

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

**WRIT PETITION NO.7495 OF 2019**

1) Jalandar S/o Ramdas Patil,  
Age-50 years, Occu:Agril.,

2) Ramdas S/o Bapu Patil,  
Age-Major, Occu:Agril.,

Petitioner Nos. 1 and 2  
R/o-Plot No.80, Adarsh Nagar,  
Chopda, Dist-Jalgaon,

3) Prakash S/o Dhudku Chaudhari,  
Age-Major, Occu:Agril.,  
R/o-Plot No.51/05/B,  
Malharpura, Near Bhavani Mandir,  
Chopda, Dist-Jalgaon,

4) Navnath S/o Devising Patil,  
Age-Major, Occu:Agril.,

5) Pravin S/o Vinayak Karankal,  
Age-Major, Occu:Agril.,

Petitioner Nos.4 and 5  
R/o-Virwade, Tq-Chopda,  
Dist-Jalgaon.

**...PETITIONERS**

**VERSUS**

1) The State of Maharashtra,  
Through The Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai-32,

- 2) The Collector, Jalgaon,  
Dist-Jalgaon,
- 3) The Deputy Collector (Land Acquisition-2),  
Upper Tapi Project (Hatnur), Jalgaon,
- 4) Special Land Acquisition Officer No.2,  
Upper Tapi Project (Hatnur), Jalgaon,
- 5) The Executive Engineer,  
Medium Project, Division Jalgaon,
- 6) The Deputy Director  
of Land Records, Chopda,  
Dist-Jalgaon,
- 7) The Sub Divisional Engineer,  
Gul Medium Project, Sub Division  
Chopda, Dist-Jalgaon.

**...RESPONDENTS**

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Mr.P.B. Patil Advocate h/f. Mr. P.H. Patil Advocate  
for Petitioners.  
Mrs.M.A. Deshpande, A.G.P. for Respondent Nos.1 to 4.  
Mr.A.D. Pawar Advocate for Respondent Nos. 5 and 7.

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**CORAM: SMT. VIBHA KANKANWADI AND  
Y.G. KHOBRADE, JJ.**

**DATE : 10<sup>th</sup> OCTOBER, 2022**

**JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :**

1. Rule. Rule made returnable forthwith. Heard learned  
counsel for the appearing parties finally, by consent.

2. It has been submitted on behalf of the petitioners that they are the farmers from the village Virwade, Taluka-Chopda, District-Jalgaon. In the year 2006, the lands of the petitioners were acquired for S.R. No.06/2009 of right canal of Gul Medium Project. Notice of joint measurement was issued to petitioner No.5 only and thereafter notice under Section 4 of the Land Acquisition Act was also given to petitioner No.5 only on 27<sup>th</sup> August 2010. No notices of joint measurement as well as Section 4 of the Land Acquisition Act were given to petitioner Nos.1 to 4, therefore, they had made representation to respondent No.4 on 7<sup>th</sup> January 2011. Respondent No.3 had informed about the grievances of petitioner Nos. 1 to 4 by letter dated by letter dated 29<sup>th</sup> January 2011 to respondent No.5. Thereafter respondent No.3 had given notices to petitioners and allowed them to raise objection for the notice under Section 9 of the Land Acquisition Act. Accordingly, petitioner No.2 had made representation on 3<sup>rd</sup> June 2011 stating that the compensation in respect of the acquired land should be paid to him and certificate under the Act be issued to him. It also appears that respondent No.3 directed respondent Nos.5 and 6 to carry out re-

measurement of the land of the petitioners as per their shares vide communication dated 18<sup>th</sup> April 2012. Accordingly, respondent No.6 issued notice about the joint measurement on 4<sup>th</sup> March 2013 and the report of the joint measurement was given on 6<sup>th</sup> September 2013, however, no steps were taken by the respondents for the acquisition of the land of the petitioners and no payment of compensation was made. Thereafter, also the representations were made by the petitioners and there was communication between the respondents inter-se also. Thus, since 2006 till today the petitioners have not received the compensation though they had persuaded for the same. Further, by way of amendment, the petitioners contended that during the pendency of the Writ Petition, respondent No.7 issued notices under Section 12(2) of the Land Acquisition Act on 18<sup>th</sup> January 2020 and in that notice it was mentioned that the award was passed on 25<sup>th</sup> June 2013. In fact the petitioners were not aware about passing of the award. Passing of award after lapse of the period of two years is in contravention of Section 11A of the Land Acquisition Act and therefore, there is absolutely no legality to the award that has been passed. It is non-est and should be treated as lapsed.

