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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6411 OF 2002**

1. Suresh Narayan Kamath (deceased)

Through heirs

A. Santosh Suresh Kamath

B. Sushila Suresh Kamath

All R/o. 1258, B-ward, Mangalwar Peth,
Kolhapur.

2. Mr. Ananta Chandrakanth Sangaonkar,

Occ. :Business,

R/o. 804, D-Ward Bazar gate,

Kolhapur.

... Petitioners

Versus

1. The Union of India,
Department of Post & Telegram
Through Senior Superintendent
of Post Office, Kolhapur Division,
Kolhapur 416 003.
2. The Senior Superintendent
Post Office, Kolhapur Division,
Raman Mala Kolhapur 416 003.
3. The Post Master Shaniwar Peth
Post Office, Sahiwar Peth, Kolhapur.
4. The Commissioner,
Pune Division Pune.

5. The Special Land Acquisition Officer
(11) Kolhapur.

... Respondents

Mr. A.A. Kumbhakoni, Senior Advocate i/by Mr. T.D. Deshmukh for the Petitioners.

Mr. Vinod Joshi for the Respondent No.1.

Mr. V.B. Thadhani, AGP for the Respondent Nos.4 and 5.

CORAM : A.S. OKA & C.V. BHADANG, JJ.

DATE ON WHICH SUBMISSIONS WERE HEARD ON : 29.02.2016

DATE ON WHICH JUDGMENT PRONOUNCED ON : 17.06.2016

(As C.V.Bhadang, J is sitting at Goa, signed Judgment is pronounced by A.S.Oka, J in accordance with Rule 1 of Chapter XI of Appellate Side Rules.)

JUDGMENT (PER A.S. OKA, J.):

. By this Petition under Article 226 of the Constitution of India, the challenge is to the acquisition proceedings under the Land Acquisition Act, 1894 (for short “the said Act of 1894”). The challenge is also to the Award dated 8th April, 2003 made under Section 11 of the said Act of 1894 during the pendency of this Petition. The public purpose of the acquisition is setting up a Post Office. The property subject matter of this Petition is a land and building bearing City Survey No.2092/2 admeasuring 680.6 square meters situated at C-Ward Kolhapur, District Kolhapur. The building on the said property has been

let out to the first respondent-the Union of India through the Department of Posts and Telegram. One Narayan Anandrao Pawar was the owner of the said property which was sold to M/s.BNP Enterprises from whom the deceased first Petitioner and the Petitioner 1-B purchased the same by a registered Sale Deed dated 23rd March, 1995. The area of 549.50 square meters out of the said property bearing City Survey No.2092/2 is the subject matter of this Petition(for short “the said property). On 24th July, 1995 a proposal for acquisition of the said property was moved at the instance of the Postal Authorities. On 14th November, 1995 the Petitioners decided to demolish the building on the said property as the same was in a dilapidated condition. The Petitioners informed the Postal Department about their intention to demolish the old building and to construct a new building. The Petitioners offered to provide a premises to the post office in the proposed new building. By a letter dated 30th November, 1996 the Petitioners submitted a concrete proposal in writing to the Chief Post Master General of the Maharashtra State. Two alternatives were offered in the said letter. The offer was to provide constructed area in the newly constructed building for the Postal Department. Thereafter, there was a correspondence between the Postal Department and the Petitioners. The Petitioners offered premises to the Postal Department free of cost on ownership basis as stated in their letter at Exhibit-G to the Petition.

2 In the year 1997, an organisation of employees of the Postal Department filed a Civil Suit in the Civil Court at Kolhapur. The Suit was filed for raising an objection to the proposed surrender of the premises let out to the Postal Department to the Petitioners. In the said Suit, a written statement was filed by the Postal Department contending that the Department was trying to secure alternate accommodation from the landlord at the cost of surrendering tenancy as the building was very old. An application for temporary injunction in the said Suit was rejected. On 21st June, 1998 the Petitioners forwarded a copy of the proposed agreement to be entered into by and between the Petitioners, developers(Shri Shiv Builders and Developers) appointed by them and the Postal Department which provided for an allotment of area of 2867 square feet on the ground and first floor of the newly constructed building free of cost on ownership basis to the Postal Department. There was a development agreement executed between the owners and the said Developers on 14th February, 2000.

