

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

WRIT PETITION NO. 5312 OF 2017

Sumit S/o Ashokkumar Bharadiya
Age : 28 yrs, Occ: Agriculture,
R/o. Mantri Colony, Subhash Road,
Beed, Tal & Dist. Beed.

...Petitioner

Versus

1. The Union of India,
THROUGH the Principal Secretary,
Department of Railways, Rail Bhavan,
New Delhi.
2. The General Manager,
Central Railways, Mumbai.
3. The Chief Engineer (Construction),
(Proposed Ahmednagar-Beed-Parli(V)
Railway Line), Central Railways, Pune.
4. The Engineer (Railways)
Proposed Ahmednagar-Beed-Parli(V)
Railwayline, Ahmednagar.
5. The State of Maharashtra,
Through the Secretary,
Revenue Department,
Mantralaya, Mumbai.
6. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
7. The Collector,
Beed District, Beed.
8. The Dy Collector,
Land Acquisition,
Jayakwadi Project, Beed

9. The Superintendent,
Land Records, Beed. ...Respondents

Mr. R.R. Mantri, Advocate for Petitioner
Mr. M.N. Navandar, Advocate for Respondent Nos. 1 to 4
Mr. A.R. Kale, Assistant Government Pleader for Respondent
Nos. 5 to 9

**CORAM : PRASANA B. VARALE AND
MANISH PITALE, JJ.**

**RESERVED ON : 20TH AUGUST, 2018
PRONOUNCED ON : 29TH AUGUST, 2018**

JUDGMENT (Per Manish Pitale, J.)

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.
2. The petitioner herein has claimed that the Railway Authorities represented by respondent Nos. 1 to 4 herein have encroached upon part of the land belonging to him by undertaking construction of Ahmednagar-Beed-Parali railway line through the said portion of his land, for which neither any acquisition proceeding was undertaken nor was any compensation paid to him.
3. Initially, it was the prayer of the petitioner that the

said respondents be prohibited from carrying out any work pertaining to laying down said railway line, but, by way of amendment, petitioner has submitted that if said portion of land is required for railways, he would give up his claim to that portion of the land, provided he is paid compensation in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “the Act of 2013”).

4. The petitioner purchased 2.68 hectares of land in Block 68 (old), new Block No.69 village Palwan, Taluka and Dist. Beed, by a registered sale deed on 30.01.2009. It was the case of the petitioner that prior to purchasing the said land from one Sayyad Badshah Sayyad Gulab, he held a power of attorney of the said vendor, on the basis of which he had applied for and obtained an order of conversion of the said land to non-agricultural use.

5. It has come on record that notification for acquisition of one hectare 17 R land from the said Block No.68/69 was issued under section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as “the L.A. Act”) first on 18.12.2008 and lastly on 04.02.2009. Thereafter, notification under

section 6 of the L.A. Act was issued and finally award dated 04.11.2011 was declared by the competent authority. In the notifications and in the said award, it was stated that the aforesaid portion of land from Block No. 68/69 owned by one Sudamati Vishwanath Prabhale and others was acquired. There was no mention of any other owner from the said Block 68/69 and name of only the said Sudamati Vishwanath Prabhale was specifically stated in the said documents. It is the case of the petitioner that no notices were ever issued to the petitioner and other similarly situated persons and that therefore, the entire exercise carried out by respondent Nos. 5 to 9 was illegal and there had been no acquisition of the land belonging to petitioner in the eyes of law.

6. It was claimed by the petitioner that when the railway authorities first entered upon portion of land belonging to him in Block No. 68/69 that he became aware about the aforesaid railway line passing through his land, and the claim staked by the authorities on that portion of his land.

7. In this backdrop, on 16.11.2015, the petitioner sent a letter to respondent No. 8 (Dy. Collector, Land Acquisition)

demanding grant of compensation for the portion of his land sought to be utilized for laying down the said railway line. On this basis, the said respondent sent a letter to respondent No. 9 for remeasurement of the land in Block No. 68/69, so as to ascertain the area of land being utilized for laying down the railway line.

8. On 04.04.2016, petitioner sent a detailed representation to respondent No.7 (Collector, Beed) seeking compensation for part of his land being utilized by the railway authorities, under the provisions of the Act of 2013. On 07.01.2017, the petitioner sent a representation to respondent No. 8 for remeasurement of the land to ascertain the exact extent to which the land of the petitioner was being utilized for laying down the railway line.

