

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

WRIT PETITION NO.9088 OF 2016

Tulshiram S/o. Maroti Dhumal,
Age-75 years, Occu-Agriculture,
R/o. Hathehjungpura, Nanded

...PETITIONER

VERSUS

1. State of Maharashtra,
Through Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-400 032
2. The Secretary,
Department of Urban Development,
Mantralaya, Mumbai-400 032
3. The District Collector,
Dist. Nanded
4. The Deputy Collector,
Land Acquisition Peculation Tank,
Minor Irrigation Division No.2
Nanded Waghela, Nanded
5. The Executive Engineer,
Public Works Division
Nanded, Tq. & Dist. Nanded

...RESPONDENTS

Mr.Pawankumar S. Agrawal, Advocate for the petitioner
Mr.S.B.Yawalkar, AGP for the respondent/State

WITH

WRIT PETITION NO.10894 OF 2016

Nandkumar S/o. Ramrao Vaidya
Age-51 years, Occu-Business,
R/o. Shrinagar, Nanded
Tq. & Dist. Nanded

...PETITIONER

VERSUS

1. State of Maharashtra,
Through Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-400 032
2. The Secretary,
Department of Urban Development,
Mantralaya, Mumbai-400 032
3. The District Collector,
Dist. Nanded
4. The Deputy Collector,
Land Acquisition Peculation Tank,
Minor Irrigation Division No.2
Nanded Waghela, Nanded
5. The Executive Engineer,
Public Works Division
Nanded, Tq. & Dist. Nanded

...RESPONDENTS

Mr.Pawankumar S. Agrawal, Advocate for the petitioner
Mr.S.B.Yawalkar, AGP for the respondent/State

**CORAM : S.S. SHINDE &
S.M. GAVHANE, JJ.**

RESERVED ON : 16.01.2018

PRONOUNCED ON : 27.04.2018

J U D G M E N T [PER: S.M. GAVHANE, J.]

. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the parties.

2. Since the final award dated 29.03.2016 is challenged in both the writ petitions they are being disposed of by this common judgment.

3. Writ Petition NO.9088/2016 has been filed by the petitioner Tulshiram Maroti Dhumal to quash and set aside the notification dated 01.03.2012 under Section 4, notice under Section 4(1) dated 27.03.2012 and notice under Section 6 of the Land Acquisition Act, 1894 and final award dated 29.03.2016 under Section 11 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act of 1894, for short) in respect of Land Gut NO.117, admeasuring 89-R, situate within the local limits of village Asarjan, Tq. & Dist. Nanded (hereinafter referred to as the acquired land 'A') which is owned and possessed by the petitioner.

4. Writ Petition No.10894/2016 is filed by Nandkumar Ramrao Vaidya to quash and set aside the

notification under Section 4 dated 01.03.2012, notice under Section 4(1) dated 27.03.2012, notification under Section 6 dated 28.03.2013 and award dated 29.03.2016 under section 11 of the Act of 1894 in respect of land Gut No.117, admeasuring 1-Hector 98-R situate within the local limits of village Asarjan, Tq. & Dist. Nanded (hereinafter referred to as the acquired land 'B') which is owned and possessed by the petitioner.

5. Since the facts of both the petitions are similar, for convenience we are referring the facts and the contentions of the petitioner in Writ Petition No.9088/2016 which are as under:

A. Respondent No.3 the Collector, Nanded is the officer of respondent No.1 who is authorized to acquire the land by initiating land acquisition proceedings. Respondent No.4 the Deputy Collector, Land Acquisition is empowered by respondent No.3 to act under the provisions of the Land Acquisition Act to proceed to acquire land. Respondent No.3 directed respondent No.4 to initiate land acquisition proceedings from the village Asarjan, Tq. & Dist. Nanded. Respondent No.5 the Executive Engineer submitted the proposal for the purpose of construction of Commissioner Office and residential quarters at Asarjan,

Nanded. Respondent No.4 had issued notification under Section 4(1) of the Act of 1894 on 27.03.2012 and has acquired the land mentioned as site Nos. 6 and 7. The acquired land 'A' of the petitioner is acquired and award dated 29.03.2016 is passed by respondent NO.4 under Section 11 of the Act of 1894.