3. The learned Advocate for the petitioners submitted that this Court in ***Mahesh Shivaji Dighe and another vs. State of Maharashtra and others, (2004) 4 MhLJ 614***, has held that the provisions of Section 11A of the Land Acquisition Act are mandatory and failure to comply with it would render the award null and void. Under such circumstance, the declaration by issuing a writ is required in this case. So also the notices issued in between are also required to be quashed and set aside.

4. Affidavit in reply has been filed by Miss Seema Arjunrao Ahire, Sub Divisional Officer, Amalner Division, Amalner, District-Jalgaon, on behalf of respondent Nos.2 and 3, wherein most of the facts have been admitted. It is then stated that preliminary notification under Section 4 of the Land Acquisition Act was published in the Government Gazette on 20<sup>th</sup> May 2010 in respect of the said project and notice under Section 6 came to be issued on 20<sup>th</sup> January 2011. The declarations under Section 6 (g) (1) (2) (3) (4) of the Land Acquisition Act were published on 2<sup>nd</sup> May 2012 calling upon the objections and then the final award was declared on 25<sup>th</sup> June 2013. It is stated that there is

no major delay in declaring the award. The award has been finalized and therefore, there is no need to interfere. Learned AGP, based on this affidavit, has submitted that there will not be a bar under Section 11A of the Land Acquisition Act.

5. Miss Aaditi Girish Kulkarni, Executive Engineer, Jalgaon Medium Project Division-1, Jalgaon has filed affidavit-in-reply on behalf of respondent Nos.5 and 7. It is denied that the possession of the land was taken in the year 2006. According to her, the possession was taken on 22<sup>nd</sup> February 2009. Possession receipts would clearly show the said fact, copies of which have been produced along with the affidavit-in-reply. Initially joint measurement was carried out on 4<sup>th</sup> March 2010, however, re-measurement was required to be done in view of the separate share of each of the petitioner and accordingly re-measurement sheet was prepared on 27<sup>th</sup> February 2013. 2/3rd amount was paid by the acquiring body on 2<sup>nd</sup> April 2010, which was amounting to Rs.3,54,494/-. After passing of the award, the Special Land Acquisition Officer demanded the remaining amount of Rs.23,447/- and after reminder the said amount was deposited on 10<sup>th</sup> February 2017. Thus, the acquiring body has

deposited the entire amount for the purpose of acquisition of the land belonging to the petitioners. As the land had sub-divisions, it appears that the re-measurement was required to be done later on and the distribution of the compensation ought to have been through the office of Special Land Acquisition Officer. Merely because ministerial act of intimating the claimants about passing of the award has not been done and they have not taken the amount, would not amount to lapsing of the entire acquisition proceedings.

6. Based upon the said affidavit-in-reply, the learned Advocate appearing for respondent Nos. 5 and 7 submitted that there is no bar under Section 11A of the Land Acquisition Act.

7. At the outset, it is to be noted that Section 11A of the Land Acquisition Act provides that the Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. Further, the proviso to Section 11A provides that, in a case where the declaration has been published before

the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from the date of the commencement of the said Amendment Act. Here, we are concerned with the main provision and not the proviso. Here in this case, even if we take the affidavit on behalf of the Government as it is, which is in fact not supported by documents, but those documents have been filed by the petitioners, it would show that the notice under Section 4 of the Land Acquisition Act has been issued to petitioner No.5 only though the 7 X 12 extract shows name of all the petitioners. Thereafter petitioner Nos.1 to 4 gave representation on 7<sup>th</sup> January 2011 to respondent No.4, yet no such further acts have been done immediately and that representation appears to have been only forwarded without any positive act. Further, even after the alleged declaration of award, Special Land Acquisition Officer has not informed the same to the petitioners though the Writ Petition was then still pending. No counter-affidavit, after the amendment has been carried out by the petitioners, has been filed on behalf of the respondents that after 25<sup>th</sup> June 2013 till 18<sup>th</sup> January 2020, when notice under Section 12(2) of the Land Acquisition Act was issued by respondent No.4; the petitioner

Nos.1 to 5 were issued with any such intimation about passing of the award. Intimation about passing of the award is mandatory. The Sub Divisional Officer rather accepts that there was delay. In Para No.5 of the affidavit, it is clearly stated that notification under Section 6 of the Land Acquisition Act was published on 20<sup>th</sup> January 2011 and award was published on 25<sup>th</sup> June 2013. Such delay cannot be justified when it is mandatory.