9. Thereafter, on 02.02.2017, the said Sudamati Vishwanath Prabhale sent a letter to the respondent No. 8 stating that the record of rights (7/12 extract) of Block No. 68/69 was showing one hectare 17 R land as belonging to her, which stood acquired for work of railway line. She stated that she had only 0.03 hectare land in the acquired

portion from Block No.68/69 and that even for that area of land, she had not received any compensation. She further stated that other parts of the land belonged to the petitioner and other persons. In this backdrop, she requested that remeasurement of Block No. 68/69 be done so that huge area shown as belonging to her and acquired for the said purpose, would stand corrected in the record of rights.

10. As no steps were being taken by the respondents on the representations submitted by the petitioner and the said Sudamati Vishwanath Prabhale, the petitioner filed the present writ petition No.5312/2017 praying for remeasurement of Block No.68/69 and for prohibiting the railways from carrying out work of railway line in the land belonging to the petitioner.

11. As noted above, the writ petition was subsequently amended, by the petitioner stating that he was ready to give up his claim to the portion of land in which railway line was being laid, subject to his right of receiving just and fair compensation under the provisions of the Act of 2013.

12. In response to the notice issued by this Court, the respondent Nos. 1 to 4 representing railway authorities filed their reply-affidavit stating that if there had been any mistake in the recording of the names of owners in the award, it was the responsibility of the State Authorities, which had undertaken the process of acquisition of the said land. It was conceded that even the said Sudamati Vishwanath Prabhale had not been paid compensation. The respondent No.9 filed its reply stating that joint measurement was conducted in the year 2005 and later it was also conducted in the year 2010, and further that land belonging to Sudamati and others was acquired from Block No.68/69. It was stated that reameasurement of the land could not be conducted because the representative of the railways did not remain present despite notice.

13. The respondent Nos. 7 and 8 i.e. Collector, Beed and the Dy. Collector, Land Acquisition filed their reply stating that the objection to the acquisition of land raised on behalf of the petitioner was belated. It was claimed that when the first notification under section 4 of the L.A. Act was issued on 18.02.2008, the sale deed executed in favour of the

petitioner on 30.01.2009 was illegal, null and void. It was pointed out that after a direction of remeasurement given by this court by order dated 20.02.2018, remeasurement was now carried out, wherein it was found that land belonging to the petitioner to the extent of 0.82 R was being utilized for the purposes of laying down the railway line. It was submitted on behalf of the said respondents that since the correction of mistakes in the award could not be made at such a belated stage, the writ petition deserved to be dismissed.

14. Mr. R.R. Mantri, learned counsel appearing for the petitioner submitted that under section 4 of the L.A. Act, a notification can be published on various dates, but the last of the dates of such publication is taken as the date of the notification. It was contended that when the last date of publication of notification under section 4 of the L.A. Act in the present case was also admittedly 04.02.2009, the sale deed dated 30.01.2009 executed in favour of the petitioner, was definitely prior to the notification.

15. It was submitted that mutation entries had been made in pursuance of execution of the aforesaid sale deed dated

30.01.2009 and that therefore, there was no substance in the contention raised on behalf of the respondents that the petitioner could have no concern with the land in Block No.68/69. It was further contended that a perusal of the entire award dated 04.11.2011 and the documents connected therewith shows that no notice was ever issued to the petitioner and other similarly situated owners of land in Block No. 68/69, which consisted of 8 hectares 15R land. The award and the documents consistently mentioned the name only of Sudamati Vishwanath Prabhale and others as the owners. There was nothing to show in the said documents as to who were the other owners and whether they had been put to notice regarding the acquisition proceedings undertaken by the respondent/State. It was also contended that neither compensation was paid, nor possession of the land belonging to the petitioner was ever taken by the respondents till the work of laying down the railway line was initiated in November, 2015. On this basis, it was contended that the award did not pertain to the land belonging to the petitioner at all, and that therefore, in absence of valid acquisition proceedings and payment of compensation, the respondents could not have utilized

0.82R land of the petitioner for laying down the railway line.

16. It was further contended on behalf of the petitioner that the respondents were liable to compensate the petitioner to the extent of 0.82R of his land under the provisions of the Act of 2013. It was contended that Section 24 (2) of the Act of 2013 applied to the facts of the present case, particularly the proviso thereto and that even if the said earlier acquisition proceedings were taken into consideration they had obviously lapsed and the respondents were liable to compensate the petitioner under the provisions of the Act of 2013. It was further contended that there had been instances when the Hon'ble Supreme Court had held that if it was found that acquisition proceedings were unsustainable and yet the land was required for national development work, instead of quashing the entire proceeding, the land owner was granted compensation calculated on the date on which possession was actually taken from said land owner. It was submitted that the respondents were certainly liable to compensate the petitioner from the date in November, 2015 when his possession to the extent of 0.82R land was actually

disturbed by respondents under the Act of 2013. The learned counsel placed reliance on the Judgment of the Hon'ble Supreme in the case of **Competent Authority Vs. Barangore Jute Factory and others (2005) 13 SCC 477** and Judgments of this Court in the case of **Kashid Narayanrao Aatmaram and others Vs. The State of Maharashtra and others (Writ Petition No.11338/2016 decided on 14.06.2017)** and Judgment of this Court of **Umesh Board Paper Mills Pvt.Ltd. Vs. The Union of India and others (Writ Petition No. 11738/2017 decided on 16.03.2018)**.

