**IN THE HIGH COURT AT BOMBAY**
**APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 5712 OF 2003
WITH
CIVIL APPLICATION NO. 2046 OF 2012
WITH
CIVIL APPLICATION NO. 634 OF 2004

Balaji Amines Limited,
A Registered Public Limited
Company having its Registered
Office at Balaji Bhavan,
165/A, Railway Lines,
Solapur and factory
located at Tamalwadi,
Post Tuljapur, Tal. Tuljapur,
Dist. Osmanabad. **....Petitioner.**

**Versus**

1. The State of Maharashtra
Irrigation Dept., Mantralaya,
Mumbai.

2. The Collector, Osmanabad,
Dist. Osmanabad.

3. The Sub Divisional Officer,
Minor Irrigation Sub Division,
Tuljapur, Tal. Tuljapur,
Dist. Osmanabad.

4. Special Land Acquisition Officer,
Medium Project No. 2,
Osmanabad, Dist. Osmanabad.

5. The Maharashtra Krishna Khore
Development Corporation
Through its Superintending Engineer,
Circle Office, Krishna Kore,
Osmanabad. **....Respondents.**

Mr. Ajit B. Kale, Advocate for petitioner.

Mr. M.M. Nerlikar, AGP for respondent/State.

Mr. G.B. Rajale, Advocate for respondent No. 5.
Mr. G.G. Kadam, Advocate for intervenors.

**CORAM : T.V. NALAWADE AND SUNIL K. KOTWAL, JJ.**
**DATED : APRIL 26, 2018.**

**JUDGMENT : [PER T.V. NALAWADE, J.]**

1) The petition is filed under Article 226 and 227 of the Constitution of India and also under provisions of the Land Acquisition Act, 1984 for issuing writ of following nature against the respondents :-

(i) To direct the respondents to allow the petitioner to continue to use the water from the well and bore wells situated in the land Gat No. 201 of village Tamalwadi, Tahsil Tuljapur, District Osmanabad;

(ii) To restrain respondents from claiming the bills in respect of use of water from aforesaid sources by the petitioner company; and

(iii) To direct the respondents to refund the amount of Rs.5,18,765/- already recovered by the respondents as charges under name water tax and prevent respondents from raising such bills in future.

2) It appears that in the year 2016 application for amendment was moved in writ petition for adding more reliefs like

declaration that the award of acquisition made is null and void and the proceeding of acquisition has lapsed. Though the amendment was allowed on 27.6.2016, the amendment is not effected in the main proceeding. However, the learned counsel for the petitioner was allowed to argue on the entitlement of the petitioner to get such relief. Both the sides are heard.

3) The petitioner is registered as public limited company and it is engaged in manufacture and export of chemical substance. For manufacturing process, the petitioner company requires atleast three lakh liters of water every day as the water is required at every stage of chemical process. Hundreds of workers are working in the factory of petitioner company. Land Gat No. 201 admeasuring 30 R. was owned by the petitioner company and in this land, the company had taken well and four bore wells. The water from this source was utilized by the company in the past.

4) It is not mentioned in the petition by the petitioner that in the year 1999 itself, by way of negotiations, land Gat No. 201 of the petitioner was acquired for construction of dam. It is the contention of the petitioner that in the year 2000, notification under section 4 (1) of the Land Acquisition Act was issued and after that within the prescribed time, subsequent steps like notification under

section 6 etc. were not taken and the award was also not passed within prescribed period.

5) It is the contention of the petitioner that in the year 2001, respondent Irrigation Department of the State Government issued notice to it and asked it to pay the water tax of Rs.1,70,940/-. It is contended that due to threat of stoppage of water supply, company started making payment and till the date of petition, total amount of more than Rs.5,00,000/- as mentioned by the petitioner is paid by the petitioner company. It is the case of the petitioner that the petitioner is legal owner of Gat No. 201 and it is entitled to get the water from the well and the bore wells taken in the said land and Irrigation Department has no authority to claim water tax in respect of the water taken from those sources.

6) The respondents have filed reply affidavit and they have denied the aforesaid contentions. It is contended that necessary procedure was followed for acquisition and the land was taken in possession as per the private negotiations well back prior to the date of first notification. It is the contention of the respondents that the compensation amount was assessed in respect of well and bore wells etc. and as the petitioner continued to take water from one well and three bore wells, which were in the land Gat No. 201 by installing

electric motors and by laying pipeline, it became liable to pay water charges as it was using the water of respondents. It is contended that before taking steps meeting was held in the office of Collector in which the petitioner was advised to give necessary application as per the procedure laid down in the Maharashtra Irrigation Act, 1976, but the petitioner did not give such application and it continued to lift water from the source which was belonging to the respondents. It is contended that as the storage tank came to be constructed for public utility and the water was used for industrial activity by the petitioner, the petitioner was liable to pay water tax as per the charges fixed by the Government under aforesaid Act. It is the case of the respondents that the tax was levied in respect of the period when the water was available in the dam and no tax was levied when the dam was dry.

7) The record which include copy of final award prepared by the Special Land Acquisition Officer shows that entire land required for dam was taken over by private negotiations in the year 1999-2000. The award shows that by way of provisional compensation amount sanctioned was of Rs. 47,34,123/- and on the date of award i.e. on 14.3.2006 amount of Rs. 75,38,984/- was payable to the persons who had lost the land in the project. Though these circumstances are there, the learned counsel for petitioner

submitted that necessary procedure was not followed for acquisition. In this regard, there is one more important document like reference filed by the petitioner after passing of the award and in the reference, there is mention that the petitioner was accepting even the amount deposited after making of final award by the Special Land Acquisition Officer.

