

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1692 OF 2004

1. Smt. Mainabai Shivsing Pardeshi,
age : Major, Occu.: Household/
Agriculturist,
R/o.: Padampura, Aurangabad
2. Bhaulal Govardhandas Gumaldu
Age : 51 years, Occu.: Business,
R/o. H.No.5/10/84, Padampura,
Aurangabad

PETITIONERS

VERSUS

1. The State of Maharashtra,
through Secretary, Department
of Revenue and Forest,
Mantralaya, Mumbai
2. The Divisional Commissioner
(Revenue), Aurangabad,
Aurangabad Division,
Aurangabad
3. The Special Land Acquisition
Officer, Special Unit,
Aurangabad
4. The Collector,
Aurangabad,
District Aurangabad

RESPONDENTS

WITH
CONTEMPT PETITION NO. 197 OF 2014
IN
WRIT PETITION NO. 1692 OF 2004

Jagjiwanram Co-operative Housing
Society Ltd., Aurangabad,
through its Secretary,
Narayan s/o Gulabchand Banswal

PETITIONER
(ORI.RESP.NO.7)

VERSUS

1. Mainabai w/o Shivsing Pardeshi,
age : Major, Occu.: Business,
R/o.: Opp. Hanumand Mandir,
RTO Officer Road, Padampura,
Aurangabad
2. Sham s/o Udhavsing Pardeshi,
Age : 35 years, Occu.:
Legal Practitioner,
R/o.: Opp. Hanumand Mandir,
RTO Officer Road, Padampura,
Aurangabad
3. P.D. Kulkarni,
Project Coordinator, MSRDC,
Aurangabad
4. Shri Uday Bharade,
Deputy Engineer,
MSRDC, Aurangabad
5. Shri Suradkar,
Site Engineer,
MSRDC, Aurangabad
6. The State of Maharashtra,
Through Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai
7. Divisional Commissioner,
(Revenue), Aurangabad
8. The Special Land Acquisition
Officer, Special Unit,
Aurangabad
9. The Collector,
Aurangabad
10. The District Deputy Registrar,
Co-operative Societies,
Aurangabad

CONTEMNORS**RESPONDENTS**

CIVIL APPLICATION NO. 4045 OF 2014
IN
CONTEMPT PETITION (ST.) NO.9618 OF 2014
IN
WRIT PETITION NO.1692 OF 2004

Jagjiwanram co-operative
Housing Society Ltd.,
Aurangabad

APPLICANT
(ORI.RESP.NO.7)

VERSUS

Mainabai w/o Shivsing Pardeshi
and others

**CONTEMPNORS/
RESPONDENTS**

WITH
WRIT PETITION NO.6433 OF 2005

Uddhavsing s/o Shivsing Pardeshi,
Age : 52 years, Occu.: Agri.,
Business, resident of Padampura,
Aurangabad,
District Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra,
through Secretary, Department
of Revenue and Forest,
Mantralaya, Mumbai
2. The Divisional Commissioner
(Revenue), Aurangabad,
Aurangabad Divn.,
Aurangabad
3. The Special Land Acquisition
Officer, Special Unit,
Aurangabad
4. The Collector, Aurangabad,
District Aurangabad

5. The District Deputy Registrar,
Co-operative Societies,
Aurangabad
6. The Assistant Registrar,
Co-operative Societies,
Aurangabad
7. Jagjivanram Co-operative
Housing Society Limited,
Aurangabad, through its
Secretary Shri Narayan
s/o. Gulabchand Banswal,
age : 57 years, Occu.: Service,
resident of Padampura,
District Aurangabad

RESPONDENTS

**WITH
CIVIL APPLICATION NO. 4042 OF 2015
IN
WRIT PETITION NO. 6433 OF 2005**

Smt. Rekha s/o Ramesh Banswal
and others

APPLICANTS

VERSUS

Uddhavsing s/o Shivsing Pardeshi
and others

RESPONDENTS

**WITH
WRIT PETITION NO.5596 OF 2007**

Jagjivanram Co-operative Housing
Society Ltd., Kesharsingpura,
Aurangabad,
through it's Secretary

