

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4382 OF 1998

1. Punja s/o Ramkrushna Dighe
age major.

2. Rakhma Ramkrushna Dighe
age major

3. Bhika s/o Ramkrushna Dighe
age major.

4. Bhiva s/o Ramkrushna dighe
age major

all agriculturist, r/o Jorve
Tq. Sangamner, Dist. Ahmednagar.

Petitioners

Versus

1. District Re-settlement Officer
Ahmednagar District, Ahmednagar.

2. Sub Divisional Officer
Sangamner Sub Division,
Sangamner
Dist. Ahmednagar

3. Tahsildar, Sangamner
Dist. Ahmednagar

4. District Collector,
Ahmednagar District,
Ahmednagar.

5. Special Land Acquisition Officer,
No. 19, Ahmednagar

6. State of Maharashtra

Respondents

Mr. Sushant V. Dixit with Mr. V.J. Dixit, Senior Counsel, for the petitioners.

Mr. S.P. Sonpawale, A.G.P. for Respondent no. 6.

WITH
WRIT PETITION NO. 4385 OF 1998

1. Digambar Yashwant Joshi
age 68 years,
2. Uttam Yashwant Joshi
age 64 years
3. Charudatt Digambar Joshi
age 42 years,
4. Balkrushna Digambar Joshi
age 39 years
5. Govind Digambar Joshi
age 36 years
6. Vinayak Digambar Joshi
age 34 years
7. Mukund Digambar Joshi
age 32 years
8. Moreshwar Uttam Joshi
age 41 years
9. Shantaram Uttam Joshi
age 38 years
10. Vijay Uttam Joshi
age 35 years

Petitioners

Versus

1. District Re-settlement Officer
Ahmednagar District, Ahmednagar.
2. Sub Divisional Officer
Sangamner Sub Division,

Sangamner
Dist. Ahmednagar

3. Tahsildar, Sangamner
Dist. Ahmednagar
4. District Collector,
Ahmednagar District,
Ahmednagar.
5. Special Land Acquisition Officer,
No. 19, Ahmednagar

6. State of Maharashtra Respondents

Mr. Sushant V. Dixit with Mr. V.J. Dixit, Senior Counsel, for the petitioners.

Mr. S.P. Sonpawale, A.G.P. for Respondent no. 6.

WITH
WRIT PETITION NO. 4384 OF 1998

1. Raosaheb s/o Revaji Kakad
age major
2. Baburao s/o Revaji Kakad
age major
3. Karbhari s/o Revaji Kakad
age major

All agriculturists, r/o Jorve
Tq. Sangamner, Dist. Ahmednagar

Petitioners

Versus

1. District Re-settlement Officer
Ahmednagar District, Ahmednagar.
2. Sub Divisional Officer
Sangamner Sub Division,
Sangamner
Dist. Ahmednagar

3. Tahsildar, Sangamner
Dist. Ahmednagar
4. District Collector,
Ahmednagar District,
Ahmednagar.
5. Special Land Acquisition Officer,
No. 19, Ahmednagar
6. State of Maharashtra Respondents

Mr. Sushant V. Dixit with Mr. V.J. Dixit, Senior Counsel, for the petitioners.
Mr. S.P. Sonpawale, A.G.P. for Respondent no. 6.

WITH
WRIT PETITION NO. 4386 OF 1998

1. Dattu s/o Sakharam Dighe
 2. Murlidhar s/o Sakharam Dighe
 3. Keshav s/o Sakharam Dighe
- All age major, r/o Jorve
Tq. Sangamner, Dist. Ahmednagar
- Petitioners

Versus

1. District Re-settlement Officer
Ahmednagar District, Ahmednagar.
2. Sub Divisional Officer
Sangamner Sub Division,
Sangamner
Dist. Ahmednagar
3. Tahsildar, Sangamner
Dist. Ahmednagar
4. District Collector,
Ahmednagar District,

Ahmednagar.

