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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.3462/2016

Nasiruddin Mayyoddin Khan
and three others.

...Petitioners..

Versus

The State of Maharashtra & two others.

...Respondents...

.....

Shri Amol K. Gawali, Advocate for petitioners.

Shri D.R. Kale, AGP for respondent nos.1 & 2.

Shri M.N. Nawandar, Advocate for respondent no.3.

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**CORAM: S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

DATE: 27.07.2017

ORDER :

1] By this petition under Article 226 of the Constitution of India, the petitioners claim a declaration that the proceedings for acquisition of land admeasuring 0.12 Ares has lapsed in view of Section 24(2)

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of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Settlement Act, 2013 (hereinafter referred to as the Act No.30 of 2013).

2] The petitioners claim that land bearing Survey No.160 situated at Mauje Burudgaon Tq. & Dist.Ahmednagar, belongs to the petitioners. It is claimed that this land was notified for acquisition by the respondents for the purpose of the respondent no.3 - Railways. The public purpose was stated to be Nagar-Beed-Parali Railway line. A notification u/s 4 of the erstwhile Land Acquisition Act, 1894 (the repealed Act) was published in the year 2002 and it is stated that an award was made on 29.6.2005. Annexure 'A' is copy of this award.

3] The argument is that this survey number includes various sub-divisions and the award did not specify which portion was acquired for Railway line or for which compensation was offered. There was no clarity. When this fact was brought to the notice of the Special Land Acquisition Officer, he claimed that the persons whose land has not been acquired should submit no objection certificate and the persons whose lands were acquired should file an affidavit stating the extent of land which

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has been acquired. Considering the affidavits and no objections, the respondent no.2 will distribute the compensation, was the understanding.

4] In compliance with this direction, the petitioners claim that they submitted their no objection for payment of compensation. The affidavits came to be forwarded on 25.11.2005. Thereafter, there was a clarification issued and which is referred at page no.5 of the petition.

5] The argument is that the award amount was apportioned once again in terms of the details set out in paragraph no.8 of the petition. The argument is that though the apportionment was made, the award amount was not paid to the petitioners. One Mayyoddin Anioddin Khan was the predecessor in title and he was residing at Pune. Said Mayyoddin Anioddin Khan was entitled to receive Rs.95,680/- towards Survey No.160/4 (the portion of his acquired land). Others were paid the compensation by cheques.

6] It is in these circumstances the argument is that Mayyoddin filed Land Acquisition Reference No.911/2008. He expired during the pendency of the same.

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The names of present petitioners were brought on record. The written statement was filed and later on, the award was passed by the Reference Court. The argument is, inspite of having a Power of Attorney, the petitioners were not paid the amount.

7] Shri Gawali would submit that there is no disputed question of fact. That Mayyoddin has allegedly executed a Power of Attorney in favour of one Santosh Hastimal Gugale for pursuing his claim, has no merit. Said Shri Gugale is an Advocate and he served a notice u/s 80 of the Code of Civil Procedure before institution of a civil suit in the competent Civil Court. Apart therefrom, present petitioners instituted Regular Civil Suit No.267/2013 and a decree was passed therein. The decree is that the petitioners should be paid an amount of Rs.95,680/- with interest at 10% p.a. Annexure 'F' is copy of this degree.

8] Relying upon this judgment and decree dated 1.1.2015 of the competent Civil Court, an application (Exhibit 25) in Land Acquisition Reference No.7/2010 was filed. The argument was that since the award amount has not been paid, the proceedings lapsed.

9] No cognizance was taken of this claim though the contesting respondents to this petition filed their objections.

10] Shri Gawali would rely upon Section 24(2) of the Act No.30 of 2013 and the judgment of the Hon'ble Supreme Court of India in *Pune Municipal Corporation v. Harakchand Misirimal Solanki & others* (**AIR 2014 SC 982**).

