

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

WRIT PETITION NO. 5240 OF 2019

Tukaram Santu Birambole and Ors.

... Petitioners

Versus

The State of Maharashtra and Ors.

... Respondents

Mr. Chetan G. Patil for the Petitioners.

Ms. Kavita N. Solunke, AGP for the Respondent Nos. 1 to 4.

Mr. Umesh H. Pawar for the Respondent Nos. 5 and 6.

**CORAM: R. D. DHANUKA AND
S. M. MODAK, JJ.**

DATE : 1st MARCH, 2022

P.C. :-

. By this petition filed under Article 226 of the Constitution of India, the petitioners seek writ of certiorari for quashing and setting aside the declaration issued by respondent nos. 4 under Section 6 of the Land Acquisition Act, 1894 dated 7th May, 2010 published in the Official Gazette on 27th May, 2010 and the award passed under Section 11 of the said Act on 14th February, 2011 and the entire land acquisition proceedings qua the land bearing Gat No. 256/B admeasuring 0.55 Ares situated at Village Vadakshivale, Taluka Ajra, District Kolhapur.

2. It is the case of the petitioners that on 28th February, 2006, the petitioners lands bearing Gat No. 180, 194/2, 194/3 and 194/4 admeasuring 1 Acre 0.07.9 Ares situated at Vadakshivale, Taluka Ajra, District Kolhapur were acquired due to submergence. According to the

petitioners they were tenants in the very same village since their ancestors in the land bearing Gat No. 256 admeasuring 1 hector 92 Ares and the predecessors of the petitioners were deemed purchasers as on 1st April, 1957.

3. It is the case of the petitioners that the name of the predecessors of the petitioners were continuously shown in the revenue records as a protected tenant. Subsequently, consolidation took place in the said village in the year 1974-75 and during that time the names of the predecessors of the petitioners were removed without any notice.

4. Sometime in the year 2009, the respondent no.4 proposed to initiate acquisition proceedings in respect of the land in question. The notice was issued under Section 3A of the Land Acquisition Act, 1894 for taking measurement of the property proposed to be acquired. On 17th July, 2009, the petitioners raised an objection to the said measurement being taken. On 7th May, 2010, the respondent no.4 proceeded with the acquisition and issued a declaration under Section 6 of the said Act. On 30th July, 2009, the Land Acquisition Officer issued a notification under Section 4 of the Act and published in Maharashtra Government Gazette on 3rd October, 2009. The corrigendum of Section 4 was published in Maharashtra Government Gazette on 30th July, 2009. On 27th May, 2010, the declaration under Section 6 of the said Act was published in the Maharashtra Government Gazette and was published in local sector i.e. village Chavadi on 24th June, 2010. On 14th February, 2011, the Special Land Acquisition Officer declared the final award under Section 11 of the Land Acquisition Act and to pay

compensation of Rs.1,36,919/- to the respondent nos. 5 and 6 and to take possession on 3rd August, 2011 vide Kabjepatti-Panchnama and be handed over to the representative of the Collector and Dy. Director, Project Resettlement (Land) Kolhapur on the same day.

5. On 18th March, 2019, the petitioners filed this petition *inter-alia* impugning the acquisition proceedings and the award.

6. Mr. Patil, learned counsel for the petitioners invited our attention to some of the documents annexed to the petition and would submit that the predecessors of the petitioners were already cultivating the land in question as on 1st April, 1957 and were thus deemed purchasers of the said land. He submits that another land in the same village was already declared and acquired as part of the affected land where the land in question was acquired under affected land. He invited our attention to the objection raised by his client on 7/12 extract annexed to the petition and would submit that names of the predecessors of the petitioners were mentioned in the 7/12 extract. He also invited our attention to the objection dated 13th July, 2009 raised by the petitioners to the notice issued under Section 3A of the Land Acquisition Act.

7. It is submitted that though the petitioners have raised objections as far back as on 17th July, 2009, no notice was issued to the petitioners by the Special Land Acquisition Officer under Section 4, 6 or 9 of the said Act and the entire proceedings are thus vitiated.

8. It is submitted that the objection raised by the petitioners have

not been dealt with by the Special Land Acquisition Officer in the award passed on 14th February, 2011. In support of this submission, learned counsel placed reliance on the following judgments :-

- (i) The Judgment of Supreme Court in case of ***Kulsum R. Nadiadwala v/s. State of Maharashtra and Ors., (2012) 6 SCC 348*** and in paragraph nos. 4, 5, 6, 12 and 13.
- (ii) The Judgment of Supreme Court in case of ***J & K Housing Board and Anr. v/s. Kunwar Sanjay Krishan Kaul and Ors., (2011) 10 SCC 714*** and in paragraph nos. 32 to 36.

9. Learned counsel for the petitioner invited our attention to the order passed by the Authority under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948. He further states that insofar as the land in acquisition is concerned, since the land in question was already acquired by the State Government, in the said order passed by the Authority under the said Act, the Authority did not declare the purchase price by issuing certificate under Section 32G. He submits that since the names of the petitioners were already recorded in the 7/12 extract as on the date of issuance of certificate under Section 4 of the said Act, the Special Land Acquisition Officer ought to have issued notice to the petitioners.

10. It is submitted that though at some stage, the names of the petitioners were deleted from the 7/12 extract, on the application filed by the petitioners, the consolidation officers has corrected those entries and has reinserted the names of the petitioners.

