

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

947. WRIT PETITION NO. 14088 OF 2018

1. Ramchandra Bandu Peherkar, age 74 years
2. Laxman Bandu Peherkar, age 70 years
3. Nivrutti Bandu Peherkar, age 65 years
4. Sudam Bandu Peherkar, age 62 years
5. Suresh Bhavrao Rajale, age 47 years
6. Rajendra Bhavrao Rajale, age 43 years
7. Vijay Bhavrao Rajale, age 40 years
8. Rama Suryabhan Rajale, age 90 years
9. Pandit Rama Rajale, age 75 years
10. Shankar Rama Rajale, age 50 years
11. Uddhav Rama Rajale, age 45 years

All farmers by occupation and R/o Karhol
post Goalatgaon Taluka and District Aurangabad

VERSUS

1. The State of Maharashtra
through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai – 400 032
2. The Divisional Commissioner,
Aurangabad
3. The Collector,
Aurangabad.
4. The Special Land Acquisition Officer &
Deputy Collector (Land Acquisition),
Krishna Khore Vikas Mahamandal, Aurangabad
5. The Executive Engineer,
Minor Irrigation Division No.1, Aurangabad.

Ms. Pradnya S. Talekar, Advocate for petitioners.
Mr. P.K. Lakhotiya, Asstt. Govt. Pleader for Respts. No. 1 to 4
Mr. S.G. Bhalerao, Advocate for respondent No.5

CORAM : S. V. GANGAPURWALA
AND
A. M. DHAVALA, J J.

DATE : 25th APRIL, 2019

ORAL ORDER:

1. Rule. Rule made returnable forthwith. Heard learned Counsel for the parties finally with consent.

2. Land of the petitioners is acquired pursuant to the award passed on 8th May 2015 and subsequently revised award passed on 13th July 2016. Ms. Talekar, learned Counsel for the petitioners submits that the land of the petitioners was acquired. Notification U/S. 4(1) of the Land Acquisition Act, 1894 was issued on 11th September 2012 and the same was published in local newspaper on 19th March 2013. Declaration U/S. 6 of the L.A. Act was issued on 19th March 2013 and published in Govt. Gazette on 11th April 2013. There was no publication of notification U/S. 6 of the L.A. Act in the village. It was only section 9 notification that was published. Section 6 declaration was published in local newspaper on 24th Nov. 2013. The learned Counsel submits that the award passed on 8th May 2015 was beyond the period of two years as contemplated under section 11 of the L.A. Act. As the award was not passed within a period of two years, the award passed earlier stands lapsed and fresh acquisition proceeding has to be initiated. The

respondents considering that in the award dated 8th May 2015 computation of compensation is not as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 issued fresh award on 13th July 2016 computing the compensation as per the Act 2013. However, the market value was considered as on the date of notification U/S.4(1) of the L.A. Act. The learned Counsel submits that as the award is not passed within a period of two years from the date of declaration U/S. 6 of the L.A. Act, the award stands lapsed. The learned Counsel relies on the judgment of this Court in case of other persons whose lands were acquired under the said award dated 8th May 2015. The said judgment is passed in Writ Petition No. 5049/2015 dated 16th February 2016.

3. The learned Assistant Government Pleader submits that the petition deserves to be dismissed on the ground of delay and latches. The petitioners are not challenging the initial award dated 8th May 2015 and allowed the second award to be passed considering the proviso of Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 . Said award was passed on 13th July 2016 and the amount of compensation is withdrawn by the petitioners. The reference is also filed by the petitioners before the

competent authority and thereafter they approached this Court challenging the award. The petitioners were farmers. The petitioners have also got benefit of alternate land under the Rehabilitation Act. In view of these aspects, petitioners are not entitled for any relief.

4. We had specifically asked the learned Assistant Government Pleader as to whether declaration U/S. 6 of the L.A. Act was published on 30th August 2013 in the village as was shown in the award. The learned Asstt. Govt. Pleader, on instructions and upon going through the record, concedes that the declaration U/s. 6 was never published in the village and the date of publication in village as shown on 30th August 2013 was of section 9 notice. We have also gone through the record. We did not find publication of section 6 declaration in village.

5. The award passed is not within the period of two years as is contemplated under the Act, 1894. In view of that, the same deserves to be set aside.

6. It appears that the petitioners have also got amount of compensation pursuant to the award passed and have also applied for enhancement of compensation. So also, the land has been given under the Rehabilitation Act.

7. By virtue of operation of Section 11A of the Land Acquisition Act, the acquisition stands lapsed. Lapsing of the acquisition is axiomatic. It also appears that during this period there was no stay in operation. In view of the fact that lapsing of acquisition as per section 11A is axiomatic, the award stands lapsed. However, it also needs to be considered that the petitioners have also derived some benefit from the award and have withdrawn compensation amount. Possession of petitioners' land was taken by the respondents on 30th October 2015. The petitioners cannot be given advantage and benefit of delay on their part. In view of that, we are inclined to direct the respondents to consider valuation of the land as on the date of possession taken from the petitioners of their land.

8. The reference can be had to the judgment of the Apex Court in the case of *Competent Authority Vs. Barangore Jute Factory and others*, reported in (2005) 13 Supreme Court Cases page 477. In that case also, the Apex Court had considered shifting of the date of the notification and had directed to consider the valuation of the land as on the date the possession was taken.

9. In view of the above, we direct the respondents to pass a fresh award in respect of the lands of the petitioners as per the provisions of the Right to Fair Compensation and Transparency in

Land Acquisition, Rehabilitation and Resettlement Act, 2013 and consider the valuation of the land of the petitioners as on 30th October 2015. First, notification U/S. 11 shall be issued within a period of three months from today and the acquisition shall be completed within a period stipulated under the Act. The acquisition proceedings shall be initiated expeditiously. The acquisition pursuant to writ awards stand lapsed.

10. The amount, which is already paid to the petitioners, shall be adjusted.

11. Respondent No.5 shall forward the proposal as per the new Act within a period of six weeks from today and the acquisition shall be completed within the time stipulated in the Act 2013.

12. The parties are entitled to proceed ahead as per the statute.

13. The payment shall be made to the petitioners as per the fresh award to be passed, after adjusting amount of compensation already paid under the earlier award, within a period of three months from the date of passing of the award.

(A. M. DHAVAL)
JUDGE

Madkar

(S. V. GANGAPURWALA)
JUDGE