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

WRIT PETITION NO. 11652 OF 2016

Shri Raghunath Kisan Tamhane .. Petitioner
Vs.
The State of Maharashtra & Ors. .. Respondents

Mr. Vishwajit P. Sawant a/w. Mr. P. M. Jadhav for the Petitioner.
Mrs. Madhubala Kajale, 'B' Panel Counsel for Respondent No.1-State.
Mr. R. S. Khadapkar for Respondent Nos.2 & 3.
Mr. T. D. Deshmukh for Respondent No.5.

CORAM : R. M. BORDE & V. L. ACHLIYA, JJ.
DATE : 12th FEBRUARY, 2019.

P. C. :

1. Heard.
2. The Petitioner is praying for issuance of writ of certiorari for quashment of proceeding of acquisition of land bearing Survey No. 670A/2B admeasuring 83.05 R of village Bibvewadi, District Pune. The Petitioner also contends that in view of provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, the acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of the said plot of land shall be deemed to have lapsed. The Petitioner is praying for issuance of directions or a writ of mandamus directing the Respondents to delete the said plot of land belonging to him from acquisition proceeding.

The Petitioner is also praying for setting aside the letter/communication dated 09.07.2009 whereby the request made by the Petitioner for grant of Transferable Development Rights (TDR) was rejected. The Petitioner contends that he is the sole owner of the plot of land under acquisition and the said plot of land was a part of the development plan published by Respondent No.2 in the year 1982 which was also acquired by the State Government. According to the Petitioner, notification under Section 126 of the Maharashtra Regional and Town Planning Act, 1966 read with Section 6 of the Land Acquisition Act, 1894 was issued on 05.06.1984 and in observance of the procedure prescribed, an Award came to be declared on 05.11.1984. The possession of the said land has been taken over under the panchnama executed on 04.02.1984. After passing of the Award on 05.11.1984, according to the Petitioner, Respondent No.1 issued a modified Development Control Rules for application to Pune Municipal Corporation and as per the said Rules, provision has been made for grant of TDR for the land under acquisition. Copy of the Award placed on record by the Petitioner also includes modified Award as amended on 31.12.1984. The Petitioner contends that he has not received amount of compensation as per the Award dated 05.11.1984 and as such he served legal notice on Respondent No.2 and called upon to return the said plot back to the Petitioner. According to the Petitioner, no compensation was paid by the Respondents as such he made application on 29.05.2006 for grant of TDR in view of acquisition of land. However,

his request has not been considered. According to the Petitioner, after acquisition of land and determination of compensation, the same has neither been tendered nor deposited in the Court of law or the Treasury. Under such circumstances, he is entitled to claim the TDR.

3. Affidavit-in-Reply has been presented by the Special Land Acquisition Officer Ms. Smita Anandrao Kalkutki objecting to the contentions raised by the Petitioner. It is contended that on 28.12.1984 the Petitioner along with his wife and 9 other persons, including the persons in whose favour the property is stated to have been transferred, tendered an application to the Special Land Acquisition Officer contending therein that Shri Raghunath Kisanrao Tamhane (Applicant No.1) along with his wife Mrs. Malatibai R. Tamhane has sold their land bearing Survey No. 670/A/2B to Applicant No.3, whose name is recorded in the Application, by way of registered Sale Deed dated 12.12.1980. It is further recorded in Application that Raghunath K. Tamhane or his wife do not have any interest in the property under acquisition and the amount be paid to Applicant Nos.3-A to 3-I, whose names are recorded in the Application. In pursuance of the presentation by the joint Application, an amended Award came to be declared on 31.12.1984 recording therein the entitlement of one Panhalal Keshvlal Doshi as Power of Attorney Holder of the purchasers i.e. Applicant Nos.3-A to 3-I, whose names were recorded in the Application dated 28.12.1984 presented by the Petitioner to the Land

Acquisition Officer. According to the State, the possession of the land has been delivered which has been handed over to the Municipal Corporation on 29.11.1984. The amount of compensation arrived at has been deposited by the Special Land Acquisition Officer in Government Treasury Office. It is, thus, contended that the Petitioner has no *locus* to file the present Petition as the Petitioner has sold the land in dispute in favour of Shri Rajkumar Agarwal and others. The provisions of Section 24(2) of the Right Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 will not be attracted to the acquisition made invoking the provisions of the MRTP Act.

4. An Affidavit has been presented by one Shri Anil Mule, Deputy Commissioner, Municipal Corporation of the City of Pune wherein it has been claimed that the Petitioner do not have right or interest in the land under acquisition and the Award has been declared in the name of Respondent No.4 on 05.11.1984. A reference is made to the request made in writing and tendered by the Petitioner to the Special Land Acquisition Officer on 28.11.1984. It is contended that in view thereof, the Petitioner does not have entitlement to the compensation. It is further stated that three cheques bearing Nos.102117, 102118 and 102119 dated 31.12.1987 were handed over to the Power of Attorney, namely, Shri P. K. Doshi. It is asserted that PMC has deposited the amount with the Collector and the cheques in respect of the aforesaid amount have been

handed over to the Power of Attorney. So far as the entitlement to the TDR is concerned, it is contended that as per the policy, the Petitioner is not entitled for TDR and even otherwise the Petitioner does not have any entitlement to the compensation or TDR in respect of instant acquisition.

