

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7867 OF 2012

M/s Moti Ratan Estate,
through its Partner
Mr. Vijay Nemichand Kasliwal,
Age : 45 years, Occu. Business,
having its office at Kasliwal Niwas,
Near Old Mondha, Nanded,
District Nanded

PETITIONER

VERSUS

1. State of Maharashtra,
through Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai – 32
2. The Secretary,
Department of Urban Development,
Mantralaya, Mumbai – 32
3. The District Collector,
Nanded
4. The Deputy Collector,
Land Acquisition Percolation Tank,
Minor Irrigation Division No. 2,
Nanded-Waghala, Nanded
5. The Executive Engineer,
Public Works Division,
Nanded, Tq. & Dist. Nanded
6. Nanded-Waghala Municipal Corporation,
through its Commissioner,
Nanded, Tq. and Dist. Nanded

RESPONDENTS

Mr. V.J. Dixit, Senior Advocate instructed by and
with Mr. P.S. Agrawal, Advocate for the Petitioner
Mr. A.R. Kale, A.G.P. for respondent Nos. 1 to 5
Mr. M.D. Narwadkar, Advocate holding for Mr. Murar V.
Deshpande, Advocate for respondent No. 6

**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.**

**JUDGMENT RESERVED ON : 3rd MARCH, 2017
JUDGMENT PRONOUNCED ON : 24th MARCH, 2017**

JUDGMENT (PER : SANGITRAO S. PATIL, J.) :

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

2. The petitioner, a partnership firm duly registered under the Indian Partnership Act, has challenged the acquisition proceedings culminated into two awards dated 8th May, 2015 in respect of 1.60 hectare of land out of block No. 119 and 1.21 hectare of land out of block No. 18 (hereinafter referred to as "acquired lands") respectively, situate within the local limits of village Asarjan, Taluka and District Nanded.

3. The learned counsel for the petitioner submits that the petitioner purchased the acquired lands in the year 2003. Respondent No. 3 – Collector, Nanded granted permission to the petitioner for making use of the acquired lands for non-agricultural use on 30th August,

2003. Respondent No. 6 – Commissioner, Nanded-Waghala Municipal Corporation approved layout of the acquired lands on 18th November, 2003. Respondent No. 6 published a declaration, expressing its intention to prepare a draft Development Plan for Nanded-Waghala Municipal Corporation in the year 2006 wherein the acquired lands were allocated for residential use. In the year 2009, respondent No. 1 proposed to establish the office of the Divisional Commissioner at Nanded and for that purpose, reserved the lands block Nos. 111, 113, 114, 116 and 120 having total area of 31 Hectares 40 Ares. The acquired lands were not included in the lands proposed to be acquired for the office of the Divisional Commissioner. Subsequently, the acquired lands also were proposed to be acquired for the said purpose which was challenged by the petitioner by filing Writ Petition No. 5090/2009, but it came to be disposed of with liberty to approach the appropriate forum. Accordingly, the petitioner challenged the draft Development Plan before the Minister, Urban Development on 13th April, 2010 and the same is pending. Thereafter, respondent No. 4 – Deputy Collector and Special Land Acquisition Officer published a notification under section 4 of the Land Acquisition

Act, 1894 ("the Act of 1894", for short) on 27th March, 2012. However, without extending the petitioner an opportunity of raising objection under section 5A of the said Act, recommended to respondent No. 1 for acquisition of the acquired lands. The declaration under section 6 came to be made on 21st March, 2013 and ultimately, the awards came to be passed on 8th May, 2015.

