

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.437 OF 2016

LRS. OF ABDUL JABBAR KHAN, ABDUL RAZZAQ S/O. ABDUL JABBAR KHAN AND OTHERS

-VS-

**STATE OF MAHA., THR. PRINCIPAL SECRETARY, MINISTRY OF WATER SUPPLY AND SANITATION,
MUMBAI AND OTHERS**

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A.H. Jamal, counsel for the petitioners.
Mr. S.M. Uike, Addl.G.P. for the R-1 to 3.

**CORAM : SMT. VASANTI A. NAIK &
V. M. DESHPANDE, JJ.**

DATE : MAY 2, 2016.

By this writ petition, the petitioners challenge the award passed by the Special Land Acquisition Officer, dated 26.7.1993.

The petitioners claim to be the owners of the land that was acquired by the State of Maharashtra for construction of staff quarters. In pursuance of the land acquisition proceedings, that were initiated by the respondents in the year 1992-93, the land, that was claimed to belong to the petitioners, was acquired and an award was passed on 26.7.1993. The Special Land Acquisition Officer passed the award in respect of the concerned land in the name of Madrasa Raufia Trust, as according to the Special Land Acquisition Officer, the said trust claimed to be the owner of the land and the name of the Trust was recorded in the 7/12 extracts. Being aggrieved by the award passed by the Special Land Acquisition Officer in favour of the Madrasa Raufia Trust, the petitioners filed the reference under Section

30 of the Land Acquisition Act, 1894. The said reference was decided in favour of the petitioners and in a first appeal filed by the Madrasa Raufia Trust, the matter was remanded to the Trial Court for a fresh decision in the reference. In the second round of litigation also, the reference was answered in favour of the petitioners by the judgment dated 28.7.2010 and the petitioners were held to be the owners of the concerned land. After the petitioners were declared to be the owners, the petitioners have filed the instant petition challenging the award passed by the Special Land Acquisition Officer on 26.7.1993.

Shri Jamal, the learned counsel for the petitioners, submitted that though the award is passed more than five years before the commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the respondents have not deposited the compensation in the account of the petitioners. It is submitted that in view of the provision of the proviso to Section 24(2) of the Act of 2013, it is necessary for the respondents to deposit the compensation in the account of the beneficiary. It is submitted that although the land was acquired for the purpose of construction of the staff quarters, the staff quarters have not been constructed on a part of the said land and, therefore, the acquired land is liable to be returned to the petitioners. The award of the Special Land Acquisition Officer is challenged on the aforesaid two grounds.

Shri Uike, the learned Additional Government Pleader appearing on behalf of the respondents, states that the petition is misconceived and is liable to be dismissed. It

is submitted by referring to the affidavit-in-reply filed on behalf of the respondents that after the award was passed and the dispute in regard to the ownership and title to the acquired land cropped up between the petitioners on one hand and the Madrasa Raufia Trust on the other, the amount that was liable to be paid towards compensation was deposited in the Civil Court where the dispute between the parties was pending under Section 30 of the Land Acquisition Act, 1894. It is submitted that the petitioners, therefore, cannot challenge the award on the ground that the amount of compensation is not deposited in the account of the petitioners. It is stated that the case of the petitioners that the staff quarters are not constructed on the acquired land is false as the respondents have constructed the staff quarters on the acquired land and the land is utilized for the purpose for which it was acquired. It is submitted that even if the land was not utilized for the purpose for which it was acquired, a land holder would not have any right to seek the restitution of the land from the State Government. The Additional Government Pleader, sought for the dismissal of the writ petition.

On hearing the learned counsel for the parties and on a perusal of the affidavit-in-reply, we find that no case is made out by the petitioners for challenging the award passed by the Special Land Acquisition Officer on 26.7.1993. The provisions of Section 24(2) of the Act of 2013, cannot be made applicable to the facts of this case. This is a clear case where after passing of the award, the respondents have deposited the amount that was liable to be paid towards compensation for the land in the Civil Court where the

dispute between the petitioners and the Madrasa Raufia Trust was pending under Section 30 of the Land Acquisition Act, 1894. The amount was deposited in the Court so that the successful party could withdraw the amount. We find that the respondents had deposited the amount in the Court as per the provisions of Section 31 of the Land Acquisition Act, 1894. Section 31(2) of the Land Acquisition Act, 1894 provides that if there is any dispute about title or the persons to whom the compensation is payable, the amount of compensation shall be deposited by the Collector in the Court in which a reference under Sections 18 or 30 is made. Admittedly, there was a reference under Section 30 of the Land Acquisition Act, 1894 and if the respondents have deposited the amount that was payable towards the compensation in the Court as per Section 31 of the Land Acquisition Act, 1894, the first submission made on behalf of the petitioners for challenging the impugned award is liable to be rejected.

There is also no merit in the other submission made on behalf of the petitioners that the acquired land should be returned to the petitioners as it is not utilized for the purpose for which it was acquired. Firstly, it is seriously disputed by the respondents that the land is not utilized for the construction of staff quarters. It is the case of the respondents that staff quarters are already constructed on the land. Even if the staff quarters were not constructed on the land and the land was not utilized for the purpose for which it was acquired, a landholder would not have any right to claim back the land. It would be necessary to refer to the judgment of the Honourable Supreme Court, reported in

(1997)2 SCC 627 (C. Padma and ors. ..vs.. Dy. Secretary to the Govt. of T.N. and ors) in this regard. In any case, since the land is already claimed to have been utilized for the purpose for which it was acquired, the claim of the petitioners cannot be accepted.

As there is no merit in either of the submissions made on behalf of the petitioners, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

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