

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

WRIT PETITION NO.11355 OF 2017

- | | | |
|---|----|-------------|
| 1. Ishwar s/o. Vasant Geer
Age. 32 years, Occ. Agri., | .. | Petitioners |
| 2. Madhav s/o. Vasant Geer
Age. 36 years, Occ. Agri., | | |
| 3. Shivaji s/o. Lala Thakur,
Age. 70 years, Occ. Agri., | | |
| 4. Vinayak s/o. Lala Thakur,
Age. 72 years, Occ. Agri., | | |
| 5. Vitthal s/o. Ganpati Thakur,
Age. 45 years, Occ. Service, | | |
| 6. Kesharbai w/o. Kachrushing Thakur (died)
Through LR
Kachrusing s/o. Gulabsing Thakur,
Age. Major, Occ. Agri., | | |
| 7. Babu s/o. Ganpati Waghmare,
Age. 61 years, Occ. Agri., | | |
| 8. Lalmiya s/o. Gulamdastgir Patel (died),
Through LR
Sarkar s/o. Gulamdastgir Patel,
Age. 70 years, Occ. Agri. | | |
| 9. Harishchandra s/o. Prabhu Shinde
Age. 48 years, Occ. Agri., | | |
| 10. Kondabai w/o. Prabhu Shinde (died)
Through LR
Harishchandra s/o. Prabhu Shinde
Age.48 years, Occ. Agri., | | |
| 11. Prabhu s/o. Bali Mali (Shinde) (Died)
Through LR
a) Harishchandra s/o. Prabhu Shinde | | |

Age.60 years, Occ. Agri.,
b) Vyankat s/o. Prabhu Shinde,
Age. 60 years, Occ. Agri.

12. Kashibai w/o. Baburao Shinde
Age. 80 years, Occ. Agri.,
13. Abdulrauf s/o. Abdulrazzak Kazi
Age. 69 years, Occ. Agri.,

All above R/o. Bori, Tq. Latur,
Dist. Latur.

VERSUS

1. The State of Maharashtra .. Respondents
Through its Secretary,
Public Works Department, Mantralaya,
Mumbai – 32.
2. The Executive Engineer
Public Works Department,
Bandhkam Bhavan, Rajiv Gandhi Chowk,
Latur, Tq. & Dist. Latur.
3. The Collector/Special Land Acquisition Officer,
Latur, Tq. & Dist. Latur.
4. The Sub-Divisional Officer/
Land Acquisition Officer,
Sub-Division Office, In front of
District & Sessions Court, Latur,
Tq. & Dist. Latur.

Mr.B.M. Dhanure, Advocate for the petitioners.
Mr.S.S. Dande, AGP for the respondent/State.

**CORAM : SUNIL P.DESHMUKH &
S.M.GAVHANE,JJ.**
DATED : 08.07.2019

ORAL JUDGMENT [PER : SUNIL P. DESHMUKH,J.] :-

1. Rule. Rule made returnable forthwith and heard learned counsel for appearing parties finally by consent.

2. By this petition under Article 226 of the Constitution of India, petitioners are seeking writ of mandamus or writ, order or direction in the nature of mandamus to respondents/State authorities to take action for payment of compensation in respect of lands of petitioners pursuant to provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, [for short "the Act of 2013"] particularly section 24(1)(a) of said Act.

3. It may be pertinent to refer to a few dates, which may have bearing on the matter. There is no dispute that section 4 Notification under the Land Acquisition Act, 1894 had been issued on 22-06-2007/25-09-2007 for acquisition of lands *inter alia* petitioners' lands. Subsequently, notices under section 9 were issued on 25-09-2009. On 30-09-2010 and 19-10-2010 physical possession of petitioners' lands had been taken over by the authorities for the purpose of construction of road.

4. However, subsequently, no further proceedings had taken place. No award had been passed. No compensation had been paid to the petitioners.

5. Learned counsel Mr. Dhanure, during his submissions, draws our attention to order passed by a division bench of this court dated 05-01-2015 in writ petition No.10803 of 2014 referring to section 24(1) of the Act of 2013. He further contends that even otherwise since no award under the Land Acquisition Act, 1894, had been passed, having regard to section 11-A thereunder, proceedings for land acquisition under said Act also stand lapsed. Section 11-A of Land Acquisition Act, 1894 reads thus :-

“ 11-A. The Collector shall make an award under section 11 within a period of two years from the date of publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation- In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded. ”

6. The Act of 2013 had been enforced from 01.01.2014. Section 24 of the said Act reads like this :-

“ 24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases - (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),-

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land

acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

Provided further that, in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation is lying deposited in a court or in any designated account maintained for this purpose on account of refusal or not coming forward for receiving compensation despite receipt of such notice under sub-section (2) of section 12 of the Land Acquisition Act, 1894, shall be excluded. Also if the said land is mutated within three years after passing the award in the name of acquiring body, it shall be deemed that the possession of the land has been taken. "

7. Learned AGP on the other hand submits that construction of road has already been completed and thus other provisions of the Act of 2013 may not be observed.

8. Though learned AGP has submitted so, as observed in order dated 05-01-2015 in writ petition No.10803 of 2013, we do not propose to dwell on the same leaving it to the discretion of the authorities to take appropriate decision pursuant to the provisions of the Act of 2013.

9. Having regard to the provisions of Section 24(1)(a) and that on the date of enforcement of the Act of 2013, land acquisition proceedings having

already been lapsed under old enactment, it would be a situation wherein as observed in paragraph No.6, it would not be said that any proceedings under the Land Acquisition Act on the date of enforcement of the Act of 2013, are pending. The Division Bench appears to have observed as under :-

“ Since the proceedings in respect of acquisition of the petitioners land were not pending on the date of enforcement of the Act of 2013, the State Government shall have to initiate proceedings for the acquisition of land as well as shall have to determine the amount of compensation in accordance with the provisions of the Act of 2013. ”

10. In view of aforesaid, having regard to the facts and circumstances being quite close to the matter in which order dated 05-01-2015 has been passed (Supra), we consider it appropriate that the respondents would initiate proceedings for acquisition of lands and determine amount of compensation following the Act of 2013 and declare award as expeditiously as possible preferably within a period of one year from the date of receipt of this order and the respondents shall arrange for payment of compensation from the date of declaration of award within a period of eight weeks thereafter.

11. Rule is made absolute accordingly. Petition is disposed of.

[S.M.GAVHANE,J.]

[SUNIL P.DESHMUKH,J.]