

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 3302 OF 2014**

1] Bharat S/o Vajinath Solanke,
Age : 45 Years, Occ. Agriculture.

2] Ashabai W/o Bharat Solanke,
Age : 40 Years, Occ. Agriculture
and Household,
R/o. Amala, Tq. Dharur,
Dist. Beed.

..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad
3. The District Collector,
Beed.
4. The Special Land Acquisition Officer,
And Deputy Collector, Majalgaon,
Jayakwadi Project No.3,
Beed Head Quarter, Ambajogai,
Tq. Ambajogai, Dist. Beed.

..RESPONDENTS

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Advocate for Petitioner : Mr. T.G. Gaikwad

A.G.P. for respondent-State No.1 to 5 : Mr. M.M. Nerlekar

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**CORAM :T.V. NALAWADE AND
SUNIL K. KOTWAL,JJ.
DATE : 14th JANUARY, 2019.**

ORAL ORDER :-

The petition is filed for setting aside the award dated 01.06.2011 passed by the Special Land Acquisition Officer, Jayakwadi

Project No.3, Beed Head Quarter, Ambajogai and direction is also claimed to re-initiate proceedings of land acquisition by contending that land gut No. 200 belonging to the petitioners will be submerged due to water of percolation tank.

2. Both the sides are heard.

3. The learned A.G.P took this Court through the record of the department and contents of the affidavit-in-reply. The submissions made and record show that as per the initial proposal and the award made, land admeasuring 0.51 Hectare which is portion of the land Gut No. 200, was shown to be acquired along with some portion from land Gut No. 190, which was more than 0.66 R. Subsequently, it transpired that no portion of the land from Gut No. 200 was required to be acquired and from the land Gut No. 190, the portion of land only to the extent of 0.66 Hectare was required to be acquired. The submissions made for the acquiring body on the basis of record show that the portion of 66 R from land Gut No. 190, portion of 26 R from Gut No. 189 and portion of 20 R from Gut No.191 was actually used for percolation tank. Thus, submission is made that no portion of land from Gut No. 200 was actually used/acquired for percolation tank and so the procedure as given in Section 48 of the Land Acquisition Act, 1894 needs to be followed.

4. The aforesaid record is not disputed but the fact remains that notification under Section 4 was issued in respect of land Gut No. 200

also and even the award was passed in respect of 51 R land from land Gut No. 200. Thus, some portion at least on record was shown to be acquired from land Gut No. 200 and due to that petitioners could have sustained loss.

5. This Court has carefully gone through the provision of Section 48 of the land Acquisition Act, 1894. The provision shows that if after acquisition, it transpires that the land is not required for the particular project, the Government has option to withdraw from acquisition of any land of which possession has not been taken. Even if the possession is taken, the Government can release the land from acquisition proceedings. In both the cases, the owner is entitled to get the compensation as provided under Section 48 of the Act. In view of these circumstances, this Court is hereby directing the Government to start the procedure as given in Section 48 of the Act and complete that procedure within six months from the date of this order, if that procedure is already not followed. With the aforesaid directions, the Writ Petition is allowed and disposed of. No costs.

[SUNIL K. KOTWAL]
JUDGE

YSK/

[T.V. NALAWADE]
JUDGE