

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10669 OF 2017

Anusayabai Kesu Bodake (Deceased) Through
legal heir Damu Kesu Bodake (Decd.) & Ors. .. Petitioners

V/s.

The State of Maharashtra And Ors. .. Respondents

....

Mr. Gaurav Potnis, i/b. Pallavi Potnis, for the Petitioners.

Ms. Geetanjali Shinde, for Respondent Nos. 1 to 3.

Mr. Ajit Ram Pitale, for Respondent Nos. 4 and 5.

....

**CORAM: A.A. SAYED &
S.C. GUPTA, JJ.**

DATE : 7 SEPTEMBER, 2018.

P.C.:

. By this Petition, the Petitioners have sought directions against the Respondents to acquire lands admeasuring 0-H & 9.5R from Survey No.110 and 0-H & 70R from Survey No.105 (hereinafter referred to as 'the said lands') as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and to quash and set aside the preliminary Notification published in the Govt. Gazette on 21-02-2014 under Section 4 of the Land Acquisition Act, 1894 for acquisition of the said lands for the purposes of water supply project for water treatment plant and approach road. There is also a prayer in the Petition to handover vacant possession of the said lands to the Petitioners.

2. The Petitioners claim to be owners of land bearing Gat No.279 situated at Village Dehu Malinagar, District Pune, which was fragmented into Survey No.110 admeasuring 1H-45R and Survey No.105 admeasuring 0H-82R. It is the case of the Petitioners that they have received notices dated 16-06-2014 under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'old LA Act') for acquisition of 0H-9.5R from Survey No.110 and 0H-85R for Survey No.105. According to the Petitioners even before Gat No.279 was fragmented into land Survey numbers, possession of about 70R was taken by Respondent No. 4 (acquiring body) without initiating acquisition proceedings. According to the Respondent-State, however, the acquiring body is in possession of 0H.56 Ares in Survey No.105 and 0H.02 Ares in Survey No.110.

3. The Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation Act, 2013 ("LA Act of 2013" for short) has come into force on 1 January 2014. Section 114 of the LA Act of 2013 repeals the Land Acquisition Act, 1894 ("old LA Act" for short). In the present case, it is an admitted position that the preliminary Notification was published in the Government Gazette on 21 February 2014 under Section 4 of the old LA Act. Inasmuch as on 1 January 2014, the LA Act of 2013 has come into force and the old LA Act stands repealed, we are unable to see how preliminary Notification could have been published in the Govt. Gazette on 21-02-2014 under Section 4 of the old LA Act.

4. In the circumstances, the Notification dated 21 February 2014 under Section 4 of the old LA Act would be bad in law and

deserves to be set aside and accordingly set aside to the extent it applies to the lands of the Petitioners.

5. We are informed by learned Counsel for Respondent No.4 that Respondent No.4 - Maharashtra Jivan Pradhikaran Jalvyavsthapan Vibhag (acquiring body) is in possession of the said lands from the year 1968. The Respondents would be at liberty to issue a fresh Notification under the provisions of the LA Act of 2013 within a period of three months from today to acquire the said lands. In the event, such Notification under the LA Act of 2013 is not issued within three months from today, possession of the said lands after restoring the same to its original state, shall be handed over by the Respondents to the Petitioners. Needless to say this order shall not apply to those lands which have already been acquired in the year 1968.

6. The Petition is disposed of in the above terms.