

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8983/2015

Sudamrao Baburao Adsul & Ors.

... Petitioners

V/s.

State of Maharashtra & Ors.

... Respondents

Mr. Ajinkya Udane i/b A. M. Joshi for the Petitioners

Mrs. Pushpalata N. Diwan, AGP for the Respondent State.

**CORAM: K.K. TATED &
B. P. COLABAWALLA, JJ.**

DATED : JUNE 21, 2018

PC. :

1 Heard. Office has placed this matter for speaking to the minutes of order dated 05.06.2018.

2 Inadvertently the order dated 05.06.2018 passed in Writ Petition No.4502/2017 has been uploaded in the present Writ Petition.

3 Hence, the order dated 05.06.2018 be deleted from the present Writ Petition

4 The correct order dated 05.06.2018 be uploaded in the present Writ Petition.

(B. P. COLABAWALLA, J.)

(K.K. TATED, J.)

CORRECT ORDER DATED 05.06.2018

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WRIT PETITION NO.8983/2015

Sudamrao Baburao Adsul & Ors.

... Petitioners

V/s.

State of Maharashtra & Ors.

... Respondents

Mr. V. K. Bodhare i/b. A. M. Joshi for the Petitioners

Mrs. P. N. Diwan, AGP for Respondent Nos.1 to 4.

**CORAM: K.K. TATED &
B. P. COLABAWALLA, JJ.**

DATED : JUNE 5, 2018

PC. :

1 Heard the learned counsel for the parties. By this petition under Article 226 of the Constitution of India, the Petitioners are seeking to quash the acquisition proceedings in respect of the land admeasuring 38R from Sy./Gut No.246/3 which has now been numbered as Sy./Gut No.246/3/2B and handover the possession thereof to them. The Petitioners are also seeking to set aside the Award dated 31.03.2001 passed by the Land Acquisition Officer to the extent of acquired land of the Petitioner from Sy.No.246/3.

2 In the present proceedings, the Special Land Acquisition Officer issued Notification u/s.4 of the Land Acquisition Act, 1894 (for short "Old Act") dated 24.11.1999 and published in Government Gazette on

25.11.1999 for acquiring the Petitioner's land for project affected persons from Nira Devdhar Project. After conducting due enquiry u/s.5A of the said Act, a Notification u/s.6 was issued on 07.11.2000 and published in Government Gazette on 09.11.2000 and same was published in two newspapers viz. Dainik Gandhivarta and Dainik Aaikya dated 16.11.2000. After following due process of law as per the old Act the Land Acquisition Officer has passed Award dated 31.03.2001 and awarded compensation in respect of the acquired land in favour of the owners. The Special Land Acquisition Officer has also issued notice u/s.12(2) of the old Act to Petitioner Nos. 2, 4, 9 and 10.

3 The present petition is filed by the Petitioner on 25.08.2015 challenging the said acquisition and for setting aside the Award passed by the Land Acquisition Officer and for possession.

4 The learned counsel for the Petitioner submits that initially the Petitioner had filed Revision Application before the Revenue Commissioner challenging the mutation entry by which the land was shown to have been acquired. He submits that however, thereafter, they realized that the said land was acquired under the provisions of the old Act read with the provisions of the Project Affected Persons Rehabilitation Act, 1999. Therefore, they withdrew the said Revision Application and decided to file the present Writ Petition.

5 The learned counsel for the Petitioner submits that the Petitioners are approaching this Hon'ble Court without any delay. He submits that in case if there is delay in approaching this Hon'ble Court,

same deserves to be condoned taking into account the fact that the Petitioners are approaching this court with bona fide and for legitimate remedy. He submits that if the petition is dismissed on delay and laches irreparable loss will be caused to the Petitioner.

