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

WRIT PETITION NO. 413 OF 2016

Jagannath Hari Shelar
(since deceased) Through his legal heirs .. Petitioners
Vs.
The Special Land Acquisition Officer No.3
(Panshet), Pune & Ors. .. Respondents

Mr. N. P. Deshpande for the Petitioners.
Mrs. Madhubala Kajale, 'B' Panel Counsel for the Respondent-State.

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

P. C. :

1. The Petitioners are raising challenge to the Award passed by the Land Acquisition Officer on 21.10.1976 determining the amount of compensation and acquisition of the property bearing Gat Nos. 132/1 and 132/2 of village Naigaon, Taluke Haveli, District Pune. It is the contention of the Petitioners that during lifetime of their father, the Award has been declared and his father was not received the amount of compensation. The Petitioners, for the first time, have raised the issue of non receipt of amount of compensation by the deceased father of the Petitioners, during the relevant year i.e. 1976, while presenting the instant Petition on 13.12.2015. There are more than one reason for not entertaining this Petition. This Petition is belatedly presented by the Petitioners after four decades from the date of Award. The allottees, who were allotted the land

after taking over possession from the father of the Petitioners, presented a suit bearing No. 2122 of 1993 in the Court of Civil Judge, Junior Division, Pune which was heard and disposed of by the Court of Joint Civil Judge Junior Division, Pune 14.06.1994. The Petitioners presented Appeal bearing Civil Appeal No. 878 of 1997 in the Court of II Addl. District Judge, Pune and the same also came to be dismissed by the Addl. District Judge, Pune on 17.04.2002.

2. The allottees claimed decree for perpetual injunction against the Defendants therein i.e. the Petitioners herein. The father of the Petitioners presented a written statement and contended therein that the suit lands have been partitioned amongst the brothers of the Petitioners and the possession thereof has been given. It is contended that no notice or intimation was given to them by the Land Acquisition Officer before acquiring the land and as such the acquisition is illegal which cannot confer any right or title on the allottees. The father of the Petitioners has also objected to the allotment and distribution being contrary to the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1986.

3. On perusal of the Judgment delivered by the learned Civil Judge, it does not appear that the father of the Petitioners has made any grievance in respect of failure of the acquisition authority in disbursing the amount of

compensation. Apart from this, an application was presented by the present Petitioners after the demise of their father in the year 2012 taking recourse to the provisions of Section 48 of the Land Acquisition Act. The Divisional Commissioner, Pune Division, Pune has disposed of the application and rejected the same by an order dated 29.05.2014. In the proceedings before the Commissioner also the Petitioners have not made any grievance in respect of failure of the acquisition authorities in making payment to their father after declaration of Award. Having failed before the Commissioner in securing a favourable order under Section 48 (1) of the Land Acquisition Act, the Petitioners have presented the instant Petition raising another ground as regards the failure of acquisition authorities in paying the amount of compensation to their deceased father at the time of acquisition of the property i.e. in the year 1976. The belated ground raised by the Petitioners after about 4 decades from the date of Award need not be scrutinized in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. The father of the Petitioners has passed away in 2012. While prosecuting the suit before the Civil Court or at any point of time before any authorities the father of the Petitioners has not raised any grievance during the span of 36 years while he was alive as regards the failure of the acquisition authority of making payment of compensation. We do not find any substance in the contention of the Petitioners in the instant Petition which has been conveniently raised after the demise of their father much after the declaration of Award i.e. about more than 40

years from the date of accrual of cause of action.

4. For the reasons recorded above and in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, no interference is called for. The Petition is devoid of merits. Hence, the Petition stands dismissed.

[V. L. ACHLIYA, J.]

[R. M. BORDE, J.]