

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7415 OF 2016

Bhagwat Narayan Randive

Age : 77, Occu.: Agri.,

R/o Sarola Bk., Tq. Dist. - Osmanabad

.. Petitioner

VS.

1] The State of Maharashtra
Through its Principal Secretary,
Public Works Department,
Mantralaya, Mumbai – 32

2] The Collector, Osmanabad

3] Special Land Acquisition Officer,
Minor Irrigation Works, No.1,
Osmanabad

.. Respondents

Mr. Ajinkya P. Deshmukh, Advocate for the petitioner

Mr. A.R. Kale, A.G.P for the respondent/State

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

DATE : 22-06-2017

ORAL JUDGMENT :

1. Rule. Respondent waives service. By consent, heard forthwith. By this Writ Petition under Article 226 of the Constitution of India, the petitioner seeks the following reliefs :-

“B. Hold and declare that, the Notification dated 27.07.2012 published under section 4 of 1894 act by the Respondent No.3 – Special Land Acquisition Officer for acquiring 41 R land from land Gut No. 155 at Sarola Bk. Tq. & Dist. Osmanabad, owned by the petitioner for construction of Daund – Kashti – Borfal road is lapsed in view of The provisions of The Land Acquisition Act 1894 and in view of the provisions of “The Right to fair compensation and transparency in land acquisition, Rehabilitation & Resettlement Act 2013, and for that purpose issue necessary orders.

C. Hold and declare that, the petitioner is entitled to get back the possession of 1H 48R land from Gut No.155 situated at Sarola Bk., Tq. & Dist. Osmanabad.

D. In the alternate issue writ of mandamus or any other appropriate writ, order or directions in the nature of writ of mandamus directing the Respondents to initiate Fresh Acquisition Proceedings under “The Right to fair compensation and transparency in land acquisition, Rehabilitation & Resettlement Act 2013 and determine the compensation for 1H 48R land of the petitioner from land Gut No.155 situated at Sarola Bk., Tq. & Dist. Osmanabad in accordance with the provisions of “The Right to fair compensation and transparency in land acquisition, Rehabilitation & Resettlement Act 2013 and for that purpose issue necessary orders;”

2. The prayers themselves would demonstrate as to how litigants like the petitioner are emboldened and encouraged to invoke the discretionary, equitable and extra-ordinary jurisdiction of this Court repeatedly, because there is no deterrent as far as legal access is concerned. Secondly, though the earlier orders against a litigant like the petitioner are holding the field and bind him, there is no embargo or restraint from knocking at the doors of this Court again. However, by our direction in the final paragraph of this judgment, we invite the attention of all concerned that frivolous and vexatious litigation has to be discouraged at all costs. Hence, heavy costs have to be imposed on the parties like the petitioner who abuse this Court's Writ jurisdiction.

3. This not the first time that a Writ Petition is filed by this petitioner. As is evident and appearing from the record, prior to the present Petition, he had filed a civil suit. He has also filed a Writ Petition in this Court and seeking identical relief. We make a detailed reference to these proceedings in the latter part of the judgment. Suffice it to say that the petitioner is a resident of Sarola

(Bk.), Tq. and Dist. Osmanabad. Respondents 1, 2 and 3 are the authorities incharge of implementing the earlier law, namely, the Land Acquisition Act, 1894 and the successor legislation, namely, the Act of 2013.

4. The petitioner claims to be owner and possessor of gat no. 155 admeasuring 4 H and 94 R situate at the above village. The petitioner is well aware and therefore admits that in the year 1972, for the construction of Sanja – Kamegaon Road, the respondents took over possession of a portion of the land admeasuring 1 H 48 R from gat no. 155. The petitioner admits that the construction of the road was complete in the year 1973.

5. However, he relies upon a notification under section 4(1) of the then Land Acquisition Act, 1894 published in the Gazette on 13/06/1990 by which 41 R land out of gat no. 155 was proposed to be acquired. The petitioner states that the acquisition was for the purpose indicated in the notice. That was a public purpose namely construction and laying of a road from Sanja to Kamegaon. According to the petitioner, the contents of the

notification would belie the assertion of the respondents that this land of the petitioner was utilized for construction of the road. Be that as it may. The petitioner submitted his objection to that acquisition. However, the acquisition proceeded and eventually notices under section 9(3)(4) of the Land Acquisition Act were issued. The measurement was carried out. However, beyond this, no steps were taken for completing the acquisition in terms of the 1894 Act.