PETITIONER

VERSUS

1. The State of Maharashtra,
through Ministry of Social
Welfare Department, Mantralaya,
Mumbai-32

2. The Secretary,
Department of Social Welfare,
Mantralaya, Mumbai-32
3. The Divisional Social Welfare,
Officer, Aurangabad
4. The District Social Welfare,
Officer, Aurangabad
5. The Secretary,
Ministry of Finance,
Mantralaya, Mumbai-32
6. The Collector,
Aurangabad
7. Special Land Acquisition Officer,
(Special Unit), Aurangabad

RESPONDENTS

**WITH
WRIT PETITION NO.7001 OF 2004**

1. Khandu s/o Dhanaji Raees,
age : 38 years, Occu.: Nil,
2. Shrinivas Narayan Gaudashamar,
age : 46 years, Occu.: Worker,
3. Nawab Wali Mah. Noor Moh.
age : 49 years,
Occu.: Auto Works,
4. Suresh Shivsingh Jaiswal,
age : 45 years,
Occu.: Business,
5. Shankar Rajaram Lonkalkar,
age : 44 years,
Occu.: Pan Shop,
6. Hanif Ahamed Nazir Ahmed,
age : 41 years,
Occu.: Auto Work,

7. Modh. Naimoddin Mehbvoob Sharik,
age : 39 years,
Occu.: Business,
8. Ramdas Damodhar Badak,
age : 28 years,
Occu.: Washing Center
9. Ravindra Jagannath Udawant,
age : 40 years,
Occu.: Auto Work,
10. Xevier Das Devidas,
age : 40 years,
Occu.: Auto work,
11. Mohood Khan,
age : 28 years,
Occu.: Auto work,
All R/o. Padampura,
Aurangabad

PETITIONERS**VERSUS**

1. The State of Maharashtra
through its Secretary,
Revenue and Forest Department,
Maharashtra State Mantralaya,
Mumbai – 32
2. The Commissioner,
Aurangabad Division, Aurangabad
3. The Special Land Acquisition
Officer, Aurangabad District,
Aurangabad
4. The Collector,
Aurangabad
5. Jagjivanram Co-operative Housing
Society Limited, Aurangabad
through its Secretary
Shri Narayan s/o. Gulabchand Banswal,
age : 56 years, Occu.:
Government Service,
R/o. Padampura, Aurangabad

RESPONDENTS

Mr. B.L. Sagar-Killarikar, Advocate for the Petitioner in W.P.No.1692/2004

Mr. N.R. Solunke, Advocate for the Petitioner in C.P.No.197/2004, W.P.No.5596/2004 and for respondent No.5 in W.P.No.7001/2004

Mr. M.Y. Deshmukh, Advocate for the Petitioner in W.P.No.7001/2004

Mr. P.K. Joshi, Advocate for the Petitioner in W.P.No.6433/2005

Mr. B.N. Patil, Advocate for the applicants-interveners in C.A. No. 4042/2015 in W.P. No.6433/2005

Mrs. V.N. Patil-Jadhav, A.G.P. for respondent/State in all the Writ Petitions

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

**RESERVED ON : 15th JUNE, 2017
PRONOUNCED ON : 12th JULY, 2017**

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

Writ Petition No. 1692 of 2004, 7001 of 2004 and 6433 of 2005 have been filed by the owners/persons interested in respect of the land Survey No.12, situate within the local limits of Municipal Corporation, Aurangabad for setting aside the Award dated 25th June, 2003 passed under Section 11 of the Land Acquisition Act, 1894 ("the Act of 1894", for short).