B. It is the case of the petitioner that on 06.12.2008 there was change in Government policy and Divisional Commissioner Office situated at Aurangabad was bifurcated and office of new Divisional Commissioner was to be established at Nanded. On 05.01.2009 the State Government took policy decision to establish the Divisional Commissioner Office at Nanded for four districts. The decision of bifurcation of Aurangabad Division and establishment of Commissioner Office at Nanded was challenged before the High Court in Writ Petition No.155/2009 and Writ Petition No.149/2009. The said decision of bifurcation was held up due to filing of the writ petition and further proceedings came to stand still. It is contended that on 12.02.2009 a meeting was held by the Chief Minister for acquiring land for the purpose of establishment of Divisional Commissioner office at Nanded and other Revenue Offices at Nanded. In the said meeting the Chief Minister issued directions to

acquire the land Gut No.117 within the jurisdiction of Nanded Waghala Municipal Corporation under the Additional/amended development plan.

C. Accordingly on 06.03.2009 respondent No.5 took steps to include the site Nos. 6 and 7 in the development plan of proposed Divisional Commissioner Office at Nanded. Respondent No.5 on 30.03.2009 has appointed Engineer for the purpose of acquisition of land Gut No.112 to 119, situated at Asarjan for the purpose of proposed Divisional Commissioner Office at Nanded. The acquisition of the site Nos. 6 and 7 is about the petitioners only land namely Gut No.117 and measuring 89-R, situated at Asarjan. The land Gut No.117 was never proposed in draft development plan initially prepared, nor necessity of said land was apparent for any of the purposes of Government. The Town Planning Officer of Nanded Waghala Municipal Corporation on 04.05.2009 submitted to the Commissioner of Nanded Waghala Municipal Corporation that, it is necessary to amend Draft Development Plan and to include site Nos. 6 and 7 which include land Gut No.117, as per letter dated 24.04.2009 of the District Collector, Nanded.

D. Petitioner further contended that, the proposed

amended plan has changed the reservation of the petitioners land i.e. acquired land 'A' and 'B' from residential zone to reservation for government purpose without calling objection from the petitioners or the public at large. Respondent had issued notice under Section 4(1) of the Act of 1894 on 27.03.2012 to the petitioners. The said notice has not been served on the petitioners personally till date of filing the petitions. The said notice dated 27.03.2012 states that the acquired land 'A' and 'B' are acquired for the purpose of Central Administrative Building and residential quarters. The petitioners had immediately lodged the objection through Advocate to the proposed acquisition of the acquired lands 'A' and 'B'. As per section 5-A of the Act of 1894 enquiry is contemplated but neither any personal hearing was given to the petitioners nor any enquiry was carried out and without assessing ground realities with regard to the acquisition of the petitioners lands 'A' and 'B' it was reported by respondent No.3 to the Government that the acquired lands 'A' and 'B' be included and be acquired for public purpose by issuing under Section 6 notification dated 28.03.2013.

E. Further it is the case of the petitioners that after publication of notice under Section 6 of the Act of

1894, notice under Section 9(3)(4) of the Act of 1894 was issued to the petitioner on 29.04.2013. On 01.01.2014 the Act of 1894 i.e. old Land Acquisition, 1894 was repealed and new act namely Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the Act of 2013) came into force. According to the petitioners after coming into force of the Act of 2013 the proceedings initiated by respondent No.4 under the Act of 1894 were to be continued as per Section 24 of the Act of 2013. Respondent No.4 without considering the same as provided under Section 11 of the Act of 1894, respondent No.4 has passed final award under Section 11 of the Act of 1894 on 29.03.2016 which is beyond the period of limitation i.e. two years prescribed under Section 11-A of the Act of 1894. Therefore, the entire proceedings for acquisition of both the petitioners acquired lands 'A' and 'B' shall lapse.

6. On behalf of respondent Nos. 3 and 4 affidavit of Bapu Mariba Kamble, Deputy Collector (Land Acquisition), PTMIW-2, Nanded is filed in both the petitions raising similar contentions. In the said affidavit dates of issuing notification under Section 4(1), 6 and award under Section 11 of the Act of 1894 are

not disputed. It is denied that award under Section 11 of the Act of 1894 is barred by Section 25 of the Act of 2013. So also, it is not disputed that the purpose of acquired land 'A' and 'B' has been changed from proposed Divisional Commissioner Office to Central Administrative Building and residential houses for Officers. It is denied that petitioner was not served with notice under Section 4(1) of the Act of 1894 and that no opportunity of hearing was given to petitioner.

