

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 347 OF 2019

Sudam Khandu Karande & Ors. ... Petitioners
V/s.
The State of Maharashtra & Ors. ... Respondents

Mr. Amol Gatne for the Petitioners.
Ms. P.N. Diwan, A.G.P. for Respondent Nos.1 to 4- State.

CORAM : R.M. BORDE AND V.L. ACHLIYA, JJ.
DATE : 14th JANUARY 2019.

P.C.:

1 The Petitioners are praying for issuance of a writ of mandamus or writ in the nature of mandamus or direction to quash and set aside the order dated 30.12.2017 passed in Revision Application No.96 of 2015 rejecting claim of Petitioners for release of land from acquisition under Section 48 of the Land Acquisition Act, 1984. The Petitioners also contends that the proceeding of acquisition culminating into an award dated 31.03.1989 in respect of the land bearing Gat No. 1H 62 Ares belonging to the Petitioner shall be deemed to have lapsed in view of

provisions of Section 24(2) of the Right to the Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Petitioners also seek a direction to Respondent Nos.2 to 4 to correct the Revenue record in respect of the acquired properties within specified time.

2 The agricultural land belonging to the Petitioners has been acquired in the year 1989 and an award in that regard have been declared on 31.03.1989. The proceeding for acquisition were initiated with issuance of Section 4 notification on 20.09.1984 which was followed by a declaration under Section 6 of the Land Acquisition Act dated 13.09.1988. The Petitioner contends that inspite of declaration of award on 31.03.1989, he has retained possession of the property and the same has not been taken over by the Respondents. An application came to be presented by the Petitioners to the Commissioner contending therein that the proceeding for acquisition have not been completed within the time specified in the Act of 1894 and as such, the award shall stand vitiated. It is also contended that the procedure prescribed under the Rehabilitation Act has not been followed and the computation of the eligibility for

acquisition under the slab provided in the Rehabilitation Act has not been observed. The Commissioner has considered the contentions of both the sides and has turned down the application tendered by the Petitioners for deleting the land from acquisition. It is observed by the Additional Commissioner Pune Division, Pune, that the possession of the land under acquisition has already been taken over and the landed property has also been distributed to the beneficiaries. The Petitioners contend that the observations made by the Commissioner in the order dated 30.12.2017 are not in consonance with the findings recorded by the Civil Judge, Junior Division, Ghodegaon, while disposing of the application for temporary injunction presented by the Petitioner in R.C.S. No.18 of 2016. In the suit presented by the Petitioners against the state authorities and beneficiaries relief in respect of grant of perpetual injunction has been claimed. It is contended that the beneficiaries have not been put in possession and it appears that the order of temporary injunction as requested by the Petitioners, has been granted by the Civil Court. The issue as regards handing over of possession to the beneficiaries is a matter of dispute under consideration before the Civil Court. Suit presented by the Petitioners to the Civil Court has not yet been disposed of. It is not a

matter of dispute that the award has been declared in the instant matter in the year 1989. It is also not denied that the Petitioners have received the amount of compensation determined under the award at relevant time. The Petitioners by approaching the various authorities including the Additional Commissioner and the Civil Court, in the year 2015, presenting suit in the Civil Court in 2016 have raised objection as regards the handing over possession of the property. The dispute that has been raised by the Petitioners as regards taking over of the possession by the State Government is raised after lapse of about 27 to 29 years from the date of the award. The belated objections raised as regards the handing over of the possession of the property which itself is a disputed question need not be gone into while exercising extra ordinary jurisdiction under Article 226 of the Constitution of India. The disputed questions those have been raised in the instant Petition for claiming the benefits under the beneficial provisions of Section 24(2) of the Act shall not be permitted to be invoked under the equitable jurisdiction exercisable by this Court under Article 226 of the Constitution of India at belated stage. Since the Petitioners has raised the dispute before the Civil Court as regards his entitlement and sought relief for protection is so called possession, it would be open for

the Petitioners to pursue remedy which has already been availed of by them. We do not deem it necessary to consider the disputed issue raised in the instant Petition after lapse of about 29 years from the date of the award in exercise of the equitable jurisdiction. The Petition is devoid of substance and stands rejected.

(V.L. ACHLIYA, J.)

(R.M. BORDE, J.)