2. Contempt Petition No.197 of 2004 has been filed by Jagjivan Ram Co-operative Housing Society Ltd. ("the Society", for short), seeking enforcement of the Award dated 25th June, 2003, while Writ Petition No.5596 of 2004 has been filed by the said society, seeking direction against the respondent-Government Authorities to make the funds available for acquisition of the land Survey No.12, admeasuring 52 Are in pursuance of the Award dated 25th June, 2003.

3. Common questions of law and facts are involved in these Writ Petitions, hence they are being decided by this common judgments.

4. The learned counsel for the petitioners sought the reliefs of setting aside of the Award mainly on two grounds. According to them, as per Section 11A of the Act of 1894, if no Award is made by the Collector within a period of two years from the date of publication of the declaration under Section 6, the entire acquisition proceedings in respect of the land are liable to be lapsed. They submit that in the present case, the declaration under Section 6 was

published in the Gazette on 1st June, 1989. There was stay to the acquisition proceedings during the period from 28th August, 1989 to 20th September, 2001. The stay was vacated on 21st September, 2001. Even if the period during which the stay was in operation is excluded from consideration, the Award passed on 25th June, 2003 would be beyond the period of two years as contemplated under Section 11A.

5. Secondly, it is the contention of the learned counsel for the said petitioners that possession of the land proposed to be acquired is still with them. Moreover, the amount of compensation has not been paid to them. Therefore, in view of the provisions of sub-section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("the Act of 2013", for short), the acquisition proceedings shall be deemed to have lapsed.

6. As against this, the learned counsel for the Society submits that the notification under Section 6 of the Act of 1894 was published on Chawdi on 17th June, 1989. As per sub-section (2) of Section 6 of the

Act of 1894, the last date of the date of publication of the declaration would be the date of publication thereof. As per the Explanation given under Section 11A of the Act of 1894, 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 the said declaration, is stayed by an order of a Court shall be excluded. In support of this contention, he relied on the judgment in the case of ***Government of Tamil Nadu and another Vs. Vasantha Bai*** ***AIR 1995 SC 1778***. Therefore, according to him, the Award passed on 25th June, 2003 is well within the period of two years from the date of publication of the declaration under Section 6 of the Act of 1894.

7. The learned counsel for the Society further submits that since there was stay for taking possession of the land proposed to be acquired, the possession thereof could not be taken. Therefore, in view of the amendment under sub-section (2) of the Section 24 of the Act of 2013, promulgated as per the Amendment Ordinance dated 31st December, 2014, the period during which the stay to the acquisition proceedings was in operation would be liable to be

excluded in computing the period of five years referred to in sub-section (2) of Section 24. He further submits that the amount of compensation was required to be paid by the Government Authorities. However, for the fault of the Government Authorities in paying the amount of compensation to the petitioners, the Society, which is constituted for safeguarding the interests of the weaker section, cannot be made to suffer.

8. So far as the first contention raised by the learned counsel for the petitioners that the acquisition proceedings would stand lapsed on the ground that the Award was not passed within a period of two years from the date of publication of the declaration under Section 6 of the Act of 1894 is concerned, the learned counsel for the petitioners themselves have fairly conceded that the Award has been passed within a period of two years from the last date of publication of the declaration on 17th June, 1989 and the period from 21st September, 2001 to 25th June, 2003, during which there was stay granted by this Court to the acquisition proceedings in operation, is liable to be excluded in computing the

period of two years. We also calculated the period of passing the Award from 17th June, 1989, excluded the period of stay from 21st September, 2001 to 24th June, 2003 and found that the Award has been passed within a period of one year, eight months and fifteen days. As such, the first objection against the Award does not sustain.

9. In order to appreciate the second contention, it would be necessary to reproduce here the provisions of Section 24 of the Act of 2013, which came into force with effect from 1st January, 2014. Section 24 reads thus:-

"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, (1 of 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 (1 of 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."

10. The Ordinance of 2014, issued by the Government of India on 31st December, 2014, has added the following Proviso under the existing Proviso to sub-section (2) of Section 24. It reads as under:-

"Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any account maintained for this purpose shall be excluded."