3 In Maharashtra Government Gazette dated 18th May, 2000 a notification under Sub-section (1) of Section 4 of the said Act of 1894 was published for acquisition of the said property for the public purpose of Post Office. The said notification was corrected by a corrigendum

dated 28th May, 2001 published in Government Gazette dated 7th June, 2001 clarifying that an area of 135.10 square meters was proposed to be acquired for the Development Plan road and the area of 549.50 square meters (the said property) was proposed to be acquired for the post office. The Petitioners submitted their objection to the said notification. A declaration under Section 6 of the said Act of 1894 was issued on 4th July, 2001. After serving notices under Section 9(3)(4) of the said Act of 1894, an Award was made on 8th February, 2003 by the Special Land Acquisition Officer after obtaining sanction of the Competent Authority.

4 In the Petition as originally filed, the prayer was for challenging the acquisition proceedings and the notification issued under Sub-section (1) of Section 4 of the said Act of 1894. On 7th March, 2003 notice was issued by this Court. Subsequently, an amendment was carried out for challenging the Award. By the order dated 14th August, 2003 this Court issued Rule and granted stay to the implementation of the impugned Award.

5 Shri PPG. Nambiar, Senior Superintendent, Post Office, Kolhapur filed a reply dated 11th June, 2002. There is an additional affidavit in reply filed by the same officer on 23rd April, 2003 stating

that compensation has been deposited by the post office with the Special Land Acquisition Officer in terms of an Award dated 8th April, 2003.

6 There is an affidavit in reply filed by Shri Dhananjay S. Khot on behalf of the Special Land Acquisition Officer setting out the steps taken in the acquisition proceedings. There is an additional affidavit dated 21st February, 2005 filed by Shri S.D. Chavan, Special Land Acquisition Officer for dealing with the contention regarding illegality as regards the enquiry under Section 5-A of the said Act of 1894. There is an affidavit in rejoinder filed by Shri Anant Chandrakant Sangaonkar – Petitioner No.2.

7 The learned Senior Counsel appearing for the Petitioners submitted that the offer of the Petitioners of providing premises equivalent to the area in possession of the Postal Department free of cost on ownership basis still stands. He pointed out the material averments made in the Petition. He pointed out that even in the objections raised by the Petitioners on the basis of the notice under Section 4(1) of the said Act of 1894, they stated that they were willing to provide premises in the newly constructed building to the Post Office. The learned Senior Counsel placed reliance on the decision of the Apex

Court in the case of *Jiwani Kumar Paraki Vs. First Land Acquisition Collector, Calcutta and Others*¹.

8 He relied upon what is held by the Apex Court in the said decision and especially what is observed in paragraph 23. He submitted that when the Petitioners are ready and willing to provide a newly constructed premises to the Postal Department, it need not opt for the option of acquisition which is disadvantageous to the Petitioners. He submitted that as the Petitioners are willing to allot premises of equivalent area after the redevelopment of the property, there was no need for acquisition by payment of compensation. He submitted that in any case, there was no proper enquiry under Section 5-A of the said Act of 1894 and, therefore, acquisition proceeding is vitiated. He also invited our attention to the averments made in the additional affidavit of the second Petitioner which is dated 18th January, 2007. He pointed out that it was brought to the notice of the Court by the Petitioners that in the City of Kolhapur, a large area is already available to the Postal Department and therefore, the acquisition of such a large area of 549.50 square meters for Postal Department is not necessary inasmuch as area of about 600 to 700 square feet for a post office is sufficient. He pointed out that the Petitioners were offering bigger area. The learned Senior Counsel appearing for the Petitioners submitted that perhaps

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only because an objection was raised by the Union of Postal employees that the Postal Department backed out and did not act upon the offer made by the Petitioners which at one point of time was expressly accepted by the Department.