5. Special Land Acquisition Officer,
No. 19, Ahmednagar
6. State of Maharashtra Respondents

Mr. Sushant V. Dixit with Mr. V.J. Dixit, Senior Counsel, for the petitioners.

Mr. S.P. Sonpawale, A.G.P. for Respondent no. 6.

CORAM : R.M.BORDE, J.

DATE : 30th MAY, 2017

ORAL JUDGMENT :

Petitioners are praying for issuance of writ, direction or order seeking quashment of the proceeding of land acquisition initiated by respondents and consequential award declared on 08.03.1996 under the provisions of Land Acquisition Act, 1894.

2. Agricultural lands belonging to petitioners situate at village Jorve, Tq. Sangamner, Dist. Ahmednagar, are subject matter of acquisition proceeding initiated by respondents. The lands are proposed to be acquired for resettlement of project affected persons of Upper Pravara project. Although there are several grounds raised questioning the proceedings of acquisition as well as award declared by respondent - Land Acquisition Officer, the award is liable to be set aside on two counts.

3. It is not a matter of dispute that notifications under section 4 of the Land Acquisition Act, 1894 were issued in two stages. The lands belonging to petitioners in the instant petition are infact covered by earlier notification issued under section 4 of the Land

Acquisition Act in the year 1992. It was noticed by the land acquisition authority that an area to the extent of .81 hector has been left from the acquisition proceedings and as such, a separate notification under section 4 as well as subsequent declaration under section 6 came to be issued at a later stage. As has been recorded, petitioners' landed property is covered by the notification issued under section 4 of the Land Acquisition Act by respondents, published in official gazette on 03.12.1992 and a separate notification under section 4 of the Land Acquisition Act in respect of the additional area came to be published in the official gazette on 28.04.1994. Newspaper publication regarding section 4 notification in respect of landed property belonging to petitioners was made in the months of November and December 1992 whereas, in respect of the additional area, such publication was made in the local newspaper on 26th and 28th May, 1994. Local publication in respect of section 4 notification in respect of the lands belonging to the petitioner is stated to be made on 06.11.1992 whereas, in respect of additional area, such local publication was stated to have been made on 19.04.1994. So far as publication of declaration under section 6 is concerned, it is pointed out that publication in respect of the landed property belonging to petitioners was made on 03.12.1992 whereas, as a result of certain errors, corrigendum came to be issued on 10.05.1994. Gazette publication of the declaration under section 6 is stated to be made on 04.12.1993, corrigendum was published on 02.06.1994 and, in respect of the additional area, such declaration is stated to have been published in official gazette on 27.04.1995. It is also revealed that the declaration under section 6 has been published in the local newspaper on 31.12.1993 and 28.12.1994

respectively whereas such declaration in respect of additional area has been published on 02.06.1994 and 01.06.1995. Corrigendum in relation to declaration under section 6 was published in the local newspaper on 09.07.1994 and 12.07.1994 respectively.

4. Petitioners contend that the proceedings in respect of acquisition of land shall be deemed to have lapsed in view of section 6 proviso II as well as in view of section 11A of the Land Acquisition Act, 1894. Petitioners point out that the land belonging to them have been notified under section 4 on 05.04.1994 whereas local publication of the notification under section 4 is stated to be on 06.11.1994. Declaration under section 6 has been issued on 03.12.1993 and local publication of declaration is stated to be on 10.03.1994. If the date of publication of notification under section 4 of the Land Acquisition Act and the date of local publication in relation to the lands belonging to petitioner is taken into account, which is stated to be published on 06.11.1992, declaration under section 6 stated to have been made for the first time by the land acquisition authority on 03.12.1993 is beyond the period of one year and as such, there is violation of mandate of section 6 proviso ii of the Land Acquisition Act. It is mandated under section 6 that no declaration in respect of any particular land covered by notification under section 4(1) to be published after commencement of Land Acquisition Amendment Act 1894 shall be made after expiry of one year from the date of publication of notification.

