

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7172 OF 2021

1. Vishwanath s/o Girmaji Gonde
Age 61 years, Occu: Agril.
2. Chandrasen s/o Girmaji Gonde ... **Petitioners**
Age 66 years, Occu: Agri
Both r/o Chincholi Tq. Wadwani,
Dist. Beed

VERSUS

1. The State of Maharashtra,
Through its secretary,
Water resources Department,
Mantralaya, Mumbai 32
2. The Collector, Beed
3. Sub Divisional Officer, Majalgaon ... **Respondents**
District Beed
5. The Executive Engineer,
Minor Irrigation Division,
Ambajogai, District Beed.

Mr. Nilesh N. Bhagwat i/by , Advocate for the petitioners,
Mr. A. R. Kale, AGP for respondents-State

**CORAM : SMT. VIBHA KANKANWADI &
Y. G. KHOBRAGADE, JJ.**

DATE : 10th NOVEMBER, 2022

JUDGMENT (Per Y. G. Khobragade, J.):

1. Rule. Rule made returnable forthwith. With the consent of
both the sides, the matter is heard finally at the stage of admission.

2. The petitioners have invoked jurisdiction of this Court under Article 226 of the Constitution of India and prayed for quash and set aside impugned order dated 16.10.2020 passed by the Respondent No.3 Deputy Collector (Land Acquisition) Coordination, Beed, thereby rejected the application for correction in award dated 31.03.1978 in Case No. LAQ/SR/27/74. The petitioners also prayed for issuance of directions against the respondent No.2 to correct entries in the column of ownership of Statement-E of award dated 31.03.1978 by substituting names of the petitioners as owners of the land Survey No. 31/2A and 31/2B on the basis of judgment and decree dated 04.02.2011 passed by the learned Civil Judge Senior Division, Majalgaon District Beed in Regular Civil Suit No.161 of 2010.

3. The learned counsel appearing for the petitioners submitted that, on 06.03.1975, Notification under section 4 of the Land Acquisition Act was published in the Government Gazette intending to acquire petitioners' land bearing Survey No. 31/2A and 31/2B. Thereafter, on 31.03.1978, the Special Land Acquisition Officer passed the award, however, names of the petitioners did not figure in the column of 'names of owner' but it has been mentioned as 'title not decided'. The learned counsel further submitted that, initially, petitioners' father Shri Girmaji Gonde was owner of said land but on 03.09.1990 petitioners' father died and after death of their father, their names are recorded in

the revenue record being legal heirs. Thereafter, on 09.03.2010, the petitioner approached respondent No.3 with a request to release the amount of compensation of Rs. 575/- under the Award for acquisition of their land to the extent of 0.20 R. However, on 24.05.2010, the special land acquisition passed an order and held that title of the acquired land has not been decided and therefore the petitioners were directed to get the ownership to be decided from the competent Court for release of compensation in their favour. Therefore, the petitioners filed Regular Civil Suit No. 161 of 2010 before the Court of Civil Judge Senior Division, Majalgaon and prayed for declaration of ownership of acquired land and for release of payment of compensation. Accordingly, on conclusion of trial, the learned civil Judge Senior Division passed judgment and decree on 04.02.2011 and declared that the petitioners are joint owners of land which have been acquired by respondents out of Survey No. 31/A admeasuring 6 Acre 28 gunthas and directed the Special Land Acquisition Officer to pay compensation of Rs.575/- to the plaintiffs/petitioners. Thereafter, the petitioners filed Execution proceedings bearing Darkhast No. 32 of 2004 and the respondents have deposited compensation amount in execution proceedings, which the petitioners received.

4. The learned counsel appearing for the petitioners further submitted that, on 22.06.2018, the petitioners submitted an application

with respondent No.3 Sub Division Officer for correction in the Award and Statement -E, however, after hearing, respondent No.3 solicited guidance from respondent No.2- Collector, who opined that as per provisions of section 13A of the Land Acquisition Act, 1894, the acquisition authority can only correct any clerical or arithmetical mistakes in the award within six months from the date of declaration of award but the petitioners sought for correction of award after lapse of 40 years. However, the respondent No.3 did not decide their application. Therefore, the petitioners again made representation but the respondent No.3 issued communication dated 16.10.2020 and informed them that their application for correction entries in Statement-E in the Award dated 31.03.1978 cannot be entertained. Therefore, the petitioners prayed for issuance of directions against respondent No.2 to correct their names in the column of ownership of Statement-E to the award dated 31.03.1978.

