

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

**WRIT PETITION NO. 430 OF 2009
WITH
CIVIL APPLICATION NO.2486 OF 2018**

Vishwas Namdeo Devare

... Petitioner

V/s.

- 1. The State of Maharashtra** **... Respondents**
2. The Collector, Nashik District
3. The Special Land Acquisition
Officer (Scarcity No.2)
4. Municipal Commissioner
Malegaon Municipal Corporation
5. Malegaon Municipal Corporation
6. Nimba Deochand Chavan
(since deceased) through his Lrs'
- 6A. Sudhi Nimba Chavan (Son)
- 6B. Sambhaji Nimba Chavan (Son)
- 6C. Sou. Shashikala Shantaram Patil
- 6D. Sou. Sunanda Dinkar Patil

Mr.C.G. Gavnekar a/w Mr.Suhas Deokar, Mr.S.A. Rajeshrke for the
Petitioner.

Ms.Madhubala Kajale 'B' Panel Counsel for respondent nos.1 to 3 /
State.

CORAM : R.M.BORDE & PUSHPA V. GANEDIWALA, JJ.

DATE : 28th FEBRUARY 2019.

JUDGMENT: (Per PUSHPA V. GANEDIWALA, J)

1. In this petition, the Petitioner challenges the legality and validity of the Award No. 54 of 1995 dated 29.03.2007 passed by the learned Special Land Acquisition Officer (Scarcity No. 2) in respect of final Plot No. 95, Gat No. 237/2 situated in Sangmeshwar, Taluka Malegaon, District Nashik.

2. Petitioner states that the lands of the Petitioner along with other adjoining owners were reserved under final Development Plan vide Reservation No.64 (New Reservation No.115) ad-measuring total 4 H 53 R for the purpose of construction of a building for the establishment of District Court at Malegaon.

3. As the acquisition proceedings for the subject land could not be initiated within the stipulated period as envisaged under Section 126(1) of the Maharashtra Regional Town Planning Act, 1966, the

Respondent No.2 on 16/03/2002 issued notification under Section 126(4) of the said Act of 1966 r/w Section 6 of the Land Acquisition Act 1894. The same was published in the official Gazette on 21.03.2002. The area of land 4H 53R under acquisition was further modified from time-to-time by issuing corrigendum notifications and publishing the same in the Official Gazettes.

4. It is stated that the land owners Shri. Nathamal Sitaram Maniar and Shri.Shamsunder Ramratan Jaju, whose lands were also acquired in the same notification dated 16.03.2002 presented Writ Petition No. 4099 of 2004 and Writ Petition No. 4345 of 2004 respectively before this court for a declaration that the property is no longer reserved and to delete the Site No. 115 from reserved development plan.

5. By order dated 04.05.2005, the aforesaid Writ Petitions came to be disposed of with the directions to the Respondent no. 5 therein through its officers to take steps to complete the acquisition proceeding within six months under the provisions of the Land Acquisition Act, 1894 and it was also recorded in para 4 of the said order about the statement made by the learned Advocate General on behalf of the State of Maharashtra during the hearing of the Writ Petition No. 6175/03 for

the land Survey No. 236/4 that Notification dated 16.03.2002 which was issued under Section 126 (4) of the MRTP Act r/w Section 6 of the Land Acquisition Act , without prejudice to the State's right to acquire under the Land Acquisition Act, would be withdrawn. It was made clear in the other part of the said order that the aforesaid withdrawal is not restricted only to Gat No. 237/4.

6. It is the grievance of the petitioner that without issuing fresh notifications under the provisions of the Land Acquisition Act 1894, the impugned Award dated 29.03.2007 came to be passed which is void and non est in the eyes of law.

7. The Special Land Acquisition Officer Shri. Vishwas N. Deore on behalf of respondent nos. 1 to 3 in his affidavit-in-reply dated 08.01.2008 states that the Petitioner has already withdrawn the compensation of Rs.35,96,675/- for his land i.e. Gat No. 237/2 ad-measuring 3400 sq. meters and also sought enhancement in compensation by filing reference u/s 18 of the Land Acquisition Act,1894 before the reference court and the petitioner has suppressed these facts in his petition. It is further stated that the petitioner along with Shri. Nimba Deochand Chavan have voluntarily delivered

possession of the aforesaid land to the Special Land Acquisition Officer, Nashik on 02.11.2007. Now, the petitioner, therefore, is to be es- topped from raising any grievance against the said Award dated 29.03.2007.

