

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2606 OF 2016

(Mr. Hemant s/o Jageshwar Joshi & Ors. vs. Union of India, South Eastern Central Railway thr.
its General Manager Garden Reach, Kolkata & Ors.)

AND

WRIT PETITION NO. 4291 OF 2016

(Mrs. Vidya wd/o Vasant Telang & Ors. vs. Union of India tSouth Eastern Central Railway thr. its
General Manager Garden Reach, Kolkata & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's Orders.

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
ARUN D. UPADHYE, JJ.
APRIL 03, 2018.**

Award passed in 1965 and acquisition then, is sought to be questioned in these petitions under Article 226 of the Constitution of India. As we find the challenge stale and suffering from laches, we have heard the respective counsel accordingly.

2. We have heard Shri K.H. Deshpande, Senior Advocate with Shri A.M. Sudame, learned counsel and Shri Sunil Manohar, Senior Advocate with Shri A.M. Sudame, learned counsel for the petitioners in respective petitions, Shri Amit Chutke, learned AGP for respondent Nos. 2 & 3 and Shri S.V. Purohit, learned counsel for respondent Nos. 1 & 4.

3. The submission is, in the light of recent changes in land acquisition law, unwarranted deletion of opportunity under Section 5A of the Land Acquisition Act, 1894,

(hereinafter referred to as 1894 Act) then or undue recourse to urgency clause viz., Section 17 thereof on 31.05.1962, must be seen as deprivation of right of property under Article 300-A of the Constitution of India.

4. The respective counsel for the respondents submit that there is no express prayer for setting aside Award and lands have already vested in Railways.

5. The Award was questioned and enhancement was sought in proceedings under Section 18 of the 1894 Act. The judgment delivered by the Reference Court was further brought before this Court in First Appeal under Section 54 of 1894 Act and thereafter taken to the Hon'ble Apex Court. Our attention is invited to the facts narrated by the Reference Court in para 18 of its judgment to demonstrate that even at that juncture such an attempt was made. The Reference Court then adjourned the proceedings before it and gave time to the land owners to assail the acquisition itself.

6. The petitioners have relied upon a letter dated 23.12.1962 to urge that this letter shows that subject lands were never required by the Railways and acquisition, therefore, was malafide. To substantiate this contention, assertion in petitions is pressed into service that even today land is lying as it is i.e. for more than 55 years, it has not been put to use for which it has been acquired. The Railways claim utilization of lands and deny this fact.

7. We find that this letter written in 1962 by the Divisional Audit Officer of Railways to the Divisional Accounts Officer was at Exh. 221 in Reference proceedings. The Reference Court has noted that at one stage, Railways felt that lands were not necessary but later on the decision to acquire was taken and processed by issuing notification under section 4 of 1894 Act.

8. In this situation, when the lands have already vested in Railways, alleging mere non use thereof by Railways for construction of quarters and office, cannot by itself militate with the need. The respondents have attempted to demonstrate that there is some construction and quarters have been raised on said land.

9. The respective learned Senior Advocates wish to rely upon some judgments to demonstrate that non user of land for such a long period militates with need and in any case derogates from the urgency clause then invoked.

10. As we find the challenge stale, to avoid prolixity, we have not permitted the respective learned Senior Advocates to cite the same.

11. As we find the challenge stale and misconceived, we dismiss both the petitions. However, there shall be no order as to costs.

JUDGE

JUDGE