

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

WRIT PETITION NO.7548 OF 2015

1. Jija Appa Mate
Age 55 years, Occu. Agri.
2. Kashinath Appa Mate,
Age 60 years, Occu. Agri.

Both R/o Jaypur,
Tq. & Dist. Aurangabad

...PETITIONERS

VERSUS

1. The State of Maharashtra
through its Secretary,
Irrigation Department,
(JALSAMPADA)
Mantralaya, Mumbai - 32

(Copy to be served through
Government Pleader,
High Court of Bombay,
Bench at Aurangabad)

2. The Divisional Commissioner,
Aurangabad Division, Aurangabad
3. The District Collector,
Aurangabad
4. The Special Land Acquisition Officer,
Jayakwadi Project, Aurangabad
5. The Executive Engineer,
Minor Irrigation Division,
Local Sector, Aurangabad.

...RESPONDENTS

.....
Shri A.B. Kale, Advocate for petitioners
Shri A.B. Chate, A.G.P. for State
.....

**CORAM: SUNIL P. DESHMUKH AND
R.G. AVACHAT, JJ.**

DATED : 11th March, 2019

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.):

1. Rule. Rule made returnable forthwith and taken up for final hearing with the consent of learned counsel for the appearing parties.

2. Heard learned counsel for the parties. The petition has been moved seeking directions to take steps to delete the land of petitioners from acquisition and alternatively, seeking directions to return the land of the petitioners bearing Gat No.264, admeasuring 57 R, situated at village Jaypur, Taluka and District Aurangabad.

3. It transpires that, pursuant to notification dated 24-6-1998, land acquisition proceedings were undertaken and have culminated into an award dated 5-3-2003. The petitioners also fairly concede to that, the acquiring agency has taken over physical possession of the land.

4. During the course of submissions, learned counsel Mr. Kale for the petitioners purports to draw attention to that, the land had been acquired with an intention to excavate black soil to

be used for construction of percolation tank. Said purpose having been over, the land is lying unutilised and thus, the learned counsel submits that, a request has been made to Deputy Executive Engineer, Minor Irrigation (Local Sector), Aurangabad - respondent No. 5 on 8-8-2012. It appears that, as there has been communication dated 3-12-2012 in that respect by the Sub-Divisional Officer, Aurangabad to respondent No. 5. Responding to the communication, the respondent No. 5 on 20-2-2012 had purportedly communicated that subject land being located at a long distance, his sub-division does not require the same. There had been no action upon said response over a long period. As such, petitioner had issued a letter dated 6-2-2015, making a request to act upon communication dated 20-2-2012 referred to above. Later on, it appears, there had been negative response to aforesaid letter and the petitioner is before us making aforesaid prayer.

5. In reply to the petition by respondents No. 3 and 4, it has been referred that, while land stands acquired after completing all the procedure under the Land Acquisition Act, 1894, surplus or unused acquired land can be put to any other public purpose and/ or can be sold out by public auction for use of proceeds for some other public purpose.

6. Learned counsel Mr. Kale submits that since utilisation of land for purpose being over, the land should be returned to the original land owner as it would be a case wherein it could not be said that the possession of the land has been taken over as the land is lying unutilised after excavation.

7. Learned A.G.P., however finds it difficult to be in accord with the submissions of the petitioner. He submits that, under acquisition proceedings, the land has vested in the State and it is the State land.

8. Having regard to position, though learned counsel for the petitioner has referred to provisions of Section 24(1)(b) and 24(2) as well as Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition (Rehabilitation and Resettlement) Act, 2013, it would not be said that, the case of the petitioner would be covered under any of said provisions.

9. Upon completion of acquisition proceedings, the relationship of the petitioner over the land has come to an end. It would not be said he would continue to be owner of the acquired land. In the circumstances, the petition does not call for any consideration.

10. Writ Petition, therefore, is not entertained and it is disposed of. Rule discharged.

11. At this juncture, learned counsel for the petitioner submits that, an approach pursuant to section 48 of the erstwhile Land Acquisition Act, 1894 can be made. It is for the petitioner to decide upon the same.

(R.G. AVACHAT)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE

fmp/