey No. 40/2 to the extent of 29 Gunthas was acquired. The award came to be passed in respect of the said lands in the year 1964. However, compensation of the said lands was never paid. The original owner of the property was one Fatema Begum. The said Fatema Begum executed *Hibanama* in favour of Tajkhan. According to the learned Counsel, subsequently son of Tajkhan, namely, Rasulkhan inherited the property and Rasulkhan by oral *Hiba* on 19-12-2009 gifted the property to the petitioner. The memorandum of the said oral *Hiba* was recorded and reduced into writing on 25-2-2010. The learned Counsel submits that even Tajkhan during his lifetime has given representation to the authorities to pay compensation in respect of the said land. However, the authorities did not consider the same nor paid the compensation amount. The learned Counsel submits that the respondents are bound to pay the compensation amount of the lands acquired. In absence of the compensation being paid as per the Act of 2013, the acquisition stands lapsed. The learned Counsel submits that right to property, though is not a fundamental right, is a constitutional right and it is now brought within the contour of human right.

3. The learned Counsel for the petitioner relies upon judgment of the Hon'ble Apex Court in the case of ***Tukaram Kana Joshi & others through Power of Attorney Holder Vs. M.I.D.C. & others***, reported in 2013(1) SCC 353. According to the learned Counsel, the State cannot disown their liability to pay the compensation amount and once the compensation is not paid, the acquisition automatically stands lapsed in view of Section 24(2) of the Act of 2013. The learned Counsel also relies upon judgment of the Hon'ble Apex Court in the case of ***Pune Municipal Corporation & another***

Vs. Harakchand Misirimal Solanki & others, reported in **2014(3) SCC 183**, so also, judgment of the Hon'ble Apex Court in the case of ***Union of India & others Vs. Shiv Raj & others***, reported in **2014(5) Supreme 426**. The learned Counsel submits that in view of the *Hibanama* executed, the petitioner's name is also recorded as owner in respect of the other properties detailed in the *Hibanama*. This would show that the petitioner as inherited the said properties by way of *Hibanama* having been executed by the original owner.

4. The learned Asst. Government Pleader for respondent nos.1 to 4 submits that the award has already been passed in the year 1964. Compensation is paid to the erstwhile owner. The erstwhile owner from whom the land was acquired had not made any grievance. Tajkhan is also a person to whom land is given by *Hiba* by the original owner Fatema Begum. The present petition is therefore not maintainable. The petition cannot be entertained on the ground of laches. He relies on the judgment of the Hon'ble Apex Court in the case of ***State of Maharashtra Vs. Digambar***, reported in **1995(4) SCC 683**.

5. We have considered the submissions canvassed by the learned Counsel for respective parties. The learned Counsel for the petitioner has taken us through the *Hibanama* placed on record. The factual matrix that Fatema Begum was the original owner of the property is not disputed. It is also not matter of dispute that the award has been passed in the year 1964 in respect of the properties acquired and owned by Fatema Begum. Copy of *Hibanama* is placed on record, executed by Fatema Begum in favour of Tajkhan. The said document is an unregistered one. The said document

states that it is a memorandum of oral *Hibanama*. The said document is dated 22-5-1964. The award is of January 1964 passed in respect of the land of Fatema Begum. There are other properties also apart from the properties acquired.

6. The *Hibanama* on which the petitioner relies is also an unregistered document. It is also stated to be memorandum of oral Hiba. The said document is dated 25-2-2010.

7. Gift has to be by registered instrument as per the provisions of the Transfer of Property Act. Under the Mohammedan Law, oral gift is permissible. However, for an oral gift to be valid, there are essential ingredients which are to be satisfied and out of these three ingredients, one is delivery of possession of the property.

8. In the present case, it is not disputed that the lands that have been acquired vide award of January 1964, possession of the same has also been taken at that time by the respondent - State. There was no property in possession of any individual to deliver the same at the time of Hiba. Though oral *Hiba* is permissible, one of the necessary ingredients of that oral *Hiba* is lacking. The said instrument would not give title to the petitioner in respect of the lands which have already been acquired nor would give any right to the petitioner to prosecute for any relief or remedy in respect of the lands acquired. Our observations are limited only in respect of lands acquired. We are not certainly dealing with other properties mentioned in the Hiba.

9. We find that the original owner during her lifetime had never made any grievance that the compensation is not received. The petitioner also would not have right in respect of the said property as he is not the owner nor can claim his right over the said property by inheritance also. Coupled with the above aspect, the grievance is sought to be made before this Court almost after 50 years.

10. In view of the aforesaid conspectus of the matter, it is not possible to entertain the grievance of the petitioner. The Writ Petition, as such, is dismissed. No costs.

(A.M. BADAR)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

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