11. It is submitted that the so called objection relied upon by the respondents is sham and bogus since the petitioners were in possession of the land in question. The question of taking any physical possession of the said land from the respondent nos. 5 and 6 by the Special Land Acquisition Officer did not arise. In support of those submissions, he relied upon the photograph annexed at pages 101 to 104 and also the averments made in the affidavit-in-reply filed by his client. He submits that though the Special Land Acquisition Officer in the year 2011 has declared the final award, as on date no allotment is made in support of the land in question. The allotment earlier made in favour of 3rd party is already cancelled.

12. It is submitted that under Section 9 of the Land Acquisition Act, 1984 the notice which has to be issued to the interested person was not issued to the petitioners though the petitioners was the interested person and was in possession.

13. It is submitted by the learned counsel that since the petitioners names were already recorded in 7/12 extract prior to the date of issuance under Section 4 notification, the petitioners were not required to obtain any declaration of deemed purchasers. He submits that the landlord has not raised any objection about the cultivation of the petitioners on the cut off date and also subsequently.

14. Learned counsel for the respondent nos. 5 and 6 on the other hand invited our attention to some of the 7/12 extract annexed to the petition and would submit that his clients were the owners of GAT no.

256/B. In all the mutation entries, the names of the respondent nos. 5 and 6 were recorded as owners. The Special Land Acquisition Officer having found that the respondent nos. 5 and 6 in possession had issued notice including notice under Section 3A of the Land Acquisition Act.

15. It is submitted by the learned counsel that the said so called objections raised by the petitioners on 13th July, 2009 was prior to the date of issuance of Section 4 notification, no objection of any nature whatsoever was raised by the petitioners in response to the Section 4 notification and thus the Special Land Acquisition Officer while making an award under Section 11 rightly could not have considered any objection. He submits that the land was acquired after complying with the mandatory requirements under provisions of the Land Acquisition Act.

16. Learned counsel invited our attention to the documents at page no.67 of the writ petition and would submit that there was a dispute between the petitioners and the respondent nos. 5 and 6 regarding alleged tenancy of the petitioners. Against the order passed by the Authority under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948, the Sub-Divisional Officer allowed the appeal filed by the respondent nos. 5 and 6 and he submits that the Maharashtra Revenue Tribunal however has granted stay and the proceedings are now subjudiced. He submits that the tenants were the petitioners, are thus not established as on date.

17. Mr. Patil, learned counsel for the petitioners in rejoinder submits

that the order passed by the Sub-Divisional Officer relied upon by the respondent nos. 5 and 6 has been stayed by the Maharashtra Revenue Tribunal.

18. A perusal of the record indicates that the notice under Section 3A was issued for taking measurement. The said notice was addressed to the respondent nos. 5 and 6. However, the petitioner raised an objection on 13th July, 2009 to the measurement. No objection of any nature whatsoever was raised by the petitioners in response to the notification under Sections 4 or 6 or 9. The Special Land Acquisition Officer has already made an award as far back as on 14th February, 2011. The present petition however is filed by the petitioners only on 18th March, 2019. There is no interim reliefs granted by this Court in this petition till date.

19. Be that as it may, the affidavit-in-reply filed by the State Government clearly indicates that the possession was already taken by the Special Land Acquisition Officer as far back as on 3rd August, 2011 vide Kabjepatti-Panchnama and handed over to the representative of the Collector and Dy. Director, Project Resettlement (Land) Kolhapur on the same day.

20. Under Section 16 of the Land Acquisition Act, 1894, when the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances. Once the land is vested in the State Government, even if the subsequent allotment is made by the State

Government in favour of the party has stood cancelled as submitted by the learned counsel for the petitioners, requisition proceedings cannot be declared illegal on that ground. The objection is raised by the petitioners on various grounds based on the alleged tenancy rights claimed by the petitioners were in the acquisition. Merely because the petitioners or their predecessors claiming the land in question as on due date, that would not automatically grant them the status of a deemed purchasers. Various proceedings are required to be filed under the provisions of the Maharashtra Tenancy and Agricultural Lands Act, 1948. In this case, the petitioners had filed the proceedings under Section 32G sometime in the year 2018 much after the declaration of award as far back as in the year 2011. Even in the said proceedings, the Competent Authority has rightly refused to declare any purchase price as far as for the land in question is concerned, since land acquisition was already made much before such application. Merely on the basis of the rights claimed by the petitioners without any proof and no objection raised by the petitioners in response to the notification under Section 4 of the Land Acquisition Act, Land Acquisition Officer was not required to give any notice at that stage or even at the stage of taking possession under Section 9.

21. Insofar as the Judgments of the Supreme Court in case of ***Kulsum R. Nadiadwala*** (supra) and ***J & K Housing Board and Anr.*** (supra) is concerned, there is no dispute about the proposition of law laid down by the Supreme Court in that matter, since the petitioners have not established any right in the said property which was under acquisition. Petitioners were not entitled to any notice under any of the

provisions of the Land Acquisition Act. The Judgments relied upon by Mr. Patil, learned counsel for the petitioners thus would not advance the case of the petitioners.

22. In our view, on the ground of gross delay on the part of the petitioners and also on merits, the petitioners have not made out any case for interference with the acquisition proceeding which are already completed as far back as in the year 2011. The petitioner is devoid of merit and is accordingly dismissed with cost quantified at Rs.50,000/-. The same shall be paid by the petitioners to the respondent nos. 5 and 6 within one week from today.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]

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