4. According to the learned counsel for the petitioner, without making any modification in the Development Plan of 2006 in respect of the earlier allocation of the acquired lands for residential use, they have been acquired for the construction of Central Administrative Building, other Government buildings and staff quarters, which is against the provisions of section 23 of the Maharashtra Regional and Town Planning Act, 1966 ("the MRTP Act", for short). He further submits that the declaration under section 6 of the Act of 1894 was made on 21st March, 2013. However, the impugned awards came to be passed on 8th May, 2015. According to him, as per section 11A of the Act of 1894, it was incumbent on the part of respondent No. 4 to pass

award within a period of two years from the date of publication of the declaration under section 6. He submits that Writ Petition Nos. 3051/2013 and 3159/2013 were filed by some other persons whose lands were proposed to be acquired for the above mentioned purpose. In those writ petitions, stay was granted by this Court against declaration of the awards during the period from 20th November, 2013 to 8th January, 2014. The petitioner was not a party to said writ petitions. No stay was operating against the acquired lands and respondent No.4 could have passed awards in respect of the acquired lands without any legal impediment. He, therefore, submits that the delay of more than two years from the date of publication of declaration under section 6, in passing the awards in respect of the acquired lands would entail in lapsing of the impugned awards so far as the acquired lands are concerned.

5. The learned counsel for the petitioner further submits that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("the Act of 2013", for short) came into force on 1st January, 2014. As per section 114

of the said Act, the Act of 1894 stood repealed. Since no awards were passed in respect of the acquired lands prior to 1st January, 2014, the impugned awards passed under section 11 of the repealed Act of 1894 are liable to be quashed and set aside. In support of this contention, he cited certain judgments of the Hon'ble the Supreme Court and that of the Bombay High Court, which would be considered in the later part of this judgment.

6. The learned counsel for the petitioner submits that the lands of the petitioner have been acquired at the instance of the then Chief Minister with a view to harass the petitioner. In the circumstances, he prays that the impugned awards, so far as they relate to the acquired lands, may be quashed and set aside.

7. The learned A.G.P. and the learned counsel appearing for respondent No. 6 support the impugned awards. According to them, since the awards were not passed on or before 1st January, 2014 i.e. prior to coming into force of the Act of 2013, the present awards would fall under section 24 (1) (a) of the Act of 2013 and all the provisions of the Act of 1894 would be

applicable to the said awards excepting the provisions of the Act of 2013 relating to the determination of compensation. Neither the learned A.G.P. nor the learned counsel appearing for respondent No. 6 controverted the ground of objection raised on behalf of the petitioner about non-compliance of the provisions of section 23 of the MRTP Act relating to declaration of an intention to prepare the Development Plan incorporating the acquired lands in the area meant for construction of Government buildings or staff quarters instead of for the use of residential purpose as was previously notified. However, they submit that respondent No. 4 was quite competent to acquire the acquired lands for the purpose of construction of Central Administrative Building, the buildings for other offices and staff quarters. Accordingly, after following the due procedure laid down in the Act of 1894, respondent No. 4 issued notification under section 4, conducted inquiry under section 5A and issued declaration under section 6 of the Act of 1894. They submit that the petitioner was extended an opportunity of hearing and after considering the objection raised on behalf of the petitioner, recommendations were made for acquisition of the

acquired lands. The learned A.G.P. submits that there was stay granted by this Court in Writ Petition Nos. 3051/2013 and 3159/2013 for declaration of the awards which was in force from 20th November, 2013 to the period twelve weeks after 8th January, 2014 (i.e. the date of passing final order). According to him, the said period is liable to be excluded from the period of two years prescribed for passing of award under section 11A after publication of declaration under section 6 in view of the Explanation given under section 11A of the Act of 1894. Therefore, according to him, the awards passed on 8th May, 2015 would be well within limitation and would not get lapsed. He further submits that the provisions of section 24 (2) of the Act of 2013 would not be applicable to the impugned awards since they have not been passed prior to five years of the date of enforcement of the Act of 2013. The learned A.G.P. relying on the judgment in the case of **Smt. Sakharbai Haribhau Shelke, Since deceased through her L.Rs. Vs. Sub Divisional Officer, Shrirampur and others 2014 (4) Mh.L.J. 794**, submits that since no award was passed under section 11 of the Act of 1894, prior to commencement of the Act of 2013, the notification under

sections 4 and 6 as well as the further proceedings conducted under the Act of 1894 would not be vitiated. However, while passing of the awards, the compensation will have to be determined under the provisions of Act of 2013.