17. On the other hand, Mr. M.N. Navandar, learned counsel appearing for the respondent Nos. 1 to 4 and Mr. A.R. Kale, learned Assistant Government Pleader appearing for respondent Nos. 5 to 9 submitted that the writ petition was devoid of any merit, as it was highly belated and that such a belated challenge to the acquisition proceedings and award dated 04.11.2011, ought not to be entertained in writ jurisdiction by this Court. It was submitted that the petitioner could not be said to be owner of the land when the notification under section 4 of the L.A. Act was first

issued on 18.12.2008 and therefore, he had no locus to file writ petition. It was further submitted that if there was any grievance in respect of quantum of compensation, the appropriate forum was the Reference Court under section 18 of the L.A. Act. The counsel further submitted that the land in question was acquired much earlier and development work of the railway line could not be stalled at the behest of the petitioner at this point in time. It was submitted that section 24(2) of the Act of 2013 did not apply to the facts of the present case and that the Judgments of this Court relied on by the petitioner were distinguishable on facts. On this basis, it was submitted that the writ petition deserved to be dismissed.

18. Heard counsel of the parties. In order to decide whether the petitioner is entitled to any relief in the present case, it is necessary to peruse the award dated 04.11.2011 pertaining to acquisition of part of land in Block No.68/69. A perusal of the same shows that only the name of Sudamati Vishwanath Prabhale has been mentioned as owner of land acquired from Block No.68/69, along with others. There is no specification of names of "others", anywhere in the said

award or the documents connected therewith. It is also evident from the documents pertaining to the award that there is nothing to show about payment of compensation to either the petitioner or his predecessor in title for acquisition of land in Block No. 68/69. Even with regard to the notices issued under section 12 (2) of the L.A. Act, it is seen that notice was issued only to Sudamati Vishwanath Prabhale for Block No. 68 pertaining to area of 1.17 hectares, which appears to have been received by Vishwanath. There is no other person put to notice with regard to Block No.68/69. There is also nothing to show that compensation was actually paid to the said Sudamati Vishwanath Prabhale, much less to any other person owning land in Block No. 68/69. In other words, there is nothing on record to show that either the petitioner or his predecessor in title were put to notice with regard to the said acquisition proceedings culminating in the award dated 04.11.2011.

19. In this context, the objection raised on behalf of the respondents that the petitioner had no locus in the present matter because he had purchased the land in question on 30.01.2009 while notification under section 4 of the L.A. Act

was issued on 18.12.2008, is without any substance because the last occasion when the said notification was published was on 04.02.2009. It was after the sale deed dated 30.01.2009 was executed in favour of the petitioner in respect of the land in Block No. 68/69. Thus, the said objection is found to be without any substance.

20. Even otherwise, the Hon'ble Supreme Court has held in the case of ***K.N. Aswattnaryana Setty V/s. State of Karnataka (2014) 15 SCC 394***, that if a person purchases land after issuance of Notification under section 4 of the L.A. Act, he would be entitled to compensation for acquisition as he enters the shoes of the erstwhile owner. This further demonstrates that the objection raised on behalf of the respondents is untenable.

21. In this backdrop, as noted above, there is nothing on record to show that the petitioner or his predecessor were ever put to notice in the instant case regarding acquisition of land and therefore, the respondents are not entitled to claim that the challenge raised in the present writ petition is belated. It is the specific case of the petitioner that when his possession in the land was disturbed, he immediately sent a

representation on 16.11.2015 seeking compensation and measurement of his portion of the land.

22. A perusal of the award dated 04.11.2011 also shows that possession of the acquired land was not actually taken immediately upon declaration of the award. There is nothing on record to show that the possession of the petitioner was ever disturbed before 16.11.2015 when the petitioner raised the issue with the respondent No. 8, Dy. Collector, Land Acquisition.

23. On the basis of the documents on record, including the said award, it is found that the petitioner or his predecessor in title were never put to notice about the acquisition proceeding pertaining to land in Block No.68/69, which culminated in declaration of award dated 04.11.2011. The name of the petitioner or his predecessor in title does not find mention in any of the documents pertaining to the said notifications and award passed by the respondent No.8 for acquisition of the land from Block No.68/69. Consequently, there is nothing to show that either compensation was paid to the petitioner or his predecessor and further that possession was ever taken from the petitioner of any

portion of land belonging to him in Block No.68/69 after the award was declared on 04.11.2011.