9 The learned counsel appearing for the Union of India relied upon affidavits of Shri Nambiar. He submitted that apart from running traditional post office, there are other activities conducted by the Postal Department and therefore, a large area is required. He submitted that Postal Department after considering all the factors decided to acquire the land in question. From the plan of the proposed building of the Petitioners, he pointed out that today, the Post Office has frontage on the main road whereas the proposed plan shows that in the newly constructed building, the Petitioners will retain front portion and will give rear portion to the Department. The learned AGP submitted that the acquisition is legal and valid. The learned Senior Counsel appearing for the Petitioners invited attention of the Court to the photographs tendered on record to show that the present condition of the post office premises is far from being satisfactory and the building has become dilapidated.

10 We have carefully considered the submissions. In the affidavit in reply of Shri Dhananjay S. Khot filed on behalf of the Special Land Acquisition Officer No.11, Kolhapur, it is stated that as per property register card, the area of the relevant CTS Number is 680.60 square meters. The affidavit discloses that the Department of Post submitted acquisition proposals on 28th September, 1990 and 24th July, 1995. In the said affidavit in reply, it is stated that the City Survey Office Kolhapur issued a notice dated 12th July, 1999 to the Petitioners of conducting joint measurement work on the basis of the said land acquisition proposal. In the original notification dated 4th May, 2000 under Sub-section (1) of Section 4 of the said Act of 1894, the area of the property under acquisition was mentioned as 811.70 square meters. A corrigendum dated 28th May, 2001 was issued by the Divisional Commissioner for clarifying that out of total area of the said property of 680.60 square meters, an area of 549.50 square meters was to be acquired for post office and an area of 131.1 square meters was proposed to be acquired for a road shown in the proposed Development Plan. There is an affidavit filed by Shri S.D. Chavan, Special Land Acquisition Officer is dated 21st February, 2005 to which a copy of the report under Section 5-A of the said Act of 1894 has been annexed. The report extensively records the objections raised by the Petitioners. The

objections refer to rejection of application for temporary application in the suit filed by the Employees' Union of the Postal Department. It also refers to the objection that in the City of Kolhapur, the Postal Department was having a Central Office admeasuring 25,000 square feet and therefore, there was no need to acquire the property in question. It records that according to the Petitioners, an area of 600 to 700 square feet is necessary for post office and the Petitioners were willing to provide the said area on rental basis to the Postal Department. We must note that in the report, the seven points canvassed by the Petitioner No.1A and Petitioner No.2 have been elaborately set out. Five points canvassed by the Petitioner No.1B have been also elaborately set out in the said report. Remarks of the Postal Department are also noted in which Postal Department stated that there were 54 members of the staff in the existing post office and therefore, their requirement is of an area of 6000 to 7000 square feet. It is stated that the existing Shanivar Peth post office is in a very congested locality and various Government, semi-Government offices as well as educational institutions are very close-by. It is stated that the acquisition proposal is for the purposes of providing ultra-modern services. The report is signed by the Special Land Acquisition Officer No.11, Kolhapur and the District Collector, Kolhapur. In the affidavit of Shri Dhananjay Khot and in particular paragraph 12, it is stated that the

report under Section 5-A of the said Act of 1894 was submitted to the Divisional Commissioner, Pune Division and that after considering the report, the Divisional Commissioner gave approval to the draft declaration under Section 6 of the said Act of 1894. Therefore, there is a material on record to show that there was a proper enquiry under Section 5-A of the said Act of 1894 and the objections raised by the Petitioners were duly considered by the Divisional Commissioner.

11 At this stage, it will be necessary to consider the affidavit dated 11th June, 2002 filed by Shri P.P.G. Nambiar, Senior Superintendent, Post Office, Kolhapur. It will be necessary to make a reference to paragraphs 2 and 3 of the said affidavit which read thus :-

“2. I say that the Shanivar Peth Post Office admeasuring 680.6 square meters situated on land bearing CTS No.2092/1 at 'C' Ward, Kolhapur was leased out to these respondents by indenture dated 12.9.1932 executed by the then owner. Narayan Anandrao Pawar for 15 years from 4.8.1932 on monthly rent of Rs.100/- including municipal taxes but excluding electricity and water charges when the said building admeasuring 96' x 74' (7323 square feet) was bearing Municipal No.5367. The property card in respect of said land bearing CTS No.2092/1 stands in the name of M/s. B.N.P. Enterprises with partners. Dilip B. Pawar and

