

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
**WRIT PETITION NO. 11423 OF 2017**

**Ganpat Balaji Khedkar (Deceased)**

**A. Ramchandra G. Khedkar (Deceased)**

1. Nana R. Khedkar

**B. Thakubai A. Arkas (Deceased)**

through her legal heirs

1. Dattatraya A. Arkas

2. Changdeo A. Arkas

3. Rahibai D. Shinde

C. Gitabai B. Bhujbal ... Petitioners.

**V/s.**

1. The Collector, through PLAQ

2. The Special Land Acquisition Officer

3. The District Rehabilitation Officer

4. Suresh R. Khedkar

5. Ashok R. Khedkar

6. Balu R. Khedkar

7. Suman R. Khedkar ... Respondents.

Mr. Gaurav Potnis I/b Ms Pallavi Potnis for the Petitioners.

Mr. P.P. More, AGP for the Respondents - State.

**CORAM : R.M. BORDE AND V.L. ACHLIYA, JJ.**

DATE OF RESERVING THE JUDGMENT : 08<sup>th</sup> January 2019.

DATE OF PRONOUNCING THE JUDGMENT : 13<sup>th</sup> February 2019.

**JUDGMENT: ( Per R.M. BORDE, J.)**

1] The petitioners are praying for issuance of declaration or an order holding that acquisition in respect of 13 Acres and 23 Gunthas out of Survey No. 148/1 situated at Village Shindodi

Taluka, Shirur; District Pune has lapsed by operation of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “**Act of 2013**”). The petitioners are also praying for issuance of directions to respondent Nos.1 to 3 to initiate acquisition proceedings in respect of the aforesaid land afresh, to determine the amount of compensation and pay the same to the petitioners.

2] The agricultural land belonging to the deceased grandfather of the petitioners, by name Ganpat B. Khedkar, has been acquired for *Ghodveer Project*. The original owner Ganpat Khedkar was survived by one Ramchandra G. Khedkar, the father of petitioner No.1 who has also died. The petitioners and respondent Nos. 4 to 7 are the legal heirs of the deceased Ramchandra Khedkar.

3] The proceedings for acquisition were initiated during lifetime of Ganpat Khedkar, grandfather of petitioner No.1, with issuance of Section 4 Notification on 25<sup>th</sup> June 1956 and in observance of the procedure prescribed under the Land Acquisition Act, 1894 (for short “**Act of 1894**”) an award came to be declared on 30<sup>th</sup>

July 1958. It is not a matter of dispute that possession of the land has been taken over in the year 1957. The petitioners contend that in respect of the agricultural land Survey No. 148/1, the remaining amount of compensation has not been paid to the grandfather of the petitioners. The petitioners placed reliance on Appendix - VI presented in Land Acquisition Case No. 60 of 1958, according to the petitioners, total amount of compensation determined for the land was Rs.1577.51 ps whereas their grandfather has been paid Rs.537/- and balance of Rs.1040.51 has not been paid. It is thus contended by the petitioners that since balance amount of compensation has not been paid in view of operation of Section 24(2) of the Act of 2013, the proceedings for acquisition in respect of the landed property shall be deemed to have lapsed and directions shall have to be issued to respondent Nos.1 to 3 to initiate fresh acquisition proceedings, determine the amount of compensation and pay the same to the petitioners.

4] The first and foremost ground of objection raised by respondent No.1 to 3 is that the petitioners have approached this

Court after lapse of almost 60 years from the date of acquisition of the property and the delay has not been explained by the petitioners. It has also been contended that in fact the amount of compensation had been paid to the grandfather of the petitioners and said contention is denied in the affidavit-in-reply presented on behalf of the State Government. Since grandfather of the petitioners has passed away long back so also the father of the petitioner No.1 has also passed away, it would be difficult to accept the contention as regards non-receipt of amount of compensation by their grandfather, which is not a fact within the personal knowledge of the petitioners. In the verification clause to the petition sworn by petitioner No.1, it is recorded that the facts stated in the petition are true and correct to the best of his own knowledge and belief. It cannot be inferred reasonably that the petitioners have any personal knowledge as regards failure of respondent Nos.1 to 3 to pay compensation amount to their deceased grandfather in the year 1957-1958.

5] The petitioner No.1 is 57 years of age and cannot claim any knowledge in respect of receipt of amount of compensation by his

grandfather. Apart from this, it shall have to be construed that since the grandfather of the petitioners had presented Land Reference Case No. 128 of 1959, which was decided by the Civil Judge Senior Division, Pune on 31<sup>st</sup> December 1962 and since no objection as regards failure on the part of respondent Nos.1 to 3 to pay the amount of compensation to the deceased grandfather of the petitioners was raised in the said reference application, it would not be open for the petitioners now, after lapse of 60 years from the date of award, to raise a contention that their grandfather has not received the amount of compensation during his lifetime.

6] Perused the judgment delivered by the Reference Court. One of the issue taken up for consideration by the Reference Court was as regards maintainability of the reference application in the absence of lodging of protest by the concerned claimants while receiving the amount of compensation from the Office of Land Acquisition Officer. It is concluded by the Reference Court that since the claimant, i.e., grandfather of the petitioners did not lodge any oral or written protest while receiving amount of

compensation, the reference is not entertainable. There is no indication in the judgment that any grievance was made at the relevant time as regards non-receipt of amount of compensation by the deceased grandfather of the petitioners. In these circumstances, it would be difficult to accept the contention of the petitioners that their deceased grandfather has not been paid the amount of compensation and as such the proceedings in respect of acquisition shall be deemed to have lapsed in view of Section 24 of the Act of 2013. The disputed question of fact raised in the petition after 60 years from the date of award need not be examined in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. The petition is devoid of any substance and the same deserves to be dismissed and is hereby dismissed.

**(V. L. ACHLIYA, J.)**

**(R.M.BORDE, J.)**