

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**WRIT PETITION NO. 3114 OF 2017**

Shaikh Ismail Aminsab

.. **Petitioner**

**Versus**

The State of Maharashtra and others

.. **Respondents**

Shri Shrikant B. Madde, Advocate for the Petitioner.

Mrs. A. V. Gondhalekar, Addl. G. P. for Respondents.

**CORAM : S. V. GANGAPURWALA &  
A. M. DHAVAL, JJ.**

**DATE : 16<sup>th</sup> April, 2018**

**PER COURT :**

1. Mr. Madde, learned counsel for the petitioner submits that the respondents had issued notification under section 4 of the Land Acquisition Act, 1894 (hereinafter referred to 'the Act') on 2<sup>nd</sup> January, 2007, in respect of 82 Are land owned by the petitioner. Under section 6 of the Act declaration was issued on 18<sup>th</sup> July, 2008, thereby making it clear that they are acquiring 82 Are land of the petitioner. Subsequently, the award is passed only in respect of 52 Are land. Once notification under section 4

and declaration under section 6 of the Act are issued by the Government for 82 Are land, they are duty bound to acquire 82 Are land and pay compensation for 82 Are land. The learned counsel relies on the Judgment of the Apex Court in a case of **Ramniklal N. Bhutta Vs. State of Maharashtra** reported in **1997 (1) SCC 134**.

2. Mrs. Gondhalekar, learned Additional Government Pleader submits that 30 Are land of the petitioner was meant for crematorium and the section of the community has an easementary right over it. Much prior to 1988, the land is used for crematorium of a particular community and easementary right is created in them. As such, the award could not have been passed for 82 Are land.

3. We have considered the submissions canvassed by the learned counsel for respective parties.

4. It appears that declaration under section 6 of the Act was issued for acquisition of 82 Are land of the petitioner bearing Gat No. 2 situated at Bhatkheda, Taluka and District - Latur. The

petitioner owned 82 Are land out of said Gat No. 2. However, the award is subsequently passed for 52 Are land. The 7/12 extract produced by the petitioner on record clearly shows that 30 Are land is meant for crematorium. The purpose of acquisition was crematorium and 30 Are land was already used for crematorium prior to 1988, as such, the same was not required. Easementary right was created in respect of the said 30 Are land. When the part of the land was already used for crematorium prior to 1988, there was no need to acquire the land for crematorium.

5. In view of that, the Judgment relied by the learned counsel for the petitioner of the Apex Court in a case of **Ramnislal N. Bhutta Vs. State of Maharashtra** (*supra*) may not squarely apply.

6. It would appear that the land does not vest with the Government though easementary right is created on the 30 Are land. Even the petitioner would not be entitled to use that land in perpetuity. The anomalous situation would be created. The petitioner would not be in a position to use and enjoy the land as easementary right is already created over it and the same is

being used for crematorium since time immemorial and at the same time the State will not acquire right over the property. To remove the deadlock, it would be appropriate if some lump-sum amount is paid to the petitioner as compensation, as he is deprived of the use and enjoyment of the said property and that the property also would vest with the Government on payment of the compensation amount.

7. The land, which is used for crematorium since time immemorial its market value, cannot be determined and in view of that, we are passing this order of granting lump-sum compensation.

8. In view of that, we pass the following order.

9. Considering the fact that prior to 1988, the land is being used for crematorium, we direct the State to make lump-sum payment of compensation of Rs. 50,000/- (Rs. Fifty Thousand only) to the petitioner for the 30 Are land. The said amount be paid expeditiously and preferably within three (3) months. On payment of the said amount the land shall vest with

the State and be used for crematorium and the name of the State be recorded accordingly for the said land.

10. The writ petition accordingly stands disposed of. No costs.

**[A. M. DHAVAL, J.]**

**[S. V. GANGAPURWALA, J.]**

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