

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 8329 OF 2014

Kaseemsaheb s/o. Kahboobsaheb
Shaikh (Died) Through Lrs.
Abdul Alim s/o. Kaseemsaheb Shaikh

....Petitioner.

Versus

The State of Maharashtra and Ors.

....Respondents.

Mr. A.B. Kale, Advocate for petitioner.

Mr. P.N. Kutti, AGP for respondent Nos. 1 to 4.

Mr. V.P. Latange, Advocate for respondent No. 5.

Mr. D.P. Bakshi, Advocate for respondent No. 6.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**

DATED : 16/01/2019

ORDER :

1. The petition is filed for giving direction to respondents, State Government and Municipal Council, Ahmedpur, District Latur, Local Body to start acquisition proceeding regarding 9 R. portion of Survey No. 37/2/4 of Ahmedpur city, which is already taken over under Land Acquisition Act for the construction of overhead tank for drinking water supply to the city. The construction was completed long back. Both the sides are heard.

2. The submissions made and the record produced show

that acquisition proceeding was started for aforesaid purpose in the year 1974. Notices under sections 4, 5A and 9 were issued under Land Acquisition Act. According to the respondents, even notice under section 12 was issued on the date of Regular Civil Suit No. 349/1975 which was filed by the petitioner. In the suit, relief of declaration was claimed that acquisition proceeding is illegal and reliefs were also claimed of possession and temporary injunction. The suit was partly decreed and the Trial Court, the learned Civil Judge, Senior Division, Latur held that the acquisition proceeding was void as the provisions of section 4, 5A and 9 of the Land Acquisition Act were not properly followed. However, the reliefs of mandatory injunction and possession were refused by the Trial Court. The First Appeal No. 78/1994 filed by respondents in District Court, Latur came to be dismissed and then Second Appeal No. 415/2006 was filed in this Court by respondents. The second appeal came to be allowed by the judgment and decree dated 9.7.2009 and the learned Single Judge of this Court held that suit itself was not tenable in view of the ratio laid down in the case reported as **AIR 1996 SC 523 [Laxmi Chand and Ors. Vs. Gram Panchayat, Kararia and Ors.]**.

3. The present proceeding came to be filed on 25.7.2014 and in the present proceeding, the acquisition is challenged by

contending that award is not yet passed and notice under section 12(2) of Land Acquisition Act was not given and compensation is also not paid. Some contentions which were made in the suit about notices under section 4, 5A and 9 are, however, not made in the proceeding.

4. In view of the provisions of sections 114-A of the Evidence Act and section 27 of the Limitation Act and as the land was taken in possession well back before 1970, the learned counsel for petitioner was asked to satisfy the Court as to how any relief can be granted by this Court. First, the learned counsel for petitioner started reading the reasoning given by the Trial Court for decreeing the suit partly. When this Court asked the learned counsel not to do so as the suit was dismissed by allowing the second appeal and it was open to him to show the record to substantiate the contentions, he started reading the interim order made by the learned Single Judge in Second Appeal in which the learned Single Judge had observed that it was open to the present respondents to start fresh acquisition proceeding. This Court expressed that observations made in the interim order cannot be used as the appeal itself is dismissed and after that the learned counsel for the petitioner submitted that the decision given by the Apex Court in the case of **Laxmi Chand** cited supra is itself incorrect.

5. From the pleading in the suit, which can be found in copy of judgment of Trial Court produced, it can be said that on the date of suit acquisition proceeding was completed and even possession was taken over by the present respondents. During pendency of the suit, the construction of overhead tank was also completed and it was submitted for respondents that the amount of compensation was also deposited immediately after the award with the Special Land Acquisition Officer. In view of aforesaid and other circumstances the contentions made now that the notice under section 12 of the Acquisition Act was not given and award was never prepared are not at all acceptable. In ordinary course, it needs to be presumed that necessary procedure was followed by the Government and the Land Acquisition Officer. It was specifically contended by the respondents before the Civil Court that at every stage, objections were taken by the present petitioner and objections were considered and decided by the Special Land Acquisition Officer.