5. The learned AGP submitted that the petitioners, by way of present petition, prayed for quash and set aside of the order rejecting their application for correction in Award dated 31.03.1978 and for issuance of directions to respondent No.2 to correct the entries in ownership column of Statement -E to the Award by substituting their names being owners of the land Survey Nos. 31/2A and 31/2B on the basis of judgment and decree dated 04.02.2011 passed in RCS No.

162/2010. However, as per provisions of section 13A of the Land acquisition Act, respondent No.2- Collector has power to correct only clerical and arithmetical errors within a period of six months after passing the award and there is no provision under the Act to correct the award after lapse of forty years.

6. On the face of record it appears that, on 31.03.1978, the Special Land Officer passed award in respect of acquired land under section 11 of the Land Acquisition Act and determined the compensation in respect of land Survey No. 31/2G and 31/2B (wrongly mentioned in body of petition as Survey Nos. 31/2A and 31/2B) and other lands of village Salimba Wadwani Tq. Majalgaon District Beed. In column of Name of owner in Statement E attached to the Award in respect of land Survey Nos. 31/2G and 31/2B it is mentioned that, 'title not decided' but the compensation to the tune of Rs.287.50 each is determined in respect of both the survey numbers. The petitioners have claimed that, their father late Shri Girmaji Gonde was owner of both the lands but in the year 03.09.1990, their father died and thereafter their names are recorded with the revenue record against Survey Nos. 31/2G and 31/2B and when they applied with the Special Land Acquisition Officer for release of compensation, they were directed to get their title decided from the competent court over the acquired land. Thereafter, the petitioners instituted RCS No. 11 of

2010 before the learned Civil Judge Senior Division, Majalgaon for declaration that they are owners of the property and on conclusion of trial on 04.02.2011, the learned trial Court declared that, the petitioners are owners of the acquired land out of land. Thereafter, on the basis of said judgment and decree, the petitioner approached respondent No.3-Sub Divisional Officer for substituting their names in the award in respect of acquired land. However, on 06.10.2020, the respondent No.4 Deputy Collector (land Acquisition) Coordination, Beed opined that as per provisions of section 13-A of the Land Acquisition Act, 1894, the Collector is having power to make correction in award within a period of six months in respect of clerical and arithmetical mistakes and there is no provisions for correction of award after lapse of 40 years.

7. Section 13A of the Land Acquisition ct reads as under:

"13A Correction of clerical errors, etc.

(1) The Collector may, at any time but not later than six months from the date of the award, or where he has been required under section 18 to make a reference to the Court, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority: Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter.

(2) The Collector shall give immediate notice of any correction made in the award to all the persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered as an arrears of land revenue."

8. The petitioners prayed for correction in the Award dated 31.03.1978 on the basis of judgment and decree dated 04.02.2011 passed by the Civil Court, however, the petitioners have not taken any pain to get their title decided soon after passing of the award dated 31.03.1978 and they slept over their right since last more than 40 years. In para 8 of the petition, the petitioners contended about filing of execution proceedings bearing Darkhast No. 32 of 2014 for recovery of compensation of Rs.575/- and the respondents already deposited said amount, which came to be received by them but the petitioners have not come with plea that, they have received the said compensation under protest. After lapse of more than 40 years, the petitioners wanted to get correction in the award passed in the year 1978 with an intention to file proceeding for enhancement, which is not substantial in the eyes of law. Therefore the present petition suffers from delay and laches and the respondents cannot be directed to correct the award

31.03.1978. Therefore the present petition is liable to be dismissed.

Accordingly we proceed to pass the following order.

O R D E R

- 1) Writ petition is dismissed. No order as to costs.
- 2) Rule is accordingly discharged.

(Y. G. KHOBRAGADE, J.)

(SMT. VIBHA KANKANWADI, J.)

JPChavan