11] Additionally, the argument is, there is no disputed question of fact and merely because a statement was made in the memo of the Land Acquisition Reference, it does not mean that Mayyoddin or the present petitioners have received any amount of compensation, even under protest. Hence, the writ petition be allowed.

12] Mr.Nawandar for respondent no.3 – Railways and learned AGP for respondent nos.1 & 2, both contested this petition. An affidavit in reply has been filed to this writ petition by the acquiring body – respondent no.3 – Deputy Chief Engineer (Construction), Central Railway, Pune. There is a specific statement made in this affidavit in reply that the petitioners have accepted the compensation amount. They may have accepted under protest, but even physical possession of the acquired

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land has been taken much prior to or in any event within the stipulated period; in the sense, the benefit of Sub-section (2) of Section 24 cannot be extended to the petitioners. At two places, the petitioners have stated that the amount of compensation has been paid and accepted under protest. Hence, there is a disputed question of fact and the petition is an afterthought, which deserves to be dismissed.

13] After having heard both the sides and on perusal of the petition so also annexures and the reply affidavit with the assistance of the learned counsel, we agree with the respondents that the petition deserves to be dismissed. Our reasons for this conclusion are as under.

14] Present petition is filed on 16.3.2016. Present petition pertinently contains an averment that there was no clarity as to who was to receive the compensation. That is why, after the award was made and admittedly on the date which the award bears, the Land Acquisition Officer called upon the parties to furnish no objection if the land was not acquired or an affidavit if the land was acquired. There is no communication to this effect, but it is claimed that the petitioners filed affidavits

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on 25.11.2005. Then in the petition, it is stated that the name of the predecessor in title appears in the records and even the apportionment is made. However, Mayyoddin was residing at Pune. Mayyoddin did not receive any amount.

15] We do not think that this assertion is correct. Annexure 'A' is copy of the award. That is styled as a final award. That gives the details of the land acquired at page no.15. Thereafter, the reasons for the award appear from page no.16 onwards. It is then stated that the valuation has been made and what is material for us is those raising a demand did not remain present nor furnished any evidence. That is why, a valuation was arrived at and the award was declared. It is common ground that once this award was declared, the requisite notice u/s 12(2) of the Land Acquisition Act, 1894, was issued and duly received. From the record, it also appears that there was a revised award. Land Acquisition Reference No.911/2008 was filed by the predecessor in title of the petitioners namely Mayyoddin Anioddin Khan. He gave his address as c/o Santosh Hastimal Gugale, 4253, Chitale Road, Ahmednagar. The petitioner Mayyoddin

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stated that he had not accepted the award, but he had accepted the amount of compensation under protest. This statement appears at page no.41 of the paper book. Then, when the copy of this reference was served on the acquiring body, the question arose as to whether the amount was paid and accepted under protest. According to the respondents, there was never any doubt about this, for, not only in the amended reference, but even elsewhere in the records, there is a clear assertion that the petitioners have not accepted the award, but have accepted the amount of compensation under protest. To our mind, therefore, it is too late in the day for the petitioners to resile from their own pleadings.

16] Santosh Hastimal Gugale was admittedly the person chosen by Mayyoddin. On 3.10.2012, Mayyoddin was not in this world. The petitioners claiming to be his successors in interest through this Gugale gave a notice u/s 80 of the Code of Civil Procedure to the Land Acquisition Officer and the State after admitting the factum of acquisition, the persons named as entitled to receive compensation and the award. What has been stated in this notice is, that Mayyoddin went on several

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occasions and requested for payment of the amount of Rs.95,680/-, but at no stage was the amount paid and that is how eventually after the Power of Attorney was executed, written applications were forwarded by Mayyoddin, still the compensation amount has not been received. Mayyoddin expired on 5.7.2010.