7. It is further stated in the affidavit that acquired lands 'A' and 'B' were reserved for the purpose of Divisional Commissioner in Development Plan and the notification under Section 4, respondent has made land Gut No.117 for the purpose of Central Administrative Building and quarters as per corrigendum dated 11.10.2011. As per letter of Government this office issued a notification under Section 4 and finally passed the award which is legal. The Act of 1894 was repealed on 01.01.2014. It is not correct to say that Act of 2013 will apply. As per Section 24(1)(a) where no award under Section 11 of the Act of 1894 has been passed, then all provisions of this act relating to determination of compensation shall apply. In this case all the benefits under new Act are given to the petitioners. In this case

publication of declaration under Section 19 was not issued. But as per old Land Acquisition Act, 1894 declaration under section 6 was issued by the Commissioner, Aurangabad on 28.03.2015 and published in the Government Gazette on 04.04.2013. The Land Acquisition Act, 1894 is repealed and the Land Acquisition Act, 2013 came into being on January 1st, 2014. On 19.03.2014 the Government of Maharashtra published its directives notification regarding the new Land Acquisition Act, 2013 in the official gazette. Said notification was challenged in the Writ Petition No.4274/2014. Subsequently, the High Court directed a stay on the said notification dated 19.03.2014 vide its order dated 26.05.2014.

8. It is further stated in the affidavit that in Writ Petition No.7867/2012 the High Court directed to initiate land acquisition proceedings afresh vide its judgment dated 24.03.2017. In the said judgment the Court stated that the award is not sanctioned within two years from the date of notification under Section 6 of the Act. Referring to the stay granted/issued in Writ Petition No.3051/2013 and Writ Petition no.3159/2013 by the High Court as per the clauses-'a', 'b' and 'c' in the affidavit it is stated that, the award declared by the

office are well within limit taking the total stay period imposed in aforesaid writ petitions and further it is stated that the petition deserves to be dismissed being devoid of merits.

9. We have heard learned Advocate appearing for the petitioners in both the petitions and learned AGP appearing for the respondent/State and its officials in both the petitions. Learned Advocates for the petitioners made submissions in the light of contentions referred to above of the petitioners. Learned Advocate has particularly submitted that declaration under Section 6 of the Act of 1894 was made on 28.03.2013. However the impugned award came to be passed on 29.03.2016 i.e. after two years of notification under Section 6 and therefore as award was not passed within two years as per Section 11 (A) of the Act of 1894, it would be entail in lapsing so far as the acquired lands 'A' and 'B' of the petitioners are concerned. The learned Advocate for the petitioners further submits that, since the award was not passed on or before 01.01.2014 i.e. prior to coming into force of the Act of 2013 the provision of Section 24(i) (a) of the Act of 1894 would be applicable. To support his submissions the learned Advocate appearing for the petitioners has relied upon the decision in the case of

Mohan and another Vs State of Maharashtra reported in 2007(3)Mh.L.J.574, Singareni Collieries Company Limited Vs Vemuganti Ramkrishan and others reported in 2013(6)Mh.L.J.860 of the Apex Court and on the decision of this Court in Writ Petition No. 7867/2012 (M/s. Moti Ratan Estate Vs State of Maharashtra) (Coram: T.V.Nalawade and Sangitrao S. Patil, JJ) decided on 24.03.2017 arising out of the similar set of facts and acquisition of lands for same purpose from same village i.e. Asarjan, challenged in this writ petition.

10. In the case of Mohan and others (Supra) the Hon'ble Supreme Court while considering the provision under Section 4,6 and 11(a) of the Land Acquisition Act, 1894 held that a award has to be made within two years from the date of publication of declaration under Section 6. Failure to adhere to this time frame is fatal to the award, as the provision is mandatory.

11. Learned AGP appearing for the respondent/State made submissions in the light of contentions in the affidavit submitted on behalf of respondents and submitted that, the award would not lapse as requested by the petitioners and claimed to dismiss the petition.

12. There is no dispute that the petitioner in Writ Petition No.9088/2016 is owner and possessor of acquired land 'A' while the petitioner in writ Petition No.10894/2016 is owner and possessor of land 'B' and both the petitioners are cultivating their respective lands. There is also no dispute regarding issuing notification under Sections 4 and 6 respectively on 27.03.2012 and 28.03.2013 and that final award under Section 11 of the Act of 1894 was passed by respondent No.4 on 29.03.2016 in respect of the acquired lands 'A' and 'B'.