5. In the instant case, declaration under section 6 of the Land Acquisition Act in relation to the landed property belonging to

petitioners is beyond prescribed period of one year. The date of award is admittedly 08.03.1996. It is not a matter of dispute that section 4 notification in respect of the landed property belonging to petitioners is published in the year 1992 and last of such publication of notification in the local area is stated to be on 06.11.1992. Even if the date of local publication in relation to the additional area is taken into account to be 19.04.1994 and a declaration under section 6 published in the local area dated 10.03.1994 is taken into account, the award declared on 08.03.1996 is also liable to be set aside. The date of local publication of declaration under section 6 is clearly a manipulation made by the land acquisition authority. In the affidavit-in-reply presented on behalf of the State, it is stated that notice under section 9 of the Land Acquisition Act has been issued to the petitioners on 07.03.1994 whereas hearing was prescribed in pursuance to the notice under section 9 on 23.03.1994. In any case, notice under section 9 cannot precede declaration under section 6 of the Land Acquisition Act. Various steps prescribed under the Land Acquisition Act, 1894, are required to be observed in chronological manner. Hearing in relation to the acquisition of property can never precede declaration under section 6 of the Land Acquisition Act. In this context, decision of this court in the matter of Ramrao s/o Pralhadrao Deshmukh Vs. Godavari w/o Ramrao Deshmukh and others, 2008(2) Mh.L.J. 534, needs to be recorded. It is observed by the Division Bench in the judgment thus :

"19. On consideration of the scheme of the Land Acquisition Act, it would be seen that in the matters concerning compulsory acquisition

of the property, after completing the preliminary survey, the State authorities are expected to publish a preliminary notification for acquisition of the land under section 4(1) of the Act. Publication of the notification under section 4(1) is an expression of intention of the State to acquire the property. A further stage is provided in view of section 5A of the Act, whereby a person interested in the land can raise objections in respect of proposed acquisition which are required to be considered by the Collector. On consideration of such of the objections, a stage in respect of a declaration of intended acquisition is prescribed under section 6 of the Act. A declaration is required to be made to that effect by the State Government by issuing a necessary order and which declaration is required to be published in view of sub-section (2) of section 6 of the act. Section 7 of the Act provides that after publication of a declaration as contemplated under section 6, the appropriate Government, or some officer authorized by the appropriate Government, in this behalf or, as the case may be, the Commissioner shall direct the Collector to take order for acquisition of the land. The Collector then proceeds to cause the land to be marked out and measured and if no plan has been made thereof, a plan is to be made of the same in view of provisions of section 8 of the Land Acquisition Act. Then comes the stage of calling upon the persons interested in land to lodge the claim in respect of the compensation with the Collector. Whereas section 11 of the Act lays down the procedure in respect of the inquiry and award by the Collector. The stages enumerated by various provisions of the Act are required to be followed chronologically.

20. In the instant case, we find that the publication of a declaration under sub-section (2) of section 6 is stated to be according to the Government, on a date which follows after a notice issued to the claimant calling upon him

to submit his claim in respect of valuation of the land. Considering the state of affairs of the record that has been maintained by the office of the Land Acquisition Officer, we find that the mode of the publication of a notification under section 6(2) of the Act at village Chawadi is not worthy to be accepted and cannot be relied upon. As observed above, the panchanamas which are drawn in respect of publication of a notification at Chawadi under section 6(2) of the Act, being not worthy of acceptance, we find that whole proceedings of acquisition are vitiated as the award does not seem to have been published within the time frame prescribed under section 11A of the Act.

Apart from this, the petitioners have placed on record extract of register of declaration made by the village officers. It is recorded in the register that declaration in the locality in respect of section 4 notification has been made on 06.11.1992. So far as declaration in respect of section 6 notification is concerned, the Tahsildar has certified that no record is available in respect of local publication of declaration on 19.04.1994 and 10.03.1994. In any case so far as the landed property belonging to petitioners is concerned, the award declared by respondent on 08.03.1996 pursuant to the notification issued under section 4 of the Land Acquisition Act cannot be sustained.

