

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

Writ Petition No.3250 of 2016

* Zumbar s/o Shamrao Kamble,
Age 78 years,
Occupation : Agriculture,
R/o Javalga (Mesai)
Taluka Tuljapur,
District Osmanabad. .. **Petitioner.**

Versus

- 1) The State of Maharashtra,
Through the Secretary,
Earthquake Rehabilitation,
Mantralaya, Mumbai - 32.
- 2) The Collector, Osmanabad,
District Osmanabad.
- 3) Sub Divisional Officer/
Land Acquisition Officer,
Osmanabad,
District Osmanabad. .. **Respondents.**

Shri. Vivekanand V. Ingale, Advocate, for
petitioner.

Shri. S.B. Joshi, Assistant Government Pleader,
for respondent Nos.1 to 3.

With

Writ Petition No.3841 of 2016

* Amol s/o Shivaji Bhadare,
Age 30 years,
Occupation : Agriculture,
R/o Patoda,
Taluka & Dist. Osmanabad. .. **Petitioner.**

Versus

- 1) The State of Maharashtra,
Through the Secretary,
Rehabilitation Department,
Mantralaya, Mumbai - 32.
- 2) The Collector, Osmanabad,
District Osmanabad.
- 3) Sub Divisional Officer/
Deputy Collector and
Land Acquisition Officer,
Osmanabad,
District Osmanabad. .. **Respondents.**

Shri. Vivekanand V. Ingale, Advocate, for
petitioner.

Shri. S.B. Joshi, Assistant Government Pleader,
for respondent Nos.1 to 3.

**Coram: T.V. NALAWADE &
SANGITRAO S. PATIL, JJ.**

Date: 8 March 2017

ORAL COMMON JUDGMENT: (Per SANGITRAO S. PATIL, J.)

- 1) Rule, returnable forthwith. With the
consent of the learned counsel for the contesting
parties, heard finally.

2) In these petitions, the awards made under section 11 of the Land Acquisition Act, 1894 ("the Act of 1894" for short), which have been passed in the years 2005 and 1981 respectively, have been challenged.

3) It is the case of the petitioners that their lands bearing Block Nos.1393 and 539 situate at villages Javala (Mesai), Taluka Tuljapur and Karajkheda, Taluka Osmanabad respectively have been acquired under the awards dated 24-01-2005 and 27-09-1981 respectively. However, neither possession of the lands under the acquisition has been taken by the acquiring body nor the amount of compensation has been paid to the petitioners. In these circumstances the petitioners have prayed that in view of section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("the Act of 2013" for short) the awards, subject matter of these petitions, may be declared as lapsed. The learned

counsel for the petitioners has cited the judgment in **Writ Petition No.7153 of 2014 (Ramrao Shripati Rode v. The State of Maharashtra)** delivered by this Court on 12 January 2016 wherein, in the same circumstances, the award has been declared as lapsed.

4) In para 7 of the reply affidavit filed on behalf of respondent Nos.2 and 3 in Writ Petition No.3841/2016 there is contention that possession seems to have been taken. However, admittedly, compensation has not been paid.

5) Here reference may be made to Section 24 of the Act of 2013 which reads as under :-

"24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases.

(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 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."

6) In view of the aforesaid factual position and in view of Section 24(2) read with the judgment in the case of *Ramrao Rode* (supra), the awards, subject matter of these petitions, are liable to be declared as lapsed since compensation has not been paid to the petitioners and in Writ Petition No.3250 of 2016, possession also has not been taken. Hence the order:-

(1) The awards, the subject matter of these petitions, are declared as lapsed.

(2) The Government is at liberty to initiate fresh land acquisition proceedings, if desired.

(3) The petitions are allowed in those terms.

(4) Rule is made absolute accordingly.

(5) No costs.

Sd/-
(SANGITRAO S. PATIL, J.)

Sd/-
(T.V. NALAWADE, J.)