

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

WRIT PETITION NO.1418 OF 2008

Mallikarjun Raghunath ChavanPetitioner
Versus
The State of Maharashtra and Ors.Respondents

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Mr. Uday P. Warunjikar for the Petitioners.
Mr. A.I. Patel, Addl. GP with Mr. R.P. Kadam, AGP for the
Respondent Nos.1 and 2-State.

**CORAM : A.A. SAYED AND
SMT. ANUJA PRABHUDESSAI, JJ.**

DATE : 14th JANUARY, 2020.

P.C. :-

. The challenge in the present Petition is to the validity of the Awards dated 30/09/2000 and 31/12/2001 on the ground that the acquisition proceedings which were initiated and culminated in the name of a dead person is a nullity.

2. The subject matter of the Petition is the land admeasuring 73 from Survey No.715 (part) acquired by Award dated 30/09/2000 and land admeasuring 1 Hectare 52 R from Survey No.715/6 acquired by Award dated 31/12/2001. These Awards were preceded by Notifications under Section 4 dated 06/08/1999 and 24/04/1998, which were issued in the name of Raghunath Chavan, the father of the Petitioner who expired on 25/12/1997. Mr. Uday Warunjikar, learned counsel for the Petitioner contends that by application dated 06/06/1999, the widow of the

deceased – Raghunath had intimated the death of her husband Raghunath. Despite such intimation, Notifications under Sections 4 and 6 of the Land Acquisition Act were issued in the name of a dead person. Learned counsel for the Petitioner contends that the Notifications and Awards in the name of a dead person are null and void and vitiate the entire acquisition proceedings. He further contends that though the Respondent has taken paper possession, the Petitioner continues to be in possession of the acquired land.

3. Per contra, Mr. A.I. Patel, learned Additional GP submits that in an enquiry conducted under Section 5-A of the Land Acquisition Act, statement of Amol Chavan was recorded. He further states that the notices relating to the acquisition proceedings were received by the legal representatives of Raghunath Chavan and that they had participated in the acquisition proceedings without intimating the factum of death. He therefore claims that no prejudice has been caused to the Petitioner and that the Awards cannot be quashed solely on the ground that the same are in the name of a dead person. He submits that possession of the land has been taken by the Collector and the acquired land has been allotted to the Project Affected Person, whose name has been entered in 7/12 extract.

4. Having perused the records and considered the submissions advanced by learned counsel / AGP for the respective parties, the

substantial question for consideration is whether the Awards declared under the Land Acquisition Act, in the name of Raghunath Chavan are nullity.

5. It is well settled that Judicial or Quasi-Judicial proceeding/order against a dead person is a nullity. However, this general principle cannot be imported to the land acquisition proceedings or an Award, which is only an offer of compensation payable under the Land Acquisition Act. The Notification or an Award under the Land Acquisition Act in the name of a dead person cannot be considered as a nullity unless the factum of death is brought to the notice of the Acquiring Authority and/or prejudice is caused to 'the person interested by issuance of notice or passing of Awards in the name of a dead person'. In this regard, it is relevant to note that the Award is preceded with notices at various stages. Such notices are generally issued on the basis of revenue entries. In the instant case, it is not in dispute that the acquired land was recorded in the name of Raghunath Chavan in the revenue records. These revenue entries were not changed and the name of the Petitioner or the other heirs of deceased Raghunath were not recorded in the revenue records till the date of passing of the Awards. As a consequence thereof, the notice under Section 4(1) of the Land Acquisition Act came to be issued in the name of Raghunath Chavan. Despite receipt of the notice, the legal representative of Raghunath did not report the death of Raghunath

Chavan to the Land Acquisition Officer and as a result, Notification under Section 4(1) came to be published in the name of Raghunath Chavan. It is also to be noted that the factum of the death of Raghunath Chavan was not disclosed by Amol Chavan whose statement was recorded in an inquiry under Section 5(A) of the Land Acquisition Act. This inquiry was followed by Section 6 declaration published in the year 2000 and 2001. The Petitioner or the other heirs of Raghunath Chavan had not brought to the notice of the Land Acquisition Officer that these Notifications were issued in the name of a dead person. This resulted in passing of the Awards in the name of a dead person.

6. It is also to be noted that the mother of the Petitioner had opposed the acquisition on a ground that they would be rendered landless. This fact also indicate that the Petitioner and other heirs of Raghunath had knowledge of the acquisition proceedings and despite which they had not reported the death of Raghunath to the Land Acquisition Officer, who was certainly not expected to conduct a roving inquiry and ascertain whether the person whose name was appearing in the revenue records was dead or alive. The records indicate that the Petitioner and the other heirs of Raghunath had participated in the acquisition proceedings. The Petitioner has failed to demonstrate that any prejudice has been caused to him or the others by issuance of notice for declaration of Award in the name of a dead person. Hence, the

challenge to the Awards is not tenable.

7. Section 4 Notifications were published in the year 1998 and 1999. Whereas, Section 6 Notifications were published and Awards were declared in the year 2000 and 2001. The Petitioners has challenged these Notifications and Awards only in the year 2008, that too after handing over of the possession without any demur. The delay in challenging the Awards is also a ground for not exercising powers under Section 226 of the Constitution.

8. Under the circumstances, the Petition has no merits and is accordingly dismissed.

Preeti
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Jayani

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(SMT. ANUJA PRABHUDESSAI, J.)

(A.A. SAYED, J.)