17] We do not see any reason why in this notice of 3.10.2012, no explanation is provided for the assertion in paragraph no.3 of the Reference Application that the amount was accepted under protest. That was the assertion made by Mayyoddin on 7.11.2005. Pertinently, Mayyoddin had filed the reference through the very Advocate Shri Gugale. Then, when the amended reference was filed, it was numbered as Land Acquisition Reference No.7/2010. In the memo of this reference as well, the petitioners did not deny the position as emerging from the original reference memo, but asserted that the compensation has been paid and accepted under protest. When such was the assertion in the amended reference, we do not see any reason for the petitioners addressing a notice u/s 80 of the Code of Civil Procedure and in that notice making a patently false assertion. It is

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unfortunate that Advocate becomes a Power of Attorney holder for those to whom compensation is awarded for acquisition, claims the amount under protest and thereafter issues such notice containing apparently false assertions and claims. In the civil suit that was filed, in the plaint, the petitioners, who were the plaintiffs therein, stated that the compensation amount, which was due and payable to Mayyoddin, was not known to them though the other owners obtained the compensation, Mayyoddin had no idea. In the plaint, the assertion is that the compensation remained to be collected. In the notice preceding the suit, the assertion is that the amount was never paid nor offered. It is in these circumstances, we find that the plaint contained a patently false averment. The plaint was also making a reference to the notice u/s 80, which was addressed through Shri Gugale. If that notice was drafted by Shri Gugale, Shri Gugale is the Advocate who filed the civil suit also on 22.4.2013, we see no reason then for all these false assertions. It is very clear that the suit was filed by plaintiffs – petitioners against the State of Maharashtra through the Collector, District Ahmednagar

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and the Special Land Acquisition Officer. It is claimed in the judgment delivered on 1.1.2015 that the suit proceeded *ex-parte* against defendants though they were served with the suit summons. The petitioners – plaintiffs stepped into the box and though were aware of the averments in the reference application, deliberately claimed that the compensation amount was never paid. The trial Court, therefore, proceeded on the footing that the plaintiffs in that suit had proved their case that there was no disbursement of the compensation amount to the original owner for acquisition of land. That is how the trial Court held that the claim of compensation for acquisition of the land is a right vesting in the claimant. That is how the suit came to be decreed.

18] Then, when the decree was not obeyed and honored, an application was made in pending Land Acquisition Reference. In that, all the facts were admitted, but contrary to the pleadings in the reference. In this application, it was stated that Mayyoddin did not receive the compensation amount nor he accepted it under protest. It is stated that the petitioners are the successors in interest. They have also claimed

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compensation, but the Special Land Acquisition Officer did not give them the same. That is how the civil suit was filed. The civil suit was decreed *ex-parte* and that is how they are entitled to rely upon Sub-section (2) of Section 24 of the Act No.30 of 2013. The petitioners have also annexed a copy of the reply filed to this application by the Deputy Chief Engineer (Construction), Central Railway. It is stated that the application filed is not maintainable. The entire award and acquisition has worked itself out. All further steps have been taken. There is absolutely no substance in the petitioners' assertion.

19] We are, therefore, of the opinion that the present petition is filed by the petitioners as a complete afterthought. They have gone back on their own versions in the pleadings in the reference. They have, contrary to these assertions in the pleadings, filed a bogus civil suit and have obtained a decree from the trial Court, which we are of the opinion, is *ex-facie* without jurisdiction. That decree could not have been honored nor the petitioners can expect such a judgment to be obeyed by the respondents. That is how the

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petitioners were advised to make an application in the pending reference and seek modification of the award. They also desired that a fresh award be passed. This application was rightly rejected.