8. This Court in ***Mahesh Shivaji Dighe and another vs. State of Maharashtra and others***, (supra) in Para No.11 of the Judgment, observed thus:-

“ 11. It is sought to be contended on behalf of the respondents that, since the petitioners have already preferred reference under Section 18, they have accepted the decision of the respondents to acquire the land and only dispute which they have pursued in the matter is in relation to the compensation amount. The contention is liable to be rejected for more than one reason. Section 11A clearly mandates that the award has necessarily to be passed within a period of two years from the date of publication of the declaration of the notification under Section 6. It is already held that this provision is a mandatory provision. Once requirement of law clearly mandates the authorities to perform any particular act within the specified period and

further provides for consequences in case of failure to comply with such mandate, any failure on the part of the authorities to ensure due compliance of the mandate of such provision is bound to result the act done in contravention of such provision to be ab initio void. It is well settled that when a duty is cast on the public body to perform an act within the specified period, such duty had to be performed within the specified period and such provision is to be construed as mandatory, and more so when the consequences for failure to comply such duty are also provided under the provision of law."

. Further, in the same decision, it was also considered, as to whether invocation of remedy under Section 18 of the Land Acquisition Act would amount to waiver of the mandatory requirement under Section 11A of the Land Acquisition Act. It has been observed in Para Nos. 13 and 14 thus:-

" 13. If one peruses Section 11A it would disclose that it is primarily the duty of the Land Acquisition Officer to ensure strict compliance of the period of two years for the purpose of making of award under Section 11 from the date of last declaration of notification under Section 6. Undoubtedly, such obligation is cast upon the Land Acquisition Officer from the point of view of protecting the interest of the parties whose land is sought to be acquired. Being so, though it could be argued that the persons for whose benefit the mandatory limit of two years is prescribed under Section

11A would be entitled to waive such requirement or condition prescribed under Section 11A, it is difficult to accept the contention on behalf of the Government that the reference under Section 18 itself would amount to such a waiver.

14. Section 18(1) of the said Act which deals with the right of reference to the interested parties provides that, any person interested who has not accepted the award or amendment thereof may, by written application to the Collector, require that the matter be referred by the Collector for determination of the Court, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable or apportionment of the compensation among the persons interested. Obviously, the reference under Section 18 is confined to four grounds. Firstly, the objections in relation to the measurement of the land, secondly, the amount of compensation, thirdly, as regards the quantum of apportionment of compensation and, fourthly, as regards the apportionment among the interested persons. The scope of the reference being limited to the four grounds specified in Section 18, and upon mere invocation of right to challenge the award on those four grounds, certainly, it cannot be said that a party seeking to exercise its right under Section 18 would waive his rights under Section 11A. It is well settled law that waiver has to be clear and specific. It cannot be by mere implication. Besides, there is no estoppel against law. Considering all these aspects, the contention on behalf of the respondents that, reference under Section 18 would

amount to waiver of right under Section 11A cannot be accepted. ”

9. There is no necessity to take any contrary view, as the provisions of the law are very much clear. Therefore, taking into consideration the fact that there was delay in declaration of the award, the said award has to be declared as void and barred under Section 11A of the Land Acquisition Act. The notices issued based upon the said acquisition proceedings and the award deserves to be set aside. Hence the following order:-

**ORDER**

(I) The Writ Petition stands allowed in terms of prayer clause “(B-1)” and “(B-2)”.

(II) Rule made absolute in above terms.

**[Y.G. KHOBRAGADE]**  
**JUDGE**

**[SMT. VIBHA KANKANWADI]**  
**JUDGE**