13. There is no dispute that Writ Petition No.7867/2012 was filed in this Court challenging the acquisition proceedings culminated into two awards dated 08.05.2015 in respect of 1.60 hectare of land out of Block No.119 and 1.21 hectare of land out of Block No.18, situate within local limits of village Asarjan, Tq. & Dist. Nanded were acquired lands 'A' and 'B' of the present petitioners are situate. In the similar set of facts in Writ Petition No.7867/2012 decided on 24.03.2017 this Court (Coram: T.V.Nalawade and Sangitrao S. Patil, JJ.) in paragraph Nos. 12 to 22 observed as under:-

“12. So far as the ground of objection raised by the learned counsel for the petitioner in respect of change of user of the acquired lands from residential to Government and other public buildings as well

as staff quarters is concerned, we are not inclined to attach much importance thereto. As seen from the awards, there are many other lands which have been acquired for construction of the Central Administrative Building, other Government buildings and staff quarters. Thus, the purpose of acquisition of the lands, including the acquired lands of the petitioner, covers the residential purpose also. Since residence also is one of the purposes of acquisition, the contention of the learned counsel for the petitioner that unless the allocation of the acquired lands for residential purpose is changed into Government buildings in the Development Plan, the acquired lands of the petitioner could not have been acquired, cannot be accepted.

13. So far as the ground of objection about the delay of more than two years in passing the awards from the date of declaration under section 6 of the Act of 1894 is concerned, we find substance therein. Indisputably, the declaration under section 6 was made on 21st March, 2013. As per the provisions of section 11A of the Act of 1894, the Collector shall make an award under section 11 within a period of two years from the date of publication of the declaration and if no award is made within that period, the entire proceedings for acquisition of the lands shall lapse. As per the Explanation given under section 11A, 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 said declaration is stayed by an order of a Court shall be excluded.

14. The learned A.G.P. produced the common order dated 8th January, 2014 passed in Writ Petition Nos. 3051/2013 and 3159/2013, instituted by one Pandurang Sadashiv Patil (Lute) and Gangadhar Parasram Jadhav, respectively. The initial order dated 20th November, 2013 passed in those writ petitions has been re-produced in the said order. Clause (30) of the order which is material for the purpose of deciding this writ petition, reads as under:-

“3. This Court directs that till next date, final award should not be declared. Needless to observe that in the event award is ready, the State shall make an application before this Court for leave to declare it, which will help prevention from lapsing as well as computation of the period spent in the proceedings by virtue of stay.”

15. This Court disposed of the said writ petitions with the following order:-

“Both Writ Petitions stand disposed of with the above directions. The order dated 20th November, 2013 to continue for a period of 12 weeks from today but without prejudice to the rights and conditions of parties.”

16. As seen from the above order, the stay granted by the Court on 20th November, 2013 against declaration of final award in respect of the lands of the petitioners therein was continued for a period of twelve weeks from the date of that order i.e. 8th January, 2014. As such, the stay was in operation for a total period of four months and fourteen days. The declaration under section 6 was made on 21st March, 2013. In the ordinary course, the award should have been passed on or before 20th March, 2015. The learned A.G.P. submits that in view of the stay granted by the Court, there would be extension of the period of four months and fourteen days for passing of the award vide Explanation under section 11A of the Act of 1894. Accordingly, the awards should have been passed on or before 3rd August, 2015. The awards have been passed on 8th May, 2015 and as such, they have been passed within the prescribed period.

17. The claim made by respondent No. 4 for extension of period during which stay was in operation for passing awards in respect of the acquired lands of the petitioner is not at all sustainable. Indisputably, the petitioner was not a party to Writ Petition Nos. 3051/2013 and 3159/2013. The lands of the petitioner were not the subject matter of the said petitions. As seen from clause (4) of the impugned awards, the lands of the present petitioner and that of the petitioners in Writ Petition Nos. 3051/2013 and 3159/2013 are different. Respondent No. 4 could have conveniently passed awards in respect of the acquired lands of the petitioner, despite the stay granted by the Court in the above numbered writ petitions. It can be seen from clause No. (8) of the impugned awards that the lands of the petitioners in Writ Petition Nos. 3051/2013 and 3159/2013 have been excluded from the impugned awards, in view of the directions given by the Court to consider the claims of the petitioners therein under section 15A of

the Act of 1894. When respondent No. 4 could pass the impugned awards excluding the lands of the petitioners in Writ Petition Nos. 3051/2013 and 3159/2013, it can not be said that respondent No. 4 could not have passed the awards in respect of the acquired lands of the petitioner even during the period when the stay was in force in respect of the lands subject-matter of Writ Petition Nos. 3051/2013 and 3159/2013. The stay granted by the Court was not in respect of all the lands proposed to be acquired by respondent No. 4. Even as per clause (3) of the order dated 20th November, 2013 passed by this Court, respondent No. 4 was given liberty to apply before the Court for declaration of the award in case it was ready. Though it was not necessary, still it was not difficult for respondent No. 4 to apply before the Court by way of abundant precaution for permission to declare the awards in respect of the lands of the present petitioner, when the petitioner had not challenged the acquisition proceeding in respect of his land. In any case respondent No. 4 cannot claim exclusion of the period during the stay was in operation in respect of the lands of other persons vide Explanation given under section 11A for justifying the delay in passing the awards in respect of the acquired lands of the petitioner. The awards in respect of the acquired lands of the petitioner was required to be passed on or before 20th March, 2015 i.e. Within a period of two years from the date of publication of declaration under section 6. Since the impugned awards have been passed on 8th May, 2015 i.e. beyond the prescribed period of two years in view of the provisions of section 11A of the Act of 1894, the said awards would stand lapsed so far as the acquired lands of the petitioner are concerned.

