

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

3 WRIT PETITION NO.6184 OF 2015

MOTIRAM NARSINGH MULE THROUGH GPA VITTAL ATMARAM MULE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr.Salunke V.D.
Advocate for Respondent No.2: Mr.Tandale P.R.
AGP for Respondents No.3 : Mrs.M.A.Deshpande

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**CORAM : PRASANNA B. VARALE AND
AVINASH G.GHAROTE, JJ.
DATED : 07TH OCTOBER, 2019.**

ORAL ORDER :

Heard learned counsel appearing for the
petitioner at length.

2. The grievance being raised in the petition is of non payment of benefit to which the petitioner, who is the land owner, is entitled to i.e. the rental compensation for the land of the petitioner acquired by the respondents.

3. The admitted fact situation is that the petitioner was the owner of a piece of land in Survey No. 30/ Gut No. 93, ad-measuring 65 R,

situated at Honishipparga Tq. Udgir, Dist. Latur. It is stated in the petition that the land was acquired for the percolation tank, as such the process of acquisition of land was initiated. It is stated in the petition that on 6.12.1990. Section 6 notification was issued and finally the award came to be passed on 31st March, 1993. The petitioner fairly admits that the petitioner was paid compensation of Rs.25,485/- for his acquired land. It is also stated in the petition that being dissatisfied with the compensation so awarded, a grievance is raised that the compensation that has been awarded is inadequate.

4. The petitioner filed a Reference under Section 18 of the Land Acquisition Act, for enhancement of the compensation. The learned District Judge allowed the Reference. It is then stated that being aggrieved by the judgment and award passed by the learned District Judge, dated 2.4.2007, the State Government preferred an appeal in this Court and on finding no favour with the appellant/State, appeal was rejected by this Court

by order dated 4.1.2010. Then it is stated that though the petitioner has no grievance in-so-far as the market price for the acquired land, he is having a specific grievance of non payment of rental compensation to him, on the backdrop of the fact that his land was acquired in the year 1984 i.e. before five years of issuance of section 4 notification dated 25.1.1989. It is vehemently submitted by Mr. Salunke, learned counsel for the petitioner, that respondent authorities were duty bound to pay the rental compensation to the petitioner and this view is consistently taken by this Court as well as the Hon'ble the Apex Court and the petitioner cannot be singled out or no discriminatory treatment can be given to the petitioner by depriving him from the benefit of rental compensation.

5. The issue being limited to the grievance of the petitioner i.e. the non payment of rental compensation, we have minutely gone through the petition proper, the annexures of the petition and the reply filed on behalf of respondent No. 2 Ajay

Kumar Ramrao Kasabe, the Sub Divisional Engineer, Sub Division, Udgir on a notice issued by this Court. Perusal of the petition proper, shows that though it refers to various facts which we have already stated in the earlier part of our order, in-so-far as the crucial point of non payment of rental compensation to the petitioner is concerned, the statement in the petition reads thus :

"The respondent had taken possession of the land of the petitioner in the year 1984 i.e. before 5 years of Section 4 notification then Section 4 notification was issued, award is passed, however the rental compensation for which the petitioner is entitled has not been given to him in the award nor separately".

6. When we confronted the learned Counsel Mr.Salunke, with this peculiar fact, that the above averment does not disclose the date on which possession is alleged to have been taken five years prior to Section 4 notification, Mr. Salunke, vehemently submitted that the petitioner being illiterate agriculturist, may not be aware of the specific date of possession, he however contends that this fact is also not denied by the

respondents".

7. Mr. Salunke, learned counsel appearing for the petitioner in support of his submission invited our attention to the copy of award placed on record and submitted that in the award a specific reference is made to the factum of possession being taken earlier in point of time in Clause-P. Clause-P reads thus :

"P) Possession :- The possession of the lands under acquisition has already been taken over by the A.B. private negotiation. The A.B. should therefore payment to the interested persons at the rates prescribed by Government for the period from the date of taking over possession the date of payment of advance compensation and therefore on the balance amount to compensation till the date of making final payment no advance compensation has been paid this case".

8. Reading this part of Clause, by no stretch of imagination, we are able to get the date of possession apart from which the document in which the above statement is contended is a proforma award.

9. Mr. Salunke, learned counsel for the petitioner though vehemently submitted that there is no denial to taking of possession by respondents in the year 1984. On perusal of affidavit in reply on behalf of respondents, we could not find any such admission of the respondents. On the contrary the statement in the affidavit in reply clearly states that Section 4 notification of the Land Acquisition Act was issued on 25.1.1989 by the Special Land Acquisition Officer and the award under Section 11 of the Land Acquisition Act was passed on 31.3.1993, compensation of Rs. 25,485/- has also been paid to the petitioner by the Government. Now reading this statement in the affidavit-in-reply, we are unable to accept the submission of Mr. Salunke, the learned counsel for the petitioner that respondents have admitted the position that the possession is taken in the year 1984. If respondents in their affidavit-in-reply specifically state that Section 4 notification was issued in the year 1989 the date is mentioned as 21.5.1989 i.e. the statutory point of the acquisition proceeding, we are unable to accept the

statement of learned counsel appearing for the petitioner that the respondents have admitted the position of facts situation that the possession was taken in the year 1984. The respondents further countered by stating in the affidavit-in-reply that the petition is filed with an inordinate delay, which has not been explained.

10. Thus, considering all above referred facts, we are unable to accept the statement of learned counsel for the petitioner. Resultantly, in our opinion the petition is devoid of any merits. Thus, Petition deserves to be dismissed and the same is accordingly dismissed.

11. No costs.

(AVINASH G. GHAROTE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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