

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3977 OF 2014**

Abdul Khaleq Mohamed Balooch &
Ors. ...Petitioners
Versus

Union of India through its
Department of Revenue and Ors. ...Respondents

...

Mr. V.A. Thorat, Senior Advocate with Ms Varsha Palav, Ms Prachi
Tatke, Mr. P.B. Gujar, Mr. Ajinkya Palav, Ms Rekha Musale i/b.
M/s. The Laureate for the Petitioners.
Mr. B.B. Sharma with Ms Nisha Valani for Respondent No.1.
Mr. S.S. Deshmukh for Respondent Nos.2 to 4.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED : 5th AUGUST, 2016.

P. C. :

Heard Mr. Thorat, the learned senior counsel for the
Petitioners, Mr. Sharma the learned counsel for Respondent No.1 and
Mr. Deshmukh, the learned counsel for Respondent Nos.2 to 4.

2. By this petition the Petitioners are challenging the order
dated 4th March, 2014 passed by the Respondent No.4-Collector, Diu.
By the said order the Petitioners' application under section 48 of the
Land Acquisition Act, 1894 came to be rejected.

3. While rejecting the Petitioners' application the learned Collector relied upon the affidavit dated 26.2.2014 of Avval Karkun of Mamlatdar office, of Diu stating that the possession of the land in question was taken on 19.6.1993.

4. Mr. Thorat, the learned senior counsel invited our attention to the Roznama dated 4th February, 2014. The Roznama shows that the learned Collector-Diu directed the Avval Karkun to furnish affidavit stating the facts with reference to taking over of the possession of the land in question. The Roznama further shows that on the same day proceedings were closed. As stated above, on the basis of the affidavit dated 26th February, 2014, the impugned order is passed which is under challenge in the present petition.

5. It is apparent that the affidavit of Avval Karkun was filed after the proceedings was closed and the Petitioners were not given any opportunity to repel the averments made in the affidavit. The impugned order is therefore in violation of principle of natural justice and the same cannot be sustained. The impugned order is accordingly quashed and set aside. The matter is remanded to Respondent No.4-

Collector to take decision afresh on the Petitioners' application under section 48 of the Land Acquisition Act, 1894, after hearing both the sides. The Collector shall decide the said application as expeditiously as possible and preferably within a period of eight weeks from the date of receipt of this order. Ordered accordingly.

6. Mr. Thorat, the learned senior counsel at this stage points out that during the pendency and disposal of said application under section 48 of the Land Acquisition Act, 1894, the Collector himself passed a status quo order which was in force till the passing of the impugned order. Since we have quashed the impugned order and remanded the matter back for fresh disposal to the Collector, Diu, the order of stay granted earlier, shall remain in force till fresh decision. Needless to state that the Collector, Diu shall decide the matter on its own merit and in accordance with law.

7. The petition stands disposed of accordingly.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)