18. The learned counsel for the petitioner pointed to the provisions of section 25 of the Act of 2013, wherein it is mandated that the Collector shall make an award within a period of twelve months from the date of publication of the declaration under section 19 and if no award is made within that period, the entire proceedings for the acquisition of the land shall stand lapsed. He submits that under this provision, there is no exclusion of the period during which stay was in operation while calculating the period of twelve months for passing of the awards.

19. In the present case, since the awards were not passed when the Act of 2013 came into force, the provisions of section 24(1) (a) would be applicable to the present case. Accordingly, the acquisition proceedings initiated under the Act of 1894 would be saved and continued and the provisions of the Act relating to determination of compensation only would be applicable thereto. Therefore, the provisions of section 25 of the Act of 2013 would not be applicable to the facts of the present case.

20. The learned counsel for the petitioner cited the judgments in the cases of *Yogesh Neema and others Vs. State of M.P. and others (2016) 6 SCC 387*, *Union of India (UOI) and others Vs. Shiv Raj and others* and *Vinod Kapur and others Vs. Union of India (UOI) and others (2014) 6 SCC 564*, *Pune Municipal Corporation and another Vs. Harakchand Misirimal Solanki and others (2014) 3 SCC 183* and *Sree Balaji Nagar Residential Association V. State of Tamil Nadu (2015) 3 SCC 353*, to contend that since the possession of the acquired lands has not been taken and the compensation also has not been paid to the petitioner, the awards would stand lapsed. As seen from the facts of the above cited cases, the awards therein were passed five years or more prior to the commencement of the Act of 2013. Therefore, in view of the fact that physical possession of the lands was not taken or the compensation was not paid, the said acquisition proceedings were declared as lapsed. Since the awards were not passed in the present case prior to five years of the commencement of the Act of 2013, these rulings would be of no help to the petitioner to claim that the impugned awards would be deemed to have lapsed in view of sub-section (2) of section 24 of the Act of 2013.

21. The contention raised on behalf of the petitioner that the acquired lands of the petitioner were sought to be acquired at the instance of the then Chief Minister with a view to harass the petitioner, cannot be attached with any importance. Such allegations cannot be entertained against a person who is not a party to the proceedings.

22. To sum up, the impugned awards, so far as they relate to the acquired lands of the petitioner, are liable to be lapsed on the sole ground that they were not passed by respondent No. 4 within a period

of two years from the date of declaration made under section 6 of the Act of 1894. The other grounds sought to be agitated by the petitioner for getting the impugned awards declared as lapsed do not contain any force. In the result, we pass the following order:-

- (i) The Writ Petitioner is allowed.
- (ii) The impugned awards, so far as they relate to the acquired lands of the petitioner, stood lapsed.
- (iii) The respondents are at liberty to initiate acquisition proceedings afresh against the acquired lands as permissible under the law, if desired.
- (iv) Rule is made absolute in the above terms.
- (v) The Writ Petition is disposed of.
- (vi) No costs. “

14. As the facts of the present case are similar to the facts in Writ Petition No.7867/2012 (M/s Moti Ratan Estate Vs State of Maharashtra and others) decided by Division Bench of this Court (Coram: T.V. Nalawade and Sangitrao S. Patil, JJ) on 24.03.2017, we are of the considered view that for the reasons referred to above in paragraph Nos. 12 to 22 in the said writ petition, the present petitioners are entitled to reliefs claimed in their respective writ petitions and hence in the result we pass the following order.

O R D E R

- i. Writ Petition No.9088/2016 and Writ Petition No.10894/2016 are allowed.

ii. The impugned award dated 29.03.2016 so far as it relates to the acquired lands 'A' and 'B' of petitioners in above said both the writ petitions, stood lapsed.

iii. The respondents are at liberty to initiate acquisition proceedings afresh against acquired lands 'A' and 'B' of the respective petitioners as permissible under law, if desired.

iv. Rule is made absolute in above terms.

v. The writ petitions are disposed of. No costs.

[S.M.GAVHANE, J.]

[S.S.SHINDE, J.]