Yeshwant B. Pawar. I say that after expiry of 15 years period i.e., after 3.8.1947, said lease was extended by a further period of five years by the then lessor by a Registered A.D. letter dated 17.5.1947. The then owner thereafter by indenture dated 30.3.1977 sold said House No.5367 along with the land admeasuring 680.6 square meters to the Primary Teachers Cooperative Bank, Kolhapur who thereafter by indenture dated 5.6.1980 sold the same to the said M/s. BNP Enterprises with partners, Bapusaheb N. Pawar, Dilip B. Pawar and Yeshwant B. Pawar and by indenture of 23.3.1995, the said house No.5367 along with the land admeasuring 680.6 square meters was sold by said M/s. BNP Enterprises to Suresh Narayan Kamat and Mrs. Sushila N. Kamat. It is learned that said Suresh N. Kamat had expired regarding which no intimation was given by his heirs or any one to the department. His date of death is not known to the Deptt. During the city survey of the said area in or about the year, 1971 said land was given City Survey No.2092 and house was given No.2092/1.

3. I say that since inception of lease dated 4.8.1932, Shaniwar Peth Post Office has been functioning in the said premises bearing C.T.S. No.2092/1 since 1932 till date. After expiry of the extended lease period of five years on or about 3.8.1952, the lease is not renewed but the respondent no.2 continued to remain in possession of the said premises as a protected tenant

pursuant to the provisions of the Bombay Rent Act. I say that the said house No.5367/C.T.S. No.2092/1 is an old building of which the walls are made up of stone with wooden ceiling and Manglor tile roof.”

12 Thus, the stand taken is that from the year 1932, the Shanivar Peth Post Office is being run in the area of 7323 square feet. Paragraph 6 of the said affidavit refers to the letter dated 30th November, 1996 of the Petitioners by which two options were submitted by the Petitioners. In paragraph 11 Shri Nambiar has stated thus :

“11. I say that the Post Office is undertaking various types of activities in public interest and has taken up new activities like e-post, e-mail, Western Union Money Transfers, Speed Post etc., and hence, it is clear that the acquisition proceedings initiated by the S.L.A.O. for acquiring suit property is in public interest and hence, challenge to the said acquisition proceedings by the petitioners in the aforesaid writ petition is without any basis.”

(emphasis added)

13 It is specifically stated that there was never any agreement between the Petitioners and the Postal Department by which the Postal Department agreed to accept any particular area in the proposed building to be constructed by the Petitioners. In paragraph 16, Shri Nambiar has stated thus :-

“16. I say that separate proposal for reservation of lands under acquisition for post office was not submitted to the Planning Authority at the time of finalising of the development plans as the Department was expecting acquisition proceedings to commence as early as possible. **I say that in addition to the Shanivar Peth Post Office, the respondents are planning to accommodate Kolhapur City Head Post Office situated in the rented building at Second Floor, Balbhim Chowk, Shivaji Peth, Kolhapur in the newly constructed building after acquisition so that there may not be any question of payment of rent.** I therefore submit that the petition filed by the petitioners is not maintainable and that the same is dismissed with costs. Rest of the statements are without prejudice to what is stated hereinabove.”

(emphasis added)

14 In paragraph 34 of the said affidavit, Shri Nambiar has stated that the Post Department desires to accommodate head post office in Kolhapur in the building to be constructed on the acquired land. The additional affidavit of Shri Nambiar records that as per the direction dated 16th January, 2003 issued by the Special Land Acquisition Officer, his Department has deposited the entire compensation amount. Thus, the requirement pleaded by the Postal Department is of the entire area of 549.50 square meters which is acquired for the Postal Department by the impugned acquisition. By no stretch of imagination, it can be said that the requirement of setting up a building of the post office will not constitute a public purpose within

the meaning of the said Act of 1894. In the affidavit of Shri Nambiar, it is stated that the present head post office in Kolhapur is in a rental building. There is a proposal to accommodate the head office on the acquired land. He has given reasons as to why an area of 6,000 to 7,000 square feet is required for the Post Office. He has also stated that the post office has other activities like e-post, e-mail, Western Union Money Transfer, Speed Post, etc.