8) The provisions of Amended Land Acquisition Act, 2003 came in to force on 1.1.2014. Prior to that date, the possession was taken over and even provisional compensation was paid. Final award was also passed much prior to 1.1.2014. Due to these factual aspects, it was not possible for the petitioner to challenge the acquisition proceeding. In any case, on facts also, there are no merits in the present proceeding. The first notification under section 4 (1) was published on 6.5.2000 and the first notification under section 6 was published on 7.3.2001. The notification under section 6 was published locally on 29.3.2004 and the award came to be prepared on 14.3.2006. Thus, the procedure which is given in the Land Acquisition Act, 1894 was followed. On this point, the learned counsel for petitioner placed reliance on some observations made by this Court in the case reported as **2008 (Supp. 1) Bom.C.R. 415 [Ramrao Pralhadrao Deshmukh & Ors. Vs. State of Maharashtra and Ors.]**. This Court has carefully gone through the

facts of the reported case. The facts were totally different and this Court came to the conclusion that the panchanama of publication of declaration in village by beats of drums was dated 9.8.1990 when there was one more panchanama for the same thing dated 28.11.1991. In view of the peculiar circumstances, this Court held that an attempt was made by the authority to show that the proceeding was within limitation. Reliance was also placed on some observations made in the case reported as **AIR 2007 SC 1675 [Kunwar Pal Singh Vs. State of U.P. and Ors.]**. In this case, the Apex Court has laid down that the period given in section 6 (2) of the Land Acquisition Act needs to be counted from the date of last publication of section 6 declaration as per the modes of publication given in section 6 (2). There cannot be dispute over this proposition and the relevant facts of the present matter are already quoted Similar observations are there in the case reported as **AIR 2009 SC (Supp) 1952 [Vijay Narayan Thatte and Ors. Vs. State of Maharashtra and Ors.]**. Thus, there are no merits in the challenge to the acquisition.

9) The learned counsel for petitioner then submitted that the petitioner had made alternate arrangement for collecting water from private contractor and he had taken bore wells in other portion of the land available with the petitioner. He submitted that there are

bills with him showing that he had paid to the contractor as the contractor had supplied water to the petitioner by using tankers. In this regard, it can be said that present petition was filed in the year 2003 and the interim relief was granted in favour of the petitioner. Due to interim relief, the respondents were prevented from stopping the petitioner from collecting the water from aforesaid sources. Due to that, it needs to be presumed that the petitioner continued to take water from the dam of the respondents.

10) Further, there is record of inquiry showing that when visit was paid, there was pipeline up to boundary wall touching the water of the tank. Though the well and bore wells are submerged in the tank, the submersible pumps are used by the petitioner as per the record. When the petitioner has contended in various proceedings that he was required to take atleast three lakh liters of water every day from the well and on that basis, he had claimed compensation, the petitioner cannot turn back and petitioner cannot say that such quantity cannot be considered for ascertaining the charges in respect of use of water. The respondents have produced the record showing the calculation of charges made by it. At 11th hour the petitioner is challenging the quantity of water, which was used by it when after filing of the petition, the petitioner prayed for interim relief and it was given to prevent the respondents from taking action against the

petitioner in respect of collection of water from aforesaid sources. In any case, in view of the provisions of Maharashtra Electricity Act, 1975, there is dam and the water which the petitioner is receiving can be called as canal water. The provision of section 54 shows that even when the source of water like bore well is situated away from the dam, but it is near the canal within the distance of 35 meters, the person can be charged for use of the water and that amount can be determined by the authority created under the Act. Admittedly, the water is being used for industrial purpose and so, the petitioner cannot avoid the liability to pay the charges in respect of the water. There is record like complaint received against the petitioner in that regard. The learned counsel for petitioner submitted that the wife of one officer of the respondent department was member of the association of the persons who were benefited due to the tank and the said officer saw to it that such complaints were made. This contention cannot be accepted. This Court is bound by the pleadings which are there in the petition and this Court has considered the pleadings for deciding the matter.

11) It can be said that due to interim orders made by this Court, the petitioner enjoyed the facility and did not make the payment of the charges which can be recovered from the petitioner. The submissions made by the respondents show that in the year

2012 the figure of the amount due had crossed Rs.83,00,000/-. Thus, at present the figure must have crossed the amount of Rs.1,00,00,000/-. It can be said that the petitioner must have increased the activity and so, the use of water must have been increased. It can be said that the petitioner has misused the process of law and by taking interim relief, the petitioner used the water in industrial activity, which was kept for public, but it avoided to make payment. Some data is given by the respondents to support the contention that the water was actually used. The data contains the water available, water lapsed due to evaporation and water used for other purpose and then inference is also drawn that remaining water was used by petitioner company which is adjacent to the storage tank. In any case, when the petitioner company has admitted that in the past, it's need was more than three lakh liters per day, it can be presumed that the need increased every year. The petitioner did not approach this Court to submit that it had started taking water from other sources and it was not collecting the water from tank and so, this contention made at 11th hour cannot be considered. In the result, the petition stands dismissed. Civil Applications, if any, are disposed of. Interim relief stands vacated.

**[ SUNIL K. KOTWAL, J.]** **[T.V. NALAWADE, J.]**

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