

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4409 OF 2017

Sadashiv Krushnaji Kunjir and another ... Petitioners

V/s.

The Collector, Pune and others ... Respondents

Mr. Nitin P. Deshpande, for the Petitioner.

Ms. M.S. Bane, AGP for the Respondent Nos.1, 2 and 4 – State.

Mr. Rakesh L. Singh i/by Mr. M.V. Sini and Co., for the Respondent–
NHAI.

CORAM : **NITIN JAMDAR AND
SHARMILA U. DESHMUKH, JJ.**

DATE : **17 October 2022**

P.C. :

Heard learned counsel for the parties.

2. The Petitioners have sought two prayers by way of this
Petition. The first is to set aside the Notifications dated 10 October
1976 and 24 November 1977 and the Award dated 26 March 1979.
The second prayer is to quash and set aside the order dated
7 December 2017 passed under Section 48(1) of the Land
Acquisition Act, 1894.

3. This writ petition filed on 28 March 2017 seeks to question the notification and the Award rendered almost 40 years ago. This challenge is based on certain inter departmental correspondence which is annexed to the petition, that being letters dated 8 June 2009 and 9 June 2007. According to the learned counsel this inter departmental correspondence would show that the land was erroneously acquired.

4. As of today, pursuant to the Award passed for decades ago the property is duly vested in the State Government. The power under Section 48(1) of the Act of 1894 is not conferred on the State to release acquired lands at will, but it is to be exercised in public interest, if at all this power can be exercised once possession is taken.

5. We have not been shown any legal right vested in the Petitioner, who is no longer owner of the property to seek Writ of Mandamus against the State to direct the State to exercise powers under Section 48(1) and return the land back to him. Yet, the request of the Petitioner is entertained as an appeal, arguments advanced are recorded in the order and a judgment is sought to be given. Plain reading of Section 48(1) does not contemplate such an adversarial adjudication. Merely because such order is passed, does not mean that it can be challenged as if it is a quasi judicial order. It was for the State Government to decide as to whether to withdraw from the acquisition on the land as is already stood vested, if

permissible in law. It has to be noted that for disposal and allowing of lands which have been already vested in State Government a different methodology is to be followed.

6. As regards assertion of the Petitioners that there was an inter-departmental correspondence, which according to the Petitioners is in favour of the Petitioners, all we observe that the petition filed by the Petitioner can be considered as representation to the State Government and it is for the State Government to take a decision.

7. The Writ Petition is disposed of.

(SHARMILA U. DESHMUKH, J.)

(NITIN JAMDAR, J.)