8. We have considered the submissions of learned counsel Shri. Ganesh Gavanekar appearing on behalf of the petitioner and the learned AGP Smt. Madhubala Kajale appearing on behalf of the State. Perused the record with the able assistant of the learned counsel for the petitioner.

9. The learned counsel appearing on behalf of the appellant mainly argued on the point that once the original notification dated 16/03/2002 was withdrawn in favour of the other land owners whose lands were reserved under the same reservation no. 64 (new 115) under Development Plan, the impugned award for the petitioner's land on the basis of the same notification could not have been passed. In support of his argument, the learned counsel placed his reliance on the judgment of the Supreme Court in the case of *Bhimandas Ambwani (dead) through Lrs. Vs. Delhi Power Company Limited*¹ where in para 9 , their Lordships have taken the view that in case of successive

¹(2013)14 Supreme Court cases 195

notifications under section 4 or successive declarations under section 6 of the Land Acquisition Act, 1894, the earlier notification stands obliterated.

10. The learned AGP supported the impugned Award and pressed for dismissal of the petition for want of substance in view of the facts as mentioned in the affidavit in reply on behalf of the State.

11. It is undisputed that the possession of the subject land was already handed over to the State by the petitioner vide possession receipt dated 02/11/2007. Receipt of compensation of Rs. 35,96,675/- by the petitioner towards the said award is also not denied. The learned Special Land Acquisition Officer in his affidavit in reply does not deny the withdrawal of the notification dated 16.03.2002 as per the statement of the learned Advocate General . Perusal of the record shows that the fresh land acquisition proceeding under the provisions of Land Acquisition Act 1894 was initiated in respect of the lands of the owners Shri. Nathamal Sitaram Maniar and Shri.Shamsunder Ramratan Jaju, the petitioners in the aforesaid writ petitions and the final Award was declared on 26.03.2007.

12. In respect of the land of the Petitioner, though similarly situated,

without issuing fresh notification under the provisions of the Land Acquisition Act, 1894, the impugned Award came to be declared on 29.03.2007 on the basis of the lapsed notification dated 22.03.2002 which reflects malafide on the part of the officers dealing with the acquisition proceedings. In the aforesaid order dated 04/05/2005, it is already observed by this court that the withdrawal of the notification can not be restricted to Gat No. 236/4.

13. The Land Acquisition proceedings under the Land Acquisition Act, 1894 (now repealed) commence with the publication of notification under section 4 and section 6 declares the public purpose for the acquisition. The provisions of the Land Acquisition Act, 1894 are required to be strictly followed by the State authorities in order to exercise its extra ordinary right to compulsorily acquire the private properties for public purposes.

14. In the instant case, without issuing fresh notifications under the provisions of the Land Acquisition Act, 1894 as has been issued in the cases of the other land owners Shri. Maniar and Shri. Jaju (supra) of the same final Survey no. 95, site no. 115, the respondent State declared the impugned Award, which according to us is not legal and

valid and needs to be set aside and the same is accordingly quashed and set aside.

15. Since, it is informed that, the user department has already utilized the land of the petitioner for the purpose of construction of the building for District Court, instead of directing the respondent nos. 1 to 3 to initiate fresh acquisition proceedings under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, it would be appropriate to direct the Respondents to initiate fresh inquiry for assessment of compensation on the basis of provisions of the Act of 2013 by taking the date of this order as the date of notification under section 19 of the Act of 2013 and to pay compensation to the petitioner as expeditiously as possible and in any case within a period of 12 months from the date of receipt of the copy of this order. The respondent is at liberty to set off the amount of compensation of Rs.35,96,675/-with interest at the rate of 8% p.a., which is already received by the petitioner on 02.11.2007, from the total amount of compensation arrived at.

16. In view of the above, the reference u/s 18 of the Act of 1894, if

any, pending before the reference court is rendered infructuous.

17. The Civil Application No. 2486/18 stands disposed of.

18. Rule made absolute in the above terms. In the circumstances no order as to costs.

(PUSHPA V. GANEDIWALA, J.)

(R.M.BORDE, J.)