8. It is the case of the petitioner that immediately after issuance of notification under section 4, the petitioner lodged objections to the proposed acquisition. However, respondent No.4 did not hear the petitioner and did not make inquiry as contemplated under section 5A of the Act of 1894. Therefore, the acquisition proceedings in respect of the acquired lands of the petitioner are liable to be quashed and set aside. The learned counsel for the petitioner, relying on the judgment in the case of ***Union of India (UOI) and others Vs. Shiv Raj and others (2014) 6 SCC 564***, submits that the inquiry under Section 5A of the Act of 1894 is not an empty formality. The petitioner had a substantive right of audience before respondent no.4. Respondent no.4 did not hear the petitioner. Respondent no. 4 was under an obligation to positively consider the arguments advanced by or on

behalf of the petitioner and make recommendations, duly supported by brief reasons as to why the acquired lands of the petitioner should or should not be acquired. No such exercise has been done by respondent no.4 in the present matter. Therefore, according to him, the acquisition proceedings in respect of the acquired lands are liable to be vitiated.

9. The learned A.G.P. submits that the Advocate of the petitioner appeared before respondent no.4 on 19th October, 2012. After hearing the Advocate for the petitioner, respondent no.4 made recommendations for acquisition of the acquired lands of the petitioner. He submits that respondent No.4 has duly complied with provisions of section 5A of the Act of 1894.

10. In para 21 of the reply, filed on behalf of respondent No.4, it is specifically denied that the inquiry under Section 5A of the Act of 1894 was not conducted. It is stated that the date of hearing objections of the persons interested in the lands proposed to be acquired was published in daily newspapers "Prajawani" and "Lok-Patra". The persons interested or their authorised representatives were

called upon to appear before respondent No.4. Accordingly, Advocate Shri Patni, appeared before respondent No.4 on 19th October, 2012. He was heard by respondent No.4. It is stated that after hearing Advocate of the petitioner, respondent No.4 sent the proposal under Section 6 of the Act of 1894 to the Commissioner, Aurangabad and ultimately the declaration under Section 6 was made.

11. Respondent No.4 has produced copies of the public notices published in the above-named daily newspapers at Exh.R-6 (Colly.). The contents of the notices published in these newspapers clearly show that respondent No.4 had called upon the persons interested in the lands proposed to be acquired either to appear before him personally or through their Advocates on 22nd October, 2012. Respondent No.4 specifically stated that Advocate Shri Patni appeared before him on 19th October, 2012. Respondent No.4 has produced the attendance sheet (Exh.R-7) showing that Advocate Shri Patni appeared before respondent No.4 on 19th October, 2012 and he was heard by respondent No.4. With this positive evidence on record, the contention of the petitioner that the opportunity of hearing was not given by respondent No.4,

as contemplated under Section 5A of the Act of 1894, cannot accepted. As far as the recommendations made by respondent No.4 to the Government after hearing the learned Advocate for the petitioner are concerned, the petitioner, though had various ways and means either producing them or getting them produced before the Court, did not take any steps in this regard. In the circumstances, we are not inclined to accept the contentions of the learned counsel for the petitioner that the acquisition proceedings would get vitiated for non-compliance of Section 5A of the Act of 1894.

12. So far as the ground of objection raised by the learned counsel for the petitioner in respect of change of user of the acquired lands from residential to Government and other public buildings as well as staff quarters is concerned, we are not inclined to attach much importance thereto. As seen from the awards, there are many other lands which have been acquired for construction of the Central Administrative Building, other Government buildings and staff quarters. Thus, the purpose of acquisition of the lands, including the acquired lands of the petitioner, covers the residential

purpose also. Since residence also is one of the purposes of acquisition, the contention of the learned counsel for the petitioner that unless the allocation of the acquired lands for residential purpose is changed into Government buildings in the Development Plan, the acquired lands of the petitioner could not have been acquired, cannot be accepted.

