

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

CRIMINAL WRIT PETITION NO.1071 OF 2013

1. Pundalik Mohan Pupe,
Age: 65 years, Occu: Agri.
R/o Shendraban, Tq. & Dist.
Aurangabad.
2. Janardan Sadu Tupe
(The then Sarpanch),
Age: 65 years, Occu: Agri.
R/o Shendraban, Tq. & Dist.
Aurangabad.
3. Subhash S/o ita Tupe
Police Patil, Age: 65 years,
Occu: Agri. R/o Shendraban,
Tal. And Dist. Aurangbad.
4. Daulat S/o Duraji Tupe,
Age: 60 years, Occu: Agri.
R/o Shendraban,
Tal. And Dist. Aurangabad.

...Petitioners.

Versus

1. The State of Maharashtra
Through Secretary, Industry
Department, M.S. Bombay-32
2. The Secretary,
Home Department. Mantralaya,
Mumbai.
3. The Superintendent of Police,
Aurangabad, Dist. Aurangabad.
4. Police Inspector,
Chikalthana Police Station,
Chikalthana, Dist. Aurangabad.
5. Sau. Rekha Pralhad Kakde
Age: 43 years, Occu: Household,
R/o Nathnagar, At present residing

At Sahakar Nagar, Aurangabad. **...Respondents.**

Mr. C.V. Thombre, Advocate for Petitioners.

Mr. M.M. Nerlikar, APP for Respondent Nos. 1 to 4.

Mr. V.D. Sonawane, Advocate for Respondent No.5.

WITH
CRIMINAL WRIT PETITION NO.1113 OF 2013

1. Shri Ashok S/o Nananji Chaudhari,
Age: 58 Years, Occu: Service,
as ex-Regional Officer, MIDC, A'bad.
Presently working as OSD to
Hon'ble Agricultural Marketing
Minister, Government of Maharashtra,
Mumbai, R/o Mumbai.
2. Shri Sandu S/o Baliram Kathar,
Age: 57 Years, Occu: Service as
Head Surveyor of MIDC,
Regional Office, Aurangabad.
R/o Aurangabad.
3. Shri Annasaheb S/o Marotirao Shinde,
Age: 48 years, Occu: Service as
Regional Officer, MIDC, Aurangabad.
R/o Aurangabad.

...Petitioners.

Versus

1. The State of Maharashtra
Through In-charge of Chikalthana
Police Station, Aurangabad,
Tq. And District Aurangabad
2. Sau. Rekha W/o Pralhad Kakade,
Age: 53 years, Occu: Household,
R/o Nath Nagar, Wadkha, Tq.And
District Aurangabad, At Present
Sakahaka Nagar, Aurangabad
Ta. And District Aurangabad

...Respondents.

Mr. V.D. Sapkal, Advocate for Petitioners.

Mr. M.M. Nerlikar, APP for Respondent No. 1/State

Mr. V.D. Sonawane, Advocate for Respondent No.2

**CORAM :T.V. NALAWADE AND
SMT. VIBHA KANKANWADI, JJ.**
DATED : 29/10/2018.

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

1) Both the proceedings are filed for quashing of F.I.R. No. 5/2013 registered in Chikhalthana Police Station, Aurangabad for offences punishable under sections 420, 427, 447, 448, 471, 120-B, 34 etc. of Indian Penal Code ('IPC' for short) . Both the sides are heard.

2) The case is registered on the basis of direction given by the Judicial Magistrate, First Class, Aurangabad in proceeding filed by respondent Rekha Kakade. Applicants from proceeding bearing Criminal Writ Petition No. 1113/2013 are employees of Maharashtra Industrial Development Corporation (M.I.D.C.) Aurangabad and they are of the rank of Deputy Collector. The applicants from other proceeding were used as a panch witnesses and they were working as Sarpanch, Police Patil etc. when the record of possession receipt etc. was prepared in acquisition proceeding.

3) On 6.1.1996 notification was published under sub-

section (3) of section 1 of the Maharashtra Industrial Development Act, 1961 (hereinafter referred to as 'the Act' for short) and many lands mentioned in the notification were declared as necessary for industrial area under section 2 (g) of the Act. For M.I.D.C., the acquisition process was started by Revenue Department of the State and one officer was appointed as Land Acquisition Officer in that proceeding under section 32 of the Act. Respondent Rekha appeared in that proceeding and reply was also filed.

4) On 15.11.1996 notification was published under section 32 (2) of the Act by the Government. It is contended that after the notification, there was meeting called by the Collector of the villagers for completing the acquisition process. On 4.12.1997 notification was published under section 32 (1) of the Act and then the award was also passed by S.L.A.O. On 17.5.1998 notice was issued to intimate respondent Rekha that the compensation was deposited with S.L.A.O. and that can be collected by respondent as the owner of the land. She refused to accept the notice, but panchanama of that incident was prepared. Respondent was not ready to hand over the possession, but the possession was taken on 12.8.1999 by S.L.A.O. and then S.L.A.O. handed over possession to M.I.D.C., Aurangabad.

5) Writ Petition No. 7094/2008 was filed by respondent No. 2 to challenge the act of M.I.D.C. and Government. On 3.12.2008 this Court rejected all the contentions of respondent No. 2. One more petition bearing Writ Petition No. 1284/2009 was filed, but that proceeding came to be dismissed for default. That proceeding was filed for giving direction to withdraw the acquisition proceeding.