6. Present respondent No. 6 – the Maharashtra Jeevan Pradhikaran, Ahmedpur which got the property for construction of overhead tank has produced some record and it shows that initially, in the year 1970, by private negotiations after publication of

notification under sections 4 and 6 of the Act, the land was acquired and the award was passed on 28.10.1970. This was on the basis of agreement with the petitioner and that can be found in the award of 1970. The award shows that the compensation was to be given on the basis of amount received by the Local Body at the relevant time by selling some plots by auction. Thus, there was such agreement and on that basis, the award was made and the cost of the land per Acre was fixed as Rs.2500/-. Present respondent No. 6 was not made party respondent to the suit even when the land was to be given to respondent No. 6. It can be said that this award was not brought to the notice of Civil Court and the authority also committed mistake in again starting proceeding in the year 1974. The suit was filed in the year 1975 for reliefs of declaration and possession and in that suit, only notifications of 1974 were referred by the plaintiff. Thus, material facts were concealed by the plaintiff. It is generally noticed by the Courts that when Local Body or Government is party defendant in a proceeding, necessary care is not taken to ascertain the factual aspect and to produce relevant record before the Court. The judgment of the Trial Court also shows that the evidence with regard to the award of 1970 was not given by the defendants of the said suit before the Trial Court and they also went with the presumption that the proceeding was started first time in the year 1973-74. As the acquisition was completed on 28.10.1970, there

was no question of starting fresh acquisition proceeding. The award of 1975 does not show that it was brought to the notice of Land Acquisition Officer that award was passed in the year 1970. The award of 1975 also shows that objection was taken only on one ground by the present petitioner that he had applied for conversion of land for non agricultural use and accordingly, the compensation needs to be fixed. The Acquiring Body had not produced any evidence before the Land Acquisition Officer. The Land Acquisition Officer considered the sale instances and on that basis, land value was fixed as Rs.900/- and on that, statutory benefits were awarded. It is already observed that in view of the contentions made in the petition, it was necessary for the petitioner to file reference, if he had a grievance in respect of the compensation, but that was not done and the petitioner filed the suit to challenge the acquisition itself. The award was delivered on 24.2.1975 and the suit was filed on 21.7.1975. These circumstances are sufficient to infer that there was compliance of provision of section 12 of the Act in case of second award. It can be said that there was some misconception and the present petitioner did not receive proper legal advise and he probably thought that he can get back 9 R. portion of the land situated in the city and due to that thinking, the suit was filed.

7. The aforesaid circumstances are sufficient to infer that

proper procedure was followed. Further, when Second Appeal was allowed by this Court on 9.7.2009, the writ petition came to be filed on 25.7.2014. Thus, the petition suffers from laches. In view of the provision of section 27 of the Limitation Act whatever right could have been left got extinguished after the expiry of 12 years, may be either from 1970 or 1975. Thus, no relief can be granted in the present proceeding to the petitioner.

8. Due to aforesaid circumstances this Court had requested the learned counsel for petitioner to address the aforesaid points, but he started reading the provisions of Land Acquisition Act right from provision of section 4. In view of the aforesaid circumstances, it was not permissible for him and he was expected to show some record to substantiate the contentions made in the present petition, but that was not done. When this Court insisted that he should first address the aforesaid points, as usual the learned counsel behaved arrogantly, amounting to insult of the Court. He had also made a statement about the decision given by the Apex Court in the case of **Laxmi Chand** cited supra that the Supreme Court has committed error in deciding the matter that way and he started quarreling with the Court, particularly with Justice T.V. Nalawade of this Court. This is the general approach of the counsel Shri. A.B. Kale and Justice Nalawade had noticed atleast on three occasions that the counsel

starts quarreling when he feels that he is not getting relief. His general conduct is arrogant, amounting to insult of the Court and that way he tries to pressurize the Judges of the High Court. He also said that Court may pass order like 'not before this court'. Such way, the matters and the advocates cannot be avoided by the courts and that is also the intention of such advocate behind such conduct. This conduct is unbecoming and so, this Court warned him to behave properly and it was made clear that on the next occasion, if he repeats such conduct, action can be taken against him for such behaviour under the new provisions the Advocate Act, 1961 (Regulation of Legal Profession) regarding conduct of the Advocates. Even after making such expressions by the Court, the advocate kept submitting arrogantly and left the Court. This incident was witnessed by many advocates. As intentions are already expressed by this Court in the presence of the many advocates, no more observations with regard to action that can be taken are necessary. In the result, the following order.

O R D E R

The petition stands dismissed.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/