13. So far as the ground of objection about the delay of more than two years in passing the awards from the date of declaration under section 6 of the Act of 1894 is concerned, we find substance therein. Indisputably, the declaration under section 6 was made on 21st March, 2013. As per the provisions of section 11A of the Act of 1894, the Collector shall make an award under section 11 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 proceedings for acquisition of the lands shall lapse. As per the Explanation given under section 11A, in computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of said declaration is stayed by an order of a Court shall be excluded.

14. The learned A.G.P. produced the common order dated 8th January, 2014 passed in Writ Petition Nos. 3051/2013 and 3159/2013, instituted by one Pandurang Sadashiv Patil (Lute) and Gangadhar Parasram Jadhav, respectively. The initial order dated 20th November, 2013 passed in those writ petitions has been re-produced in the said order. Clause (3) of that order which is material for the purpose of deciding this writ petition, reads as under :-

"3. This Court directs that till next date, final award should not be declared. Needless to observe that in the event award is ready, the State shall make an application before this Court for leave to declare it, which will help prevention from lapsing as well as computation of the period spent in the proceedings by virtue of stay."

15. This Court disposed of the said writ petitions with the following order:-

"Both Writ Petitions stand disposed of with the above directions. The order dated 20th November, 2013 to continue for a period of 12 weeks from today but without prejudice to the rights and conditions of parties."

16. As seen from the above order, the stay granted

by the Court on 20th November, 2013 against declaration of final award in respect of the lands of the petitioners therein was continued for a period of twelve weeks from the date of that order i.e. 8th January, 2014. As such, the stay was in operation for a total period of four months and fourteen days. The declaration under section 6 was made on 21st March, 2013. In the ordinary course, the award should have been passed on or before 20th March, 2015. The learned A.G.P. submits that in view of the stay granted by the Court, there would be extension of the period of four months and fourteen days for passing of the award vide Explanation under section 11A of the Act of 1894. Accordingly, the awards should have been passed on or before 3rd August, 2015. The awards have been passed on 8th May, 2015 and as such, they have been passed within the prescribed period.

17. The claim made by respondent No.4 for extension of period during which stay was in operation for passing awards in respect of the acquired lands of the petitioner is not at all sustainable. Indisputably, the petitioner was not a party to Writ Petition Nos. 3051/2013 and 3159/2013. The lands of the petitioner

were not the subject matter of the said writ petitions. As seen from clause (4) of the impugned awards, the lands of the present petitioner and that of the petitioners in Writ Petition Nos. 3051/2013 and 3159/2013 are different. Respondent No. 4 could have conveniently passed awards in respect of the acquired lands of the petitioner, despite the stay granted by the Court in the above numbered writ petitions. It can be seen from clause No. (8) of the impugned awards that the lands of the petitioners in Writ Petition Nos. 3051/2013 and 3159/2013 have been excluded from the impugned awards, in view of the directions given by the Court to consider the claims of the petitioners therein under section 15A of the Act of 1894. When respondent No. 4 could pass the impugned awards excluding the lands of the petitioners in Writ Petition Nos. 3051/2013 and 3159/2013, it can not be said that respondent No. 4 could not have passed the awards in respect of the acquired lands of the petitioner even during the period when the stay was in force in respect of the lands subject-matter of Writ Petition Nos. 3051/2013 and 3159/2013. The stay granted by the Court was not in respect of all the lands proposed to be acquired by