15 There seems to be some dispute about the total area of the existing building in possession of the Postal Department. In the draft agreement annexed as Exhibit-M, the Petitioners have claimed that present area in possession of the Postal Department is 2867 square feet equivalent to 266.40 square meters. The question is whether the impugned acquisition is for public purpose. Looking to the affidavit of Shri Nambiar, it is impossible to dispute the existence of public purpose for the acquisition. The claim of the Postal Department is that for fulfilling the public purpose, the entire area notified for acquisition is required and any lesser area will not serve any purpose. The proposal is to use the acquired property to accommodate the head Post Office in the city apart from accommodating the existing Shaniwar Peth Post Office. This Court while dealing with a Petition under Article 226 of the Constitution of India challenging the acquisition proceedings for public

purpose, after satisfying itself that the the public purpose exists, cannot do the exercise of deciding whether by making available a lesser area, the public purpose can be sub-served. In fact, the postal Department has placed material on record to show that it requires the entire area notified for acquisition as it is proposed to shift the Head Office in the City which is in a rental building to the said property. Moreover, the Post Office is rendering diverse services apart from the traditional postal services. Moreover, many Government and semi-Government offices are located in the area. We have noted earlier that all objections raised by the Petitioners to the acquisition were incorporated in the report under Section 5-A of the said Act of 1894 which were considered by the Divisional Commissioner.

16 Nevertheless, we are making a reference to the case made out by the Petitioners regarding the acceptance of their offer. There are two letters addressed by the Department of Post to the Original First Petitioner. On 30th November, 1996 the Original first Petitioner submitted an offer in writing to the Chief Post Master – General, a copy of which is at Exhibit-E. The first option given was of providing 1,500 square feet of built up area at basement level, 1,200 square feet at ground level plus toilet facility and parking area of 160 square feet with an independent access. The second option was of providing an area of

1,200 square feet plus toilet on ground floor, an area of 1,200 square feet plus toilet on first floor and parking facility of 160 square feet. Clause 4 of the said letter clearly records that Postal Authorities will have to pay cost of construction according to the D.S.R. applicable to Kolhapur City. The response of the Postal Department is in the form of letter dated 9th January, 1997 addressed by the Senior Superintendent of Post Office Kolhapur Division, Kolhapur, a copy of which is at Exhibit-F. The material part of the said letter reads thus :-

“Subject :- Regarding Shaniwarpeth Post Office Building.
Ref :- Your No.dt. 30.11.96 addressed to the Chief PMG
Mumbai and copy to this office.

Sir,

The Postmaster General Goa Region, Panaji has directed to inform as follows :

The landlord should offer an area equal to the one presently occupied on the ground and first floor besides parking area free of rent on permanent ownership basis.”

17 The Petitioner No.1A addressed a letter at Exhibit-G to the Senior Superintendent by stating that the conditions were acceptable to him. In the said letter, he stated that provision for 2785.87 square feet has been made in addition to parking facility. We must note here that the stand of Shri Nambiar in his affidavit is that the area in possession of Postal Department is 7323 square feet. In the draft agreement at

Exhibit-M forwarded by the Petitioners to the Postal Department, the offer is to allot an area of 2768 square feet free of cost on ownership basis.

18 In response to the service of notice under Section 4(1) of the said Act of 1895, the Petitioner No.1A and the Petitioner No.2 submitted objections dated 20th February, 2001 to the Special Land Acquisition Officer a copy of which is annexed as Exhibit-P to the Petition. Paragraph 1 of the said letter of objection records that the proposal of the Petitioners was pending with the concerned Authority of the Postal Department. While raising a contention that considering the area available to the Postal department in other parts of the City of Kolhapur, the department does not need the premises in the property in question, in paragraph 4, the Petitioners stated that in the newly constructed building, the Petitioners were willing to offer constructed portion on rental basis. In paragraph 5 it is stated that the area of the premises offered on rental basis will be of 600 to 700 square feet. Therefore, earlier stand underwent a complete change and instead of offering constructed area on ownership basis, the offer was to allot only an area of about 600 to 700 square feet on rental basis in the newly building proposed to be constructed. Thus, it is impossible to accept that any agreement or even consensus was arrived at between the

Petitioners and the Postal Department for allotment of a particular area in the newly developed property .