6 The learned counsel for the Petitioner submits that in September 2013 they learnt that 38R land out of Sy./Gut No.246/3 was acquired by the State Government for rehabilitation of the persons affected under the Maharashtra Project Affected Persons Rehabilitation Act, 1999. It is the case of the Petitioner that neither the Notification nor the Notice u/s.4, 6, 9 of the Old Act was served on them. The learned counsel for the Petitioner submits that for the first time, in the year 2013, they learnt that the Special Land Acquisition Officer has acquired their land and passed the Award dated 31.03.2001. He submits that as soon as they learnt about the acquisition they made enquiry in the Revenue Office and at that time they learnt that even the Mutation Entry was effected in favour of a third party in respect of the acquired land. Hence, the Petitioner filed Revision Application u/s.257 of the Maharashtra Land Revenue Code, 1966 before the Commissioner, Pune at Pune being RTS Revision No.67/2014 for cancellation of M.E.No.4267. He submits that subsequently, the Petitioner withdrew the said Revision Application and decided to file the present Writ Petition challenging the acquisition of land itself on the ground of violation of section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "New Act"). He submits that admittedly, neither the compensation was paid to the owner nor possession is taken by the

Respondent. He submits that as on today also the Petitioners are in possession of the suit land. Therefore, the matter is squarely covered u/s.24(2) of the New Act. Hence, this Hon'ble Court be pleased to set aside the acquisition proceedings in respect of the suit land and also declare the Award dated 31.03.2001 as null and void. He submits that as the Petitioners are in possession of the suit property and the compensation is not paid, the matter is fully covered u/s.24(2) of the New Act. Hence, this Hon'ble Court be pleased to allow the Writ Petition. He submits that if the Writ Petition is not allowed, irreparable loss and injury will be caused to the Petitioner.

7 On the other hand the learned AGP for the State has vehemently opposed the Writ Petition by filing Affidavit in reply dated 18.02.2018. She submits that the acquisition proceedings has already been completed in the year 2001 itself. She submits that the suit property has already been allotted to the Projected Affected Persons and the revenue records are also transferred in their name. As the acquisition has already been completed, there is no question of allowing the Petitioners to challenge the acquisition proceedings under Article 226 of the Constitution of India after more than 13-14 years. She submits that the Petitioners have intentionally made incorrect statement in the present petition on solemn affirmation to gain favourable orders. She submits that after passing the Award dated 31.03.2001, the Special Land Acquisition Officer has issued notice u/s.12(2) of the old Act and same was duly served on Petitioner Nos.2, 4, 9 and 10. In support of this contention, she relies on a photocopy of notice u/s.12(2) of the old Act issued by the Special Land Acquisition Officer which is at page

No.65 of the petition. She submits that after following due process of law the possession of the land was taken by them after preparing panchanama.

8 The learned counsel for the Respondent submits that the compensation has already been paid to the owners of the suit land. He submits that after taking possession of the acquired land, it was allotted to the project affected persons. In support of this contention, she relies on 7/12 extract to show that the suit property is already transferred in the name of the project affected persons. She submits that as on today, the project affected persons are in possession of the suit property. Therefore, there is no question of entertaining the present Writ Petition after more than 13 years from the date of the Award.

9 The learned counsel for the Respondent State submits that the provision of section 24(2) of the new Act is not applicable in the facts and circumstances of the present case. She submits that in the present proceedings, the Special Land Acquisition Officer has issued Notification under the provisions of the Old Act in the year 1999 and thereafter passed the Award dated 31.03.2001. She submits that the notice u/s.12(2) of the Old Act was duly served on the owners and even the compensation was already tendered to them. She further submits that the Special Land Acquisition Officer took possession of the acquired land after following due process of law. She submits that after acquisition, the said land was already allotted to the projected affected persons. Therefore, there is no question of setting aside the

acquisition u/s.24(2) of the new Act. Therefore, there is no question of entertaining the present Writ Petition.

10 The learned AGP further submits that once the acquisition proceedings is completed, the Court should not interfere with the same under Article 226 of the Constitution of India unless and until extraordinary case is made out. In support of this contention he relies on the judgment of the Apex Court in the matter of ***Municipal Council, Ahmednagar and Anr. Vs. Shah Hyder Beig and Ors.*** AIR 2000 SC 671. Para 17 and 18 thereof read thus:

17. In any event; after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of recent cases (C. Padma & Ors. v. Dy Secretary to the Govt of T.N. & Ors, reported in [1997] 2 SCC 627. This court observed as below :-