6. In paragraph 6 of the Writ Petition, the petitioner fairly states that he brought Regular Civil Suit no. 142 of 2002 in the Court of 3rd Joint Civil Judge Senior Division, Osmanabad, seeking direction against the respondents for completion of the acquisition proceedings. By judgment and order dated 13/08/2009, that suit was dismissed as not maintainable. Thereafter, the Writ Petition bearing no. 3038 of 2012 was filed in this Court. On 09/05/2012, this Writ Petition was partly allowed. Annexure "D" to the present Petition is a copy of the order of the Division Bench passed in Writ Petition no. 3038 of 2012. Pertinently, the petitioner argued in that Petition that the acquisition proceedings lapsed because of Section

11-A of the Land Acquisition Act, 1894. A Division Bench of this Court, in paragraphs no. 5, 6, 7, 8 and 9 held thus:-

“5] We have given careful consideration to the submissions. What is on record is the fact that the notification under Section 4(1) of the said Act was issued on 13th June, 1990 and on 14th August, 1992, notice under Section 9(3)(4) was issued by the respondent no.2. The fact that the notice under Section 9(3)(4) was issued shows that declaration under Section 6 of the said Act was made and published prior to 14th August, 1992. Section 11-A of the said Act reads thus:

"11A. Period within which an award shall be made -

(1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse.

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation : 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."

6] Thus, the legal effect of Sub-section (1) of Section 11-A is that the entire proceeding for the acquisition of the land in question shall lapse if the award under Section 11 is not made within a period of two years from the date of publication of declaration under Section 6. In the present case, the proceeding lapsed on completion of period of two years from the date on which declaration under Section 6 was published. The notice under Section 9 (3) (4) was issued on 14th August, 1992 and therefore, the declaration under Section 6 must have been published before the said date. In the present case, there is no dispute that award has not been made within a period of two years from the date on which publication of declaration under Section 6 of the said Act has been made. Therefore, there cannot be any dispute that the acquisition has lapsed.

7] The first prayer in the petition is for issuing a direction to the State Government to complete the acquisition proceedings by making an award. For that purpose, reliance was placed on judgment and order dated 8th August, 2011 in Writ Petition No.1372/2003. We have perused the said judgment. We find that the legal effect of Sub-section (1) of Section 11-A of automatic lapsing of the entire acquisition proceedings was not brought to the notice of this Court. Sub-section (1) of Section 11-A is very specific. Failure to make award under Section 11 has the effect of not only

invalidating the declaration under Section 6 but the entire proceedings from the stage of notification under Section 4(1) of the said Act lapses. Condition precedent for passing an award under Section 11 is the existence of legal and valid publication of notification under Section 4(1) and publication of declaration under Section 6 of the said Act. In absence of the said notification and said declaration, there is no power vesting in the Collector to declare an award under Section 11 of the said Act. In view of this legal position, the judgment and order dated 8th August, 2011 passed by this Court cannot be read as a binding precedent. Hence, we are unable to issue a writ to complete the acquisition proceeding which has already lapsed.

8] Thus, the sum and substance of the aforesaid discussion is that the acquisition has lapsed. We are not going to the question whether the possession of the land of the petitioner was taken prior to notification under Section 4(1) of the said Act. However, as the acquisition has lapsed, the logical consequence is that there is no vesting in the State Government and the acquired land will have to be returned to the person from whom the possession thereof was taken over.

9] However, it appears that the acquired land has been already put to use for a public purpose. Therefore, we deem it necessary to grant time to the State Government to initiate fresh acquisition

proceedings. As far as the compensation payable from the date of possession till the date of award under Section 11 of the said Act, if any, is concerned, it is for the petitioner to adopt appropriate remedy in that behalf. As possession was allegedly taken over prior to notification under Section 4(1), the compensation on the aforesaid count will be governed by the policy of the State regarding the grant of rental compensation. That will be in addition to compensation payable under the said Act, provided fresh acquisition proceeding is initiated.”

7. In paragraph 9 of the judgment, this Court termed the status of the land as acquired land. The Court was conscious and aware of the fact that the acquired land has already been utilized for a public purpose. That is why the Court deemed it necessary to grant time to the State to initiate fresh acquisition proceedings. As far as the compensation payable from the date of possession till the date of award under section 11 of the Act, if any, the petitioner was at liberty to adopt appropriate remedy. The Court recorded that the possession of the land was already taken. That is how the ultimate directions in paragraph 10 were issued. They read as under :-

“ 10] Hence, we pass the following order:

[i] We declare that the acquisition proceedings in respect of the land, more particularly described in paragraph no.3 of the petition, has lapsed.

[ii] We, therefore, reject the prayer for directing the State Government to complete the proceedings which were initiated earlier.

[iii] We grant time of six months from today to the State Government to initiate fresh acquisition proceedings by issuing notification under Section 4(1) of the said Act.

[iv] On failure of the State Government to issue a notification under Section 4(1) of the said Act within the stipulated period of six months from today, the respondent nos.1 to 3 shall restore the possession of the land to the petitioner or to the person from whom the same was taken over.