6) The private complaint bearing R.C.C. No. 1778/2013 in which order under section 156 (3) of Cr.P.C. is passed was filed after decision given by this Court in aforesaid writ petition. In the private complaint, following allegations are made :-

“On 3.12.2008 and 4.12.2008, with police force the Directors of Ajanta Project Limited and their employees entered the land of the petitioner/respondent and also the lands of other agriculturists. They used bulldozer, they destroyed the standing trees and crops and they created terror, they demolished the construction which was present in the filed and they caused damage to the pipeline.”

7) Though the incident alleged took place in the year 2008, the private complaint came to be filed in the year 2013 and order of investigation was sent to police station on 31.10.2013. It is the

contention of the complainant that due to the aforesaid high-handed act of the accused virtually everybody had gone into depression.

8) The submissions made and the record show that it is not disputed that Gat No. 36 belonging to the first informant from village Shendra was included in aforesaid notifications. It is also not disputed that under Special Economic Zone Rules (SEZ Rules), 100 H. land was given by M.I.D.C. to Ajanta Project Limited and that land was acquired for the M.I.D.C., by the Government. Copies of the notifications are produced which start from the year 1996 and they show that the land of the present respondent, Gat No. 36, having area of 3 H. 38 R. was included in it. Copy of record of notice is produced. There is a copy of reply dated 30.11.1996 filed by respondent and others showing that plaintiffs claimed compensation of Rs.1.5 lakh to Rs.2 lakh per Acre and they had requested to give compensation in cash. They had also requested to give employment to one member of the family and they had requested to give some portion of their land as plot from M.I.D.C. to them. Copy of record of negotiations is produced. 75% of the villagers agreed to the proposals made by the Collector. There is record of acquisition showing that it was completed in May 1998 and notice was given to collect the compensation. Respondent refused to accept the notice and there is panchanama to that effect. There is panchanama dated

23.7.1999 which was prepared unilaterally to take possession and the land of respondent was shown to be taken in possession on 23.7.1999. There is copy of possession receipt issued by M.I.D.C. on 12.8.1999 in respect of the land of respondent showing that the possession was handed over by S.L.A.O. to M.I.D.C. There is copy of mutation showing that as per the acquisition, entries were made in the record of rights.

9) Aforesaid record shows that acquisition process was completed and even possession was taken by S.L.A.O. and possession was handed over well back in the year 1999 to M.I.D.C.

10) There is copy of decision given by this Court in Writ Petition No. 7094/2008 filed for seeking relief of quashment of aforesaid proceeding. Admittedly, respondent was one of the petitioner in the said proceeding. This Court referred the provision of section 32 of the Act and some observations are made to interpret that provision and they are as under :-

"32. Compulsory acquisition -

1.

2.

3.

4. When a notice under section (1) is published in the official gazette, land shall on and

from the date of such publication vest absolutely in the State Government free from encumbrances."

We have taken a note than sub section (1) of section 32 requires State Government to declare its intention to acquire land for development by Corporation by publication in the official gazette. Sub section (2) requires personal notices to interested persons even before notification under sub section (1). Award can be drawn and notification under sub section (1) can be issued only after giving interested persons an opportunity of being heard. But once Notification under section (1) is published, the land vests absolutely in the State Government and free from all encumbrances."

Aforesaid decision was given on 3.12.2008 and according to the complainant, the incident took place on the same day. The submissions made show that one more petition bearing No. 1484/2009 was filed by present respondents and others in which similar relief, direction to withdraw the acquisition proceeding was claimed. Admittedly, this proceeding came to be dismissed for default on 27.1.2011.

11) The learned counsel for first informant submitted that there is one more development and some portion of land which was

shown to be acquired is now released in favour of the first informant. He submitted that in the past, fraud was played upon the Court and false submissions were made that the possession was already handed over when the possession was never handed over. He submitted that the State Government has given one such reason for releasing the land.

12) The aforesaid contentions of the first informant cannot be accepted in the present matter. In view of the aforesaid record and the decision given by this Court, it cannot be said that by entering the land on that day if they had really entered, they had committed the offence of criminal trespass. Further, when the incident allegedly took place in the year 2008, the complaint came to be filed in the year 2013. This circumstance also cannot be ignored. It can be said that the possession was taken over and there was grievance of aforesaid nature. They wanted more compensation and they had made other claims also. Present petitioners were officers of M.I.D.C. and some of them acted as panch witnesses for preparation of various panchanamas mentioned above. It cannot be said that they have committed offences as record was already prepared in acquisition proceeding. Nothing can be achieved even by making investigation due to delay caused in giving of the F.I.R. The decision given by this Court shows that the counsel of petitioner had made

request to allow the respondent to collect the standing crop. Thus, it was not submitted that there was structure. In any case, if there were structures, the owners get compensation for structures also in acquisition proceeding. This Court is not touching that portion of the award prepared as it is not necessary to do so for the present matter. In the result, both the proceedings are allowed. Relief is granted in terms of prayer clause 'B' of the both proceedings. Rule is made absolute in those terms.

[SMT. VIBHA KANKANWADI, J.]

[T.V. NALAWADE, J.]

ssc/