11. The above-mentioned Ordinance was issued by the Government of India since the Parliament was not in Session when it was required to be issued.

12. As per Clause (2) of Article 123 of the Constitution of India, the Ordinance promulgated under the said Article is required to be laid before both Houses of the Parliament and would stand ceased to operate at the expiration of six weeks from the reassembly of the Parliament and till then, it would have the same force and effect as an Act of the Parliament. The learned counsel for the Society did not produce anything on record to show that the said Ordinance was placed before both Houses of the Parliament and any Amendment Act has been passed during the period of last three years. Thus, after the period mentioned above, the said Ordinance would cease to have any binding force. Consequently, the amendment contained in the said Ordinance would be of no help to the Society to save the Award from operation of the provisions of Section 24 of the Act of 2013.

13. The Award in respect of the land Survey No.12

was passed on 25th June, 2003. The period of more than eleven years had been elapsed prior to the date (i.e. 1st January, 2014) of enforcement of the Act of 2013. Neither the possession of the said land was taken, nor the amount of compensation was paid as contemplated under sub-section (2) of Section 24 of the Act of 2013. Consequently, the said Award would be deemed to have lapsed.

14. The learned A.G.P., relied on the judgment in the case of ***Rajaram s/o Dhondiram Hawale and others Vs. State of Maharashtra and others in Writ Petition No.1932 of 2014***, decided by this Court on 16th September, 2014, wherein the Award was declared on 31st December, 2013 (i.e. within a period of five years prior to coming into force of the Act of 2013) and therefore, the respondent – Land Acquisition Officer was directed to determine the amount of compensation in accordance with the provisions of the Act of 2013 since the amount of compensation was not already paid to the land holders. This judgment would not be applicable to the facts of the present case since the Award herein has been passed prior to five years of coming into force of the Act of 2013.

15. The learned counsel for the Society submits that the Government may be directed to initiate the proceedings in respect of the land Survey No. 12 afresh in case the Award is deemed to have been lapsed. The provision of sub-section (2) of Section 24 itself says that the Appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act. Thus, a discretion is vested in the Government to initiate the land acquisition proceedings afresh. The Court cannot issue specific directions against the Government to initiate the proceedings for land acquisition afresh. However, we extend the said liberty to the Government, if it so chooses to initiate the land acquisition proceedings afresh.

16. In the above circumstances, Writ Petition Nos.1692 of 2004, 7001 of 2004 and 6433 of 2005 deserve to be allowed. The Award dated 25th June, 2003 in respect of the land Survey No.12 shall be deemed to have lapsed. If that be so, Contempt Petition No. 197 of 2004, filed for enforcement of the said Award and

Writ Petition No.5596 of 2004, filed seeking direction against the respondent-Government Authorities to deposit the amount of compensation in pursuance of the Award dated 25th June, 2003, would not survive. In the result, we pass the following order:-

O R D E R

(i) Writ Petition Nos. 1692/2004, 7001/2004 and 6433/2005 are allowed.

(ii) The Award dated 25th June, 2003, passed in respect of the land Survey No. 12, situate within the local limits of Aurangabad Municipal Corporation, Aurangabad is hereby declared as lapsed.

(iii) The respondent – Government Authorities may initiate the acquisition proceedings in respect of the aforesaid land afresh, if they choose to do so.

(iv) Rule is made absolute in the above terms.

(v) Writ Petition No. 5596 of 2004 is dismissed and the Rule stands discharged accordingly.

(vi) Contempt Petition No. 197/2014 does not survive and stands disposed of.

(vii) All pending Civil Applications do not survive in view of disposal of the Writ Petitions and hence, stand disposed of.

(viii) The parties shall bear their own costs.

[SANGITRAO S. PATIL]
JUDGE

[T.V. NALAWADE]
JUDGE

npj/wp1692-2004+group