

BDPPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION (ST) NO.16810 OF 2016
IN
WRIT PETITION NO.1536 OF 1999
WITH
CIVIL APPLICATION NO.28650 OF 2016
IN
REVIEW PETITION (ST) NO.16810 OF 2016**

Sahebrao Gulabrao Dhamle
(Since deceased through his legal heirs)
1A. Shankar Sahebrao Dhamle & Ors.Petitioners

V/s

The Special Land Acquisition Office No.1
and Others Respondents.

Mr. Shriram Kulkarni i/b Mr. Pranav H. Bhoite for the Applicants.
None for the Respondents.

**CORAM: V.M. KANADE &
B.P. COLABAWALLA, J.
(In Chamber at 2.40 P.M.)**

DATE: 28th February, 2017

P.C.:-

1] Petitioners have filed the Petition in 1999 challenging the acquisition proceedings on various grounds. It was inter alia contended that under the Resettlement Act, the land was acquired and the Petitioners, apart from compensation, were entitled to get other

benefits viz alternate land in the benefited zone in lieu of the land which was acquired.

2] By the order which is under review, this Court has held that the land was acquired under the Land Acquisition Act and not under Resettlement Act. This Court also repelled the other contentions raised by the Petitioners and upheld the acquisition.

3] It is now submitted that since the compensation of the land is not taken under the provisions of section 24(2), this Court can quash and set aside the Award which was passed under the Land Acquisition Act. It is also contended that the compensation is also not paid to the Petitioners.

4] In our view, it is not open for the Petitioners to raise this contention in this review petition. In the present case, Petitioners also had obtained an order from civil court where decree was passed for setting aside the said acquisition. We had observed that in view of the settled position in law the award can be set aside only by the High Court while exercising its writ jurisdiction under Article 226 of the Constitution of India and not by way of a civil suit. The new ground that possession is not taken has been raised for the first time and it was not so raised when the Petition was filed in 1999 since at that time, the amended Act had not come into force. This ground was also not urged before us when the matter was heard on merits. It is a

settled position in law that the point which is not raised earlier cannot be raised in Review Petition. Apart from this, we also cannot go into the factual aspect as to whether the compensation was paid to the Petitioners or not at this stage in the Review Petition.

5] We are therefore not inclined to review our order. Reserving the right of the Petitioners to challenge the said order, Review Petition is dismissed.

6] Since Review Petition itself is dismissed, Civil Application No.28650 OF 2016 does not survive and the same is also disposed of.

(B.P. COLABAWALLA, J.)

(V. M. KANADE, J.)