19 Now, we turn to the decision of the Apex Court in the case of *Jiwani Kumar Paraki*. The Petitioner before the Apex Court was a lessee of a premises in Calcutta. For considerably long time, the said premises were kept under requisition. The contention of the Petitioners was that there was ample power vesting in the State Government to acquire the premises under the said Act of 1894 at the time of issuing order of requisition. The prayer was made for directing de-requisition of the premises. The prayer was opposed by the Respondents by contending that there were no limitations on the power of requisitioning the property. In paragraph 23, the apex Court held thus :-

“23. Where one is repository of two powers that is power of requisition as well as power of acquisition qua the same property and if the purpose can equally be served by one which causes lesser inconvenience and damage to the citizen concerned unless the repository of both the powers suffers from any insurmountable disability, user of one which is disadvantageous to the citizen without exploring the use of the other would be bad not on the ground that the Government has no power but on the ground that it will be a misuse of the power in law. “

20 In the present case, the requirement for the public purpose pleaded by the Postal Department is of the entire area of 549.50 square meters. It is not the case of the Petitioners that they are willing to offer the equivalent area in the newly constructed building. By accepting the offer of the Petitioners, the existing need of the Postal Department for public purpose cannot be fulfilled. Moreover, the learned counsel for the Postal Department pointed out that the present premises have a frontage on the road and now as per the offer of the Petitioners, what is offered is the premises which will not have similar frontage. In fact, the frontage will be to the portion retained by the Petitioners. The area offered by the Petitioners is much less than the area which will become available to the Post Department after acquisition. By accepting the offer, the object which is sought to be achieved by the acquisition will not be achieved. Hence, in the facts of the case, it cannot be said that two viable options are available to the Department of Posts. Therefore, it cannot be said that an option which is disadvantageous to the Petitioners is being adopted by the Postal Department. Therefore, in the facts of the case, the reliance placed on the case of *Jiwani Kumar Paraki* will not advance the case of the Petitioners any further.

21 In the affidavit in rejoinder of the Petitioners, a contention is raised that there was no proper enquiry under Section 5-A. We have already dealt with the said contention. The other contention raised is that compensation amount was not deposited by the Postal Department in terms of the Government circular dated 14th June, 2001. There is a specific stand taken in the second affidavit of Shri Nambiar that the entire compensation amount has been deposited. Even assuming that there was a delay in depositing the compensation amount, it will not vitiate the acquisition proceedings. Lastly, we may make useful reference to the decision of the Apex Court in the case of *Sooraram Pratap Reddy and others Vs. Government of Andhra Pradesh and others*². The Apex Court has discussed the term “eminent domain” which is inherent power of the Government to take privately owned property and convert it into public use subject to payment of reasonable compensation. The Apex Court held that public purpose under the said Act of 1894 is wider than public necessity. The Apex Court held that it is the Government's discretion to decide the nature and purpose of acquisition and scope of review of acquisition is very limited.

22 Therefore, we are unable to accept the submissions canvassed by the Petitioners. The Petition must fail.

2. (2008) 9 SCC 552

23 Accordingly, we pass the following order :-

ORDER

- (I) The Petition is rejected;
- (II) Rule is discharged;
- (III) Interim order dated 14th August, 2003 will continue to operate for a period of two months from today.

(C.V. BHADANG, J)

(A.S. OKA, J)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6411 of 2002**

DATE : JUNE, 2016

FOR APPROVAL AND SIGNATURE OF

THE HON'BLE SHRI JUSTICE A. S. OKA :-

THE HON'BLE SHRI JUSTICE C.V. BHADANG :-

- 1 Whether Reporters of Local Newspapers may :-
be allowed to see the Judgment ?
- 2 To be referred to the Reporter or not ? :-
3. Whether Your Lordship wish to see a fair copy :-
of the Judgment ?
4. Whether this case involves a substantial :-
question of law as to the interpretation of the
Constitution of India, 1950 or any order made
thereunder ?
5. Whether it is to be circulated to the :-
Civil Judges ?
6. Whether the case involves an important :-
question of law and whether a copy of the
Judgment should be sent to Aurangabad,
Nagpur and Goa Offices ?