24. In these circumstances, it would not be necessary to examine whether the acquisition proceeding concerning award dated 04.11.2011 stood lapsed in the case of the petitioner. The documents on record show that, in so far as the petitioner is concerned, there was no process undertaken by the concerned respondents, as recognized by law, for acquisition of any portion of the land belonging to the petitioner in Block No. 68/69. The question that would arise for consideration in these circumstances is, as to whether what would be the nature of relief to which the petitioner would be entitled.

25. In the case of *Umesh Board Paper Mills Pvt.Ltd. Vs. The Union of India and others (supra)*, a Division Bench of this Court found that when there was no provision for amending the award wherein mistakes were found regarding names of land owners or description of property, the notifications and the award would be liable to be set aside, but since the land in question which was subject matter of the acquisition was required for developmental

and public purpose, the right of the land owner could be vindicated by directing the concerned authorities to pay compensation to such land owner as per market value on the date when possession was taken.

26. Similarly, in case of *Kashid Narayanrao Aatmaram and others Vs. The State of Maharashtra and others (supra)*, another Division Bench of this Court, while considering the question of acquisition of land for the same Ahmednagar-Beed-Parali railway line, found that when compensation was not disbursed to the land owner despite his land being taken for such project, the respondent authorities were liable to pay compensation to the land owner under the provisions of the Act of 2013.

27. In the case of *Competent Authority Vs. Barangore Jute Factory and others (supra)*, the Hon'ble Supreme Court found that normally compensation is determined as per the market price of land on the date of issuance of notification for acquisition of land. But, it was found in the said Judgment that when quashing of notifications or award was necessary as the land owner had demonstrated illegalities committed by the concerned authorities, but the acquisition

concerned development projects of public interest, the court could shift the date which would be bench mark for determining the quantum of compensation payable to such a land owner.

28. The position of law that emerges from the aforesaid precedents relied upon by the petitioner shows that even if glaring illegalities and deficiencies were demonstrated in the manner in which the land of the petitioner was sought to be taken by the respondent authorities, since the purpose for which the land was taken was of immense public interest and development, instead of setting aside the entire process of acquisition, it was in the interest of justice that direction be given to pay compensation to the petitioner by taking into consideration the date of dispossession as the date for determination of market value of the land in question.

29. The facts that have emerged from the record of the present case show that while the petitioner is owner of 2.68 hectares of land from Block No. 68/69, land to the extent of 0.82R from the same land has been taken and is required by respondent Nos. 1 to 4 for aforesaid railway line. The

petitioner stood dispossessed immediately prior to 16.11.2015, when he first wrote to the respondent No.8 regarding grant of compensation and measurement of his land. In fact, by letter dated 08.12.2015, the respondent No. 8 directed the respondent No.9 to remeasure the land in question. But, the said exercise was not undertaken by the respondent No.9. It was only after writ petition was filed and this Court specifically gave direction to the respondents that such exercise of remeasurement was undertaken, which revealed that 0.82R land belonging to petitioner had been taken by the respondents for the purpose of the said railway line.

30. In these circumstances, 16.11.2015 can be taken as the date on which the petitioner stood dispossessed by the respondents and following the above mentioned position of law laid down by Hon'ble Supreme Court and this Court, it would be in the interest of justice that direction is given to the respondents to determine compensation payable to the petitioner for 0.82R land from Block No.68/69 to be determined as on 16.11.2015, when the petitioner stood dispossessed. The compensation payable to the petitioner

for the said piece of land shall be under the provisions of the Act of 2013, which had already come into force prior to 16.11.2015.

31. In the light of the above, the writ petition is allowed in the following terms;

(i) The respondents shall undertake the exercise of determination of compensation payable to the petitioner for 0.82 R land in Block No. 68/69, village Palwan, taluka and Dist. Beed, under the provisions of the Act of 2013.

(ii) The quantum shall be determined under the provisions of the Act of 2013 payable as on 16.11.2015, being the date of determination of fair market value and consequent compensation payable to the petitioner. The said exercise shall be completed expeditiously and in any case within a period of six months from the date of this order.

(iii) Upon determination of such quantum of compensation, the same shall be paid to the petitioner within three months of completion of the aforesaid exercise.

(iv) In the light of the above, prayer (C) made in the writ petition is rejected and consequently the petitioner shall not interfere with the work of the aforesaid railway line in the above mentioned 0.82 R land in Block No. 68/69.

(v) Rule is made absolute in above terms.

(MANISH PITALE, J.) (PRASANNA B. VARALE, J.)

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