"The admitted position is that pursuant to the notification published under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act") in GOR No. 1392 Industries dated 17.10.1962, total extent of 6 areas 41 cents of land in Madhavaram Village, Saidapet Taluk, Chengalpattu District in Tamil Nadu was acquired under Chapter VII of the Act for the manufacture of Synthetic Rasiua by Tvl. Reichold Chemicals India Ltd., Madras. The acquisition proceedings had become final and possession of the land was taken on 10.4.1964. Pursuant to the agreement executed by the company, it was handed over to Tvl, Simpson and General Finance Co. which is a subsidiary of Reichold Chemicals India Ltd, It would appear that at a request made by the said company, 66 cents of land out of one acre 37 cents in respect of which the appellants originally had ownership, was transferred in GOMs No. 816. Industries dated 24.3.1971 in favour of another subsidiary company, Shri Rama Vilas Service Ltd., the 5th respondent Which is also another

subsidiary of the company had requested for two acres 75 cents of land; the same came to be assigned on leasehold basis by the Government after resumption in terms of the agreement in GOMs No. 439 Industries dated 10.5.1985. In G.O.Ms. 546 Industries dated 30.3.86, the same came to be approved of. Then the appellants challenged the original G.O.Ms. No. 1392 Industries dated 17.10.62 contending that since the Original purpose for which the land was acquired had ceased to be in operation, the appellants are entitled to restitution of the possession taken from them. The learned Single Judge and the Division Bench have held that the acquired land having already vested in the State, after receipt of compensation by the predecessor-in-title of the appellants, they have no right to challenge the notification. Thus the writ petition and the writ appeal came to be dismissed."

18. Similar is the view in an earlier decision of this Court in the case of *Municipal Corporation of Greater Bombay v. Industrial Development Investment Co, Pvt. Ltd and Ors*, reported in [1996] 11 SCC 501. Incidentally, the decision last noted was also on the land acquisition and requisition under the Maharashtra Regional and Town Planning Act, 1966 and in paragraph 29 of the report, this Court observed :-

It is well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly

ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the grounds of laches."

11 On the basis of these submissions and the Apex Court authority, the learned AGP submits that the petition is liable to be dismissed with costs.

12 We heard both sides at length. On the basis of the pleadings, the issue involved in the Writ Petition is whether the Award dated 31.03.2001 passed by the Special Land Acquisition Officer under the Old Act is liable to be set aside in view of section 24(2) of the new Act.

13 It is to be noted that in the present proceedings the Special Land Acquisition Officer has issued Notification u/s.4 of the Old Act in the year 1999 and after following due process of law, declared the Award dated 31.03.2001. Thereafter notice u/s.12(2) of the old Act was also issued. After following due process of law, the Special Land Acquisition Officer took possession of the acquired land and tendered compensation. After taking possession, the Respondent allotted the said land to the projected affected persons. All these facts happened on or before 2004 itself. Therefore, there is no question of setting aside the Award under section 24(2) of the new Act.

14 Apart from that, as on today, the land has already been allotted to the project affected persons and they are in possession. The revenue record is also changed and stands in the name of the project affected

persons. It is to be noted that though the Petitioners had knowledge about the acquisition. They failed and neglected to take appropriate steps immediately to challenge the Award passed by the Land Acquisition Officer. For the first time in the year 2014 they filed Revision Application u/s.257 of the Maharashtra Land Revenue Code, 1966 to challenge the M.E.No.4267. Thereafter the Applicants withdrew the said Application and filed the present Writ Petition. This itself shows that there was delay and laches on the part of the Petitioners for more than 10 years in challenging the Award passed by the Land Acquisition Officer. There is no satisfactory explanation given by the Petitioners for delay and laches of more than 9-10 years.

15 Even the Apex Court in the matter *Municipal Council, Ahmednagar and Anr. Vs. Shah Hyder Beig and Ors.* (supra) specifically held that the High Court should not interfere with the Award passed by the Land Acquisition Officer unless and until extraordinary case is made out.

16 Considering these facts and the law declared by the Apex Court, we do not find any substance in the Writ Petition. Hence, same stands dismissed. No order as to costs.

(B. P. COLABAWALLA, J.)

(K.K. TATED, J.)