[v] We make it clear that it will be open for the petitioner to adopt appropriate remedy for seeking compensation from the date on which possession of the land was taken over till the date of award under Section 11 of the said Act, which may be made in fresh acquisition proceedings, if initiated.

[vi] Rule is made partly absolute on above terms with no order as to costs.”

8. The petitioner then addressed a letter to the Land Acquisition Officer on 16/07/2012 and requested him to take further steps. The petitioner then relies upon the Notification dated 27/07/2012. It is stated that the public purpose set out for the acquisition is a road known as “दौंड कास्ती बोरफळ रस्त्यासाठी भूसंपादन मौ. सारोळा (बुद्रुक)”. The petitioner then addressed another communication to this Land Acquisition Officer and stated that the notification has been issued on 27/07/2012 . A notice, after this notification, under section 4(1), was published and was received by the petitioner on 02/11/2012. It indicates that out of his total entitlement, 0.41 R land is proposed to be acquired for Daund Kasti Borphal road but that is incorrect. According to the petitioner, 1H 48R is the extent of the acquired land and the possession of the same is also taken by the authorities. Yet, no steps were taken to acquire the lands. That is how the petitioner relies upon the order dated 09/05/2012 of this Court in Writ Petition no. 3038/2012.

9. It is such a petitioner, who now claims the reliefs in terms of the prayer clauses reproduced above.

10. There is an affidavit-in-reply to this Petition affirmed by the Executive Engineer, Public Works Department, Osmanabad. In paragraph 4, 5 and 6 of the affidavit-in-reply, it is stated as under:-

“4. I say and submit that, it is not in dispute that, initially the land was taken in to possession by the Zilla Parishad, Osmanabad for construction of road i.e. Sanja – Kamegaon road of Petitioner's land from Gut No.155.

5. I say and submit that, the above construction of road was undertaken by the Zilla Parishad, Osmanabad under the scheme of E.G.S. in the year 1972. I say and submit that, it is pertinent to note here that, in the year 1972, there was drought in entire country as well as in the State of Maharashtra. In such a situation, the State of Maharashtra through Zilla Parishadas to provide employment had constructed above road. I say that, the above road had been transferred for maintenance and administration towards Public Works Department, Osmanabad after construction of the road. I say that, since the work undertaken by the Zilla Parishad was under the scheme of E.G.S. no acquisition proceedings were initiated by

that time. I say that, it is also not in dispute that, the Land Acquisition Officer, issued notice under section 4(1) for initiation of land acquisition proceeding of Petitioner's land on 13.6.1990. Since those proceedings could not be complete, the proceeding were lapsed.

6. I say and submit that, the Petitioner thereafter approached to the Civil Court, the Civil Court dismissed the suit. Petitioner thereafter filed Writ Petition No. 3038 of 2012. I say that, in the mean time, the Hon'ble Supreme Court pleased to delivered Judgment and hold that, the land taken in possession by the State authorities to provide employment under the scheme of E.G.S. in the year 1971-72 in a drought period are excluded from the land acquisition proceeding. I say that, on the basis of Judgment delivered by the Apex Court, Government of Maharashtra issued a Resolution dated 26.10.2010 and informed the Government decision that the land taken in possession in the year 1971-72 in drought situations, those are not required to pay compensation. Copy of Government Resolution dated 26.10.2010 is annexed herewith and marked as **EXHIBIT-R-1.**”

11. This stand of the Executive Engineer is reiterated in the affidavit of the Sub Divisional Officer & Land Acquisition Officer, Osmanabad at page 39 of the paperbook.

12. Both these affidavits rely heavily on the Government Resolution dated 26/10/2010. This Government Resolution is issued on the subject specifically raised before us and the foundation for the above reproduced reliefs in this Petition.

13. The Government had noticed that though lands were acquired for public purposes and the possession was taken in advance, the claims for compensation have been raised and after enormous delay by certain persons claiming to be persons interested. The purpose of the acquisition like the present one is to provide relief to the drought affected residents. In scarcity and famine situation, people lose their source of livelihood because on account of scanty rainfall, no agricultural operations can be undertaken. As a result, the lands remain uncultivated. As a further result, the means of livelihood of those dependent on

agriculture are in complete jeopardy. They do not have any source of income. It is to alleviate their sufferings and to give them some temporary relief that in a situation like the drought of 1971-72, the employment guarantee scheme and other welfare measures were initiated. Under the same, construction of roads was undertaken and at construction sites, rural population was employed. Once they get an opportunity to work at such sites they earn money, so also obtain other assistance and can then overcome the crisis. A drought and famine like situation can then be taken care of. It is in such situation, lands are taken over for a Public object. A twin purpose is served by such measures. The project work is completed and at the same time employment opportunity is created for the drought and famine affected. The people interested in such lands do not raise any claims and allow or sit by when their lands are taken over in the above situation. They wait for decades together. Once they wait for decades together, do not raise any claims for compensation, the lands are taken over and are in possession of the State body or a public official for decades together, such claims for compensation should not be entertained is the subject of the afore-referred Government Resolution.

