

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1106 WRIT PETITION NO.10131 OF 2021
WITH CA/13436/2021 IN WP/10131/2021

BAPU SHIVAJI MORE (DIED) THROUGH L.RS. SAYAJI
BAPU MORE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

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Advocate for Petitioners : Mr. S. K. Shinde
AGP for Respondents - State : Mr. S. K. Tambe

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CORAM : S.V. GANGAPURWALA
AND
S.G. DIGE, JJ.

DATE : 14th DECEMBER, 2021

PER COURT :-

1. The land of the petitioners is acquired under award dated 31.08.1959 passed under Section 11 of the Land Acquisition Act, 1894.

2. Mr.Shinde, learned counsel for the petitioners submits that the possession of land is still with the petitioners. Land is acquired for the purpose of construction of Mula Dam, however, the respondents did not construct the Mula Dam on the site acquired and they have constructed Dam at other place. Learned counsel submits that in view of that the award stands lapsed. The petitioners have filed re-joinder and

on affidavit have accepted to pay the compensation received by them to respondent no.3 with 6% interest p.a. from the date of award i.e. 31.08.1959 till this date.

3. Learned counsel relies on the orders passed by this Court in the case of similarly situated petitioners in Writ Petition no.11953 of 2016 with connected Writ Petitions dated 20th April 2017, order dated 6th March, 2018 in Writ Petition no. 10617 of 2017 and many such orders.

4. Mr. Tambe, learned A.G.P. submits that the respondents do not dispute that possession of the land acquired under award dated 31.08.1959 is still with the petitioners. It is also not disputed in the affidavit that now land of the petitioners is not required for the construction of Dam. The Dam has been constructed at other place. Learned A.G.P. submits that the petitioners are not entitled to retain the land. The learned A.G.P. submits that in the 7/12 extract name of the State is recorded in the ownership column. Non-utilized acquired land if not required for other Government purpose then the concerned Collector has right to sell out the said land by auction sale and the original owners have liberty to take part in the auction proceeding.

5. The aforesaid undisputed facts are culled out as under :-

i) The land of the petitioners is acquired pursuant to the award dated 31.08.1959 passed under Section 11 of the Land Acquisition Act, 1894.

ii) Though the award is passed on 31.08.1959, acquired land is still in possession of the petitioners.

iii) The land was acquired for the purpose of constructing Mula Dam. Mula Dam is constructed elsewhere. The said land is not required for the construction of Mula Dam nor the said land is used by the respondents for any other purpose for almost 62 years.

6. Sub-section 2 of Section 24 of the Right to Fair Compensation and Transparency in land Acquisition Rehabilitation and Resettlement Act, 2013 (for short "the Act of 2013") is explicitly clear, which states that where award under Section 11 of the Land Acquisition Act, 1894 has been made five years or more prior to the commencement of the Act of 2013, but the physical possession of the land has not been taken or the compensation has not been paid, the

said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of the Act of 2013.

7. Section 101 of the Act of 2013 clarifies that when any land acquired under this Act remains unutilised for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be.

8. In the present case, for more than 62 years, the possession of the land from the date of award is still with the petitioners and the respondents have not taken over the land. The land is not required by the Government for the purpose for which it is acquired nor the same is utilized for any other purpose for 62 years. The petitioners have also placed on record various orders passed by this Court as referred to above. The petitioners have also shown bonafides to pay back the compensation amount. In fact under Old Act also the proceedings could have been resorted to under section 48 of the Land Acquisition Act.

9. Be that as it may, considering the aforesaid conspectus of the matter, we pass the following order :-

ORDER

(i) The petitioners shall deposit the amount of Rs.64,763/- i.e. the amount of compensation received by the petitioners pursuant to the award with interest @ 6% p.a. from the date of award dated 31.08.1959 till payment to the respondents authorities.

(ii) Upon deposit of the amount by the petitioners, the respondents shall take appropriate steps to cancel the award dated 31.08.1959 and take consequential steps of mutating the names of the petitioners in the ownership column in place of the Government.

(iii) Upon deposit of amount as directed above, the award dated 31.08.1959 shall stand quashed and set aside.

(iv) The Writ Petition is disposed of. No costs.

(v) In view of the disposal of Writ Petition, the Civil Application No.13436 of 2021 is disposed of.

(S.G.DIGE, J.)

(S.V. GANGAPURWALA, J.)