20] We have also no doubt in our mind that the entire acquisition has worked itself out. After the award was made and published on 21.6.2005, the petitioners' predecessor was advised to accept the amount under protest and thereafter seek enhancement in the compensation by filing a reference u/s 18 of the Land Acquisition Act, 1894. In these circumstances, we do not think why and how the very gentleman, namely, the Power of Attorney Holder, who happened to be an Advocate, Santosh Hastimal Gugale, has chosen to advise the petitioners to file a civil suit, but with the patently false averment. The petitioners had ample opportunity to get over the pleadings in the reference, but when it was amended, they could not point out anything contrary to the claim of the respondents that Mayyoddin was paid the amount and he may not have accepted the award, but proceeded to accept the compensation under protest. The Power of Attorney holder for Mayyoddin is none other than

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said Shri Gugale. It is in these circumstances that we are of the opinion that the statements, made in the affidavit in reply to this petition, are of no assistance to the petitioners. They are enough to dismiss the writ petition.

21] We must not overlook the earliest version on the record. That is to be found in the Reference Application filed originally and later on amended. It is only after the Power of Attorney holder and the Railway officials apparently colluded with each other that even the petitioners joined them. The Railway officials may shift their stand as their denials are vague or general in terms. All of them colluded with the said Shri Gugale and instituted a suit. Then, all of them in connivance with the Railway officials obtained a collusive decree. The suit proceeded *ex-parte*, but it was the duty of the learned trial Judge to take note of the averments in the Reference Application. Those were ignored completely. The petitioners – plaintiffs made a false assertion on oath. The Railway officials obliged them throughout by remaining absent and even now in this Court by not presenting the correct picture. They do not deny the

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statements in the memo of this petition totally, but in a half-hearted manner. However, in our equitable and discretionary jurisdiction, we must hold the petitioners to their assertion in the Reference Application, for, that is never specifically given up. Everything thereafter is an improvement and done deliberately. Parties, like the petitioners, can go to any extent in obtaining higher compensation by an indirect and oblique method. Prices of land are increasing day by day. Land is scarce and all the more, when it is taken over and acquired by the State / Union, the only hope is to seize the opportunity and obtain enhanced compensation. If the public officials, middlemen / agents and claimants join hands, then, the money can be shared. Once we sense and notice all this, we must be strict, firm and ruthless to nip in the bud dishonest and speculative claims.

22] As a result of this discussion, we dismiss this writ petition. We dismiss it with costs quantified at Rs.50,000/- (rupees fifty thousand only), which shall be paid by the petitioners to the respondents within a period of four weeks from today, else it shall be recovered as arrears of land revenue. These costs are

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directed to be paid because of patently false, frivolous and vexatious claim being brought before this Court. The pleadings in the reference application have been given up and as an afterthought an attempt was made to mislead this Court.

23] While disposing of this petition, we also direct that if said Advocate Shri Santosh Hastimal Gugale is still continuing as an Advocate on the roll of Bar Council of Maharashtra and Goa, he shall be proceeded against for professional mis-conduct and by initiation of appropriate disciplinary proceedings. If we do not perform this duty, it will send a wrong signal, for, professionals cannot indulge in such acts. Shri Gugale was the Power of Attorney holder of the claimants in the land acquisition proceedings, accepted the amount of compensation for them and thereafter turned around and became their Advocate and addressed a notice to the respondents on behalf of the heirs of Mayyoddin. He has *prima facie* abused his position as a professional. The Bar Council should initiate the disciplinary proceedings as expeditiously as possible and report outcome of the same to this Court.

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24] At this stage, a request is made by Shri Gawali that the directions in the concluding paragraph of this order be stayed for a reasonable period.

25] We do not think that we can accede to this request. It is evident from these proceedings that not only the parties like the petitioners, but even public officials collude with each other so as to allow conflicting versions to be raised and accepted. We are disturbed by the fact that the petitioners resort to such remedies and pursue them right upto this Court. Litigants like the petitioners ought to be discouraged and the only mode permissible and which would deter the litigants like the petitioners herein is imposition of heavy costs. We have imposed very reasonable costs. As far as the conduct of the professional is concerned, we do not think that we can accede to the request of Shri Gawali to stay our directions in that behalf. His request is thus refused.

(MANGESH S. PATIL, J.) (S.C. DHARMADHIKARI, J.)