6. Section 11 of the Land Acquisition Act provides that the Collector shall make award under section 11 of the Act within a period of two years from the date of publication of the declaration and, if no award is made within that period, the entire proceeding for acquisition of land would lapse. In the instant matter,

admittedly, declaration under section 6 in relation to the lands belonging to petitioners is made in the year 1993 and, corrigendum clarifying certain errors has been issued on 02.06.1994 in the official gazette. Local publication of notification under section 6 is also dated 31.12.1993 and 28.12.1994. Local publication of notification under section 6 as has been stated above cannot be believed since such date falls beyond the date of issuance of notice under section 9 of the Act. The proceeding in relation to acquisition of land belonging to petitioners shall be deemed to have lapsed in view of provisions of section 11 of the Land Acquisition Act, 1894.

7. Another argument advanced by petitioner is based on interpretation of section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the "Act of 2013"). Section 24 of the Act of 2013 provides thus :

24. (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, -

(a) where no award Under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in

Sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act :

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

In view of sub-section 2 of section 24, in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under section 11 has been made five years or more prior to the commencement of this Act of 2013 but the physical possession of the land has not been taken, the proceeding shall be deemed to have lapsed and the appropriate Government, if it chooses shall initiate the proceedings of land acquisition afresh in accordance with the provisions of the Act of 2013.

In the instant matter, admittedly, award has been declared five years or more prior to enforcement of the Act of 2013 and the physical possession of the lands belonging to petitioners is admittedly not taken over. This Court has directed the parties to

maintain status quo. After entertaining the instant petition and in view of orders of the Court, physical possession has not been taken over. If at all physical possession has not been taken over due to intervention of the Court, the consequences enumerated under section 24(2) of the Act of 2013 do follow. In this context, reliance can be placed on a judgment in the matter of Sree Balaji Nagar Residential Association Vs. State of Tamil Nadu, **2013(6) All MR 414**. In paragraphs 10 and 12 of the judgment, the Apex Court has observed thus :

"10. Even in the Land Acquisition Act of 1894, the Legislature had brought about amendment in Section 6 through an Amendment Act of 1984 to add Explanation 1 for the purpose of excluding the period when the proceeding suffered stay by an order of the court, in the context of limitation provided for publishing the declaration Under Section 6(1) of the Act. To a similar effect was Explanation to Section 11A which was added by Amendment Act 68 of 1984. Clearly the Legislature has, in its wisdom, made the period of five years Under Section 24(2) of the 2013 Act absolute and unaffected by any delay in the proceedings on account of any order of stay by a court. The plain wordings used by the Legislature are clear and do not create any ambiguity or conflict. In such a situation, the court is not required to depart from the literal rule of interpretation.

12. The judgment of three Judges' Bench in the case of Harakchand Misirimal (supra) has been followed by another Bench of three Judges in the case of Union of India and Ors. etc. V. Shivraj and Ors. etc. MANU/SC/0478/2014 : (2014) 6 SCC 564.

In paragraphs 25 and 26 of that judgment, this Court took notice of a clarification issued by the Government of India, Ministry of Urban Development, Delhi Division dated 14.03.2014. part of the circular extracted in that case clearly shows that the period of five years or more in Section 24(2) of the 2013 Act has been prescribed with a view to benefit the land-losers and the period spent in litigation due to challenge to the award or the land acquisition proceedings cannot be excluded.

As has been recorded above, though, in the instant matter, award has been declared five years or more prior to enforcement of the Act of 2013, possession has not been taken over by the State Government and as such, in view of provisions of section 24(2) of the Act of 2013, acquisition shall be deemed to have lapsed so far as it relates to petitioners and, it would be open for the respondents to take steps in accordance with the Act of 2013, if at all, the lands are needed for public purpose.

8. For the reasons recorded above, the award declared by respondents so far as it relates to petitioners shall stand quashed. Rule is accordingly made absolute. In the facts and circumstances of the case, there shall be no order as to costs.

(R.M.BORDE)
JUDGE