respondent No. 4. Even as per clause (3) of the order dated 20th November, 2013 passed by this Court, respondent No. 4 was given liberty to apply before the Court for declaration of the award in case it was ready. Though it was not necessary, still it was not difficult for respondent No. 4 to apply before the Court by way of abundant precaution for permission to declare the awards in respect of the lands of the present petitioner, when the petitioner had not challenged the acquisition proceeding in respect of his land. In any case, respondent No. 4 cannot claim exclusion of the period during the stay was in operation in respect of the lands of other persons vide Explanation given under section 11A for justifying the delay in passing the awards in respect of the acquired lands of the petitioner. The awards in respect of the acquired lands of the petitioner was required to be passed on or before 20th March, 2015 i.e. within a period of two years from the date of publication of declaration under section 6. Since the impugned awards have been passed on 8th May, 2015 i.e. beyond the prescribed period of two years in view of the provisions of section 11A of the Act of 1894, the said awards would stand lapsed so far as the

acquired lands of the petitioner are concerned.

18. The learned counsel for the petitioner pointed to the provisions of section 25 of the Act of 2013, wherein it is mandated that the Collector shall make an award within a period of twelve months from the date of publication of the declaration under section 19 and if no award is made within that period, the entire proceedings for the acquisition of the land shall stand lapsed. He submits that under this provision, there is no exclusion of the period during which stay was in operation while calculating the period of twelve months for passing of the awards.

19. In the present case, since the awards were not passed when the Act of 2013 came into force, the provisions of section 24 (1) (a) would be applicable to the present case. Accordingly, the acquisition proceedings initiated under the Act of 1894 would be saved and continued and the provisions of the Act relating to determination of compensation only would be applicable thereto. Therefore, the provisions of section 25 of the Act of 2013 would not be applicable to the facts of the present case.

20. The learned counsel for the petitioner cited the judgments in the cases of ***Yogesh Neema and others Vs. State of M.P. and others (2016) 6 SCC 387, Union of India (UOI) and others Vs. Shiv Raj and others*** and ***Vinod Kapur and others Vs. Union of India (UOI) and others (2014) 6 SCC 564, Pune Municipal Corporation and another Vs. Harakchand Misirimal Solanki and others (2014) 3 SCC 183*** and ***Sree Balaji Nagar Residential Association V. State of Tamil Nadu (2015) 3 SCC 353***, to contend that since the possession of the acquired lands has not been taken and the compensation also has not been paid to the petitioner, the awards would stand lapsed. As seen from the facts of the above cited cases, the awards therein were passed five years or more prior to the commencement of the Act of 2013. Therefore, in view of the fact that physical possession of the lands was not taken or the compensation was not paid, the said acquisition proceedings were declared as lapsed. Since the awards were not passed in the present case prior to five years of the commencement of the Act of 2013, these rulings would be of no help to the petitioner to claim that the impugned awards would be deemed to have lapsed in view

of sub-section (2) of section 24 of the Act of 2013.

21. The contention raised on behalf of the petitioner that the acquired lands of the petitioner were sought to be acquired at the instance of the then Chief Minister with a view to harass the petitioner, cannot be attached with any importance. Such allegations cannot be entertained against a person who is not a party to the proceedings.

22. To sum up, the impugned awards, so far as they relate to the acquired lands of the petitioner, are liable to be lapsed on the sole ground that they were not passed by respondent No. 4 within a period of two years from the date of declaration made under section 6 of the Act of 1894. The other grounds sought to be agitated by the petitioner for getting the impugned awards declared as lapsed do not contain any force. In the result, we pass the following order :-

- (i) The Writ Petition is allowed.
- (ii) The impugned awards, so far as they relate to the acquired lands of the petitioner, stood lapsed.

- (iii) The respondents are at liberty to initiate acquisition proceedings afresh against the acquired lands as permissible under the law, if desired.
- (iv) Rule is made absolute in the above terms.
- (v) The Writ Petition is disposed of.
- (vi) No costs.

[SANGITRAO S. PATIL]
JUDGE

[T.V. NALAWADE]
JUDGE