14. We have not examined the legality and validity of this resolution, for it is not challenged. We are emphasizing that the petitioner was aware that such a resolution was issued. He never took any steps to challenge it either in the earlier Writ Petition or even in the present one. An affidavit with this categorical stand is filed by the State and duly served on petitioner's Advocate. Yet, no steps were taken to question the legality and validity of the Government Resolution or the stand in this affidavit.

15. It is in these circumstances, that we would have to appreciate the arguments of the petitioner's Advocate.

16. He relies upon judgment in the case of **Tukaram Kana Joshi and others through Power-of-Attorney holder Vs. Maharashtra Industrial Development Corporation and others** reported in **(2013) 1 S.C.C. 353** to submit that even if right to property is no longer a fundamental right, it is a constitutional right. Article 300-A of the Constitution of India recognizes the same. Secondly, it is also a human right. In the case before the Supreme

Court, there was complete inaction on the part of the authorities in completing the acquisition proceedings. Possession of the appellants' land was taken over in 1964. Section 4 Notification lapsed twice. The appellants repeatedly claimed compensation and were driven to file a writ petition 24 years later. That writ petition could not have been dismissed only on the ground of delay and laches, is the conclusion reached in this judgment and in the peculiar facts of that case.

17. We do not think we can rely upon this judgment and in the facts and circumstances of the present case. The petitioner has lost his land in the year 1971-72. Secondly, not the entire holding is lost but on the own showing of the petitioner, a acquisition Notification was issued for a portion thereof. Be that as it may. The road was constructed and in use since 1973. The possession was lost in 1971-72. The petitioner in filing the civil suit as also in a earlier Writ Petition did not question the State's reliance on the Government Resolution of 2010 referred above. He should have taken steps to challenge that Government Resolution in the Writ Petition instituted in the year 2012. He did nothing of this kind.

He went on arguing his case on the basis that it is the obligation of the State to acquire his land even after nearly 40 years of taking possession. Such a person who has no right, title and interest in the property goes around and files a civil suit, loses in that litigation and then comes in writ jurisdiction merely because a Notification under section 4(1) of the Land Acquisition Act was issued but the proceedings were allowed to be lapsed.

18. In this third round, the petitioner relies upon the Notice or Notification referred to in paragraph 8 above. However, this is a desperate attempt to challenge the alleged wrongful or illegal act of deprivation of the right, title, interest in the land admeasuring 1 H 41 R possession of which was taken away back in 1972. In the garb of relying upon this Court's order and questioning the events post the same, the petitioner is trying to get back his land. Even then, the fact remains that the petitioner has lost the land and his rights over it nearly 40 years back. It is a dead and stale claim which is sought to be revived. The only argument is that it is an inaction on the part of the State which has delayed the legal proceedings and hence, the petitioner has approached the Court belatedly. We are

not impressed by this argument for more than one reason. This argument comes from a party like the petitioner who has repeatedly come to this Court. He has knocked the doors of this Court earlier but having obtained no relief rather not succeeding in getting back the land, has turned around again and questioned the completed acts of the Government dating back to 40 years. He could not succeed on these very allegations in the earlier writ petition. He would like us to direct initiation of the process of acquisition but the Government has its own reasons in not acquiring the land. The Government may be at fault in not placing the complete facts earlier yet it is not the fault or lapse of the Government but the petitioner's conduct with which we are concerned. The present petitioner having completely slept over the matter, allowed the Government to take over and utilize his land, never successfully questioned the acts earlier is bold enough to approach the Court repeatedly. He has again raised the same issue. It is that very issue, which was subject matter of the civil suit and the earlier writ petition, raised again in this third attempt.

19. We see no reason to entertain such a litigation and no

judgment of the Supreme Court or this Court can be of any assistance to him. In the peculiar facts and circumstances, we feel that this is one of the grossest abuse of the process of this Court. The Writ Jurisdiction of this Court cannot be allowed to be utilized to revive a dead and stale claim and in this manner. We see no reason to grant any relief in this Petition. It is dismissed but with costs quantified at Rs.75,000/- (Rs. Seventy Five Thousand), which the petitioner shall pay to the Government within four (4) weeks from today, failing which they can be recovered as arrears of land revenue. Rule stands discharged.

[MANGESH S. PATIL]
JUDGE

[S.C. DHARMADHIKARI]
JUDGE

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