5. Further Affidavit has been presented by one Shri Santosh Eknath Bhor, Deputy Commissioner of Municipal Corporation of the City of Pune, to oppose the admission and/or grant of any interim relief in the Petition raising several grounds. Those are : Firstly, the Petitioner raises disputed questions of fact. Secondly, it is contended that the Petitioner is guilty of suppression of material fact, the fact of tendering of application by the Petitioner along with purchasers to the Special Land Acquisition Officer on the basis of which the Award was amended is withheld from Court. Thirdly, in this view of the matter, it is contended that the Petitioner has no *locus standi* to maintain the Petition. Fourthly, it is contended that the Award has been amended at the instance of the Petitioner in the year 1984 and the Petitioner is estopped from contending that he is entitled for any relief in view of the amended Award. Fifthly, it is contended that the Petition suffers from gross delay and laches. The award is made in the year 1984 and the Petition is presented after about 3 decades in the year 2016. Apart from this, the application of the Petitioner for Transferable Development Rights was rejected way back on 05.09.2007 which issue is raised in the Petition presented in 2016 and, thus, the Petition suffers from

gross delay and latches. It is reiterated that the cheques in respect of the amount of compensation have been handed over to Shri P. K. Doshi, Power of Attorney of purchasers.

6. Respondent No.5 has also presented an Affidavit supporting the claim of the Petitioner. It is contended that, in fact, the transaction has not materialised and as such either he or the Petitioner is entitled to claim the amount of compensation or the TDR. It is contended that though there is reference to the registered Sale Deed in application presented to Land Acquisition Officer in 1984, there is no such Sale Deed executed. The Affidavit appears to have been tendered on 31.10.2018, post presentation of the Affidavit by the State and the Corporation. The contentions of the Petitioners that, in fact, no Sale Deed has been executed at relevant time, however, Agreement to Sale was executed appears to be afterthought. The contention is raised after presentation of the Affidavit by the Corporation and the State Government, wherein disclosure of application presented by Petitioner along with purchasers is made. In the Petition, there is no whisper as regards the tendering of joint application by the Petitioner along with purchaser on 28.12.1984 requesting the Land Acquisition Officer to pass an Award in the name of the purchaser and to hand over the amount of compensation to him. There is reference in the application in respect of Sale Deed stated to have been executed on 12.12.1984. Acting upon the joint application tendered by the Petitioner

and the purchaser, the Award came to be amended by the Land Acquisition Officer holding the purchasers to be entitled to receive the amount of compensation. The Petitioner, after more than 35 years of declaration of the amended Award, has approached this Court contending that, in fact, the sale transaction did not materialise and the Petitioner is entitled to receive the amount of compensation. Even otherwise, the request for grant of TDR was turned down way back in the year 2009 and the Petitioner has approached this Court in the year 2016 at belatedly. In view of delay and laches in approaching Court as well as on account of suppression of material facts, the Petitioner is not entitled to claim equitable relief.

7. Apart from this, it is recorded in the communication by the Under Secretary issued on 09.07.2009 that the cheques in respect of compensation have been handed over to Shri P. K. Doshi and as such the Petitioner would not be entitled to claim the TDR. The contention of the Petitioner that there was stop payment order in respect of cheques and as such the amount of compensation has not been paid to even power of attorney also appears to be disputed for the reasons that in the Affidavit presented by the Power of Attorney to the Land Acquisition Officer on 30.03.2007 it is recorded that he has not deposited the cheques in his account and that he has not received the amount from the office of the Special Land Acquisition Officer. The Power of Attorney has admitted in

his statement recorded on 30.03.2007 that he has received the cheques on 31.12.1984. However, he further states that he has not received any compensation.

8. In view of the facts placed on record and for the reasons as aforesaid and in view of the amended Award declared by the State, which has attained finality, according to us, the Petitioner do not have entitlement to claim the relief in respect of amount of compensation or the TDR. So far as the contentions raised in respect of non receipt of the amount of compensation and consequences arising out of operation of Section 24(2) of the Act are concerned, the issue has been answered by the Full Bench of this Court in the case of **Mehtab Laiq Ahmed Shaikh and Anr. Vs. State of Maharashtra and Ors.** Reported in **2017 (6) Mh. L. J. 408**. The Full Bench of this Court has observed thus:

“Since section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 provides different time frame and lapsing of acquisition on default, it cannot be applied to the acquisition initiated under section 125 to 127 of the Maharashtra Regional Town Planning Act. The Maharashtra Regional Town Planning Act has not undergone any change from its character as a complete Code. Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act will apply only if the acquisition proceedings are initiated under the Land Acquisition Act, 1894 and cannot apply if they are initiated under section 125 to 127 of the Maharashtra Regional Town Planning Act.”

9. In view of the observations made by the Full Bench as referred above, the relief claimed by the Petitioner founded in provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 need not be considered.

10. For the reasons recorded above, we are of the considered opinion that the Petition is devoid of merits and hence, stands dismissed.

[V. L. ACHLIYA, J.]

[R. M. BORDE, J.]