

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

**WRIT PETITION NO. 4387 OF 2007
with
CIVIL APPLICATION NO.1965 OF 2018**

1. Bhalchandra Vasudeo Bhaskare
 2. Prabhakar Vasudeo Bhaskare
 3. Vaman Vasudeo Bhaskare
 4. Devilal Vasudeo Bhaskare
 5. Vidhyadhar Vasudeo Bhaskare
- All residents of Tembhurni
Taluka Madha, District Solapur

.. Petitioners

v/s.

1. The State of Maharashtra
2. Divisional Officer,
Forest & Revenue Department,
Mantralaya, Mumbai 400 032.
3. Executive Engineer
Bhima Irrigation Division,
Pandharpur,
(Bhima Ujjani project)-Acquiring Body

..Respondents

Mrs. Geeta Mulekar for the Petitioners.

Mr. A.I.Patel, Addl. G.P. a/w. R.P.Kadam, AGP for the State Respondent
Nos.1 and 2.

**CORAM : A. A. SAYED &
ANUJA PRABHUDESSAI, JJ.**
DATED : 31 MAY 2022.
**(In Chamber at 1.30 P.M. with
Anuja Prabhudessai on V.C.)**

JUDGMENT: (PER ANUJA PRABHUDESSAI, J.)

1. By this writ petition, filed under Article 226 of the Constitution of India, the Petitioners have sought the following reliefs:-

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PRASANNA P
SALGAONKAR

“(1A) This Hon’ble Court may kindly declare that the Acquisition proceedings initiated by the State of Maharashtra by the notification under Section 4 of Land Acquisition Act, published on 26.03.1964 for acquisition of the Petitioner’s land for construction of irrigation colony of Bhima Ujjani Project, are lapsed.

(b) ...

(c) That this Hon’ble Court be pleased to quash and set aside the order dated 15.02.2007 passed by the Divisional officer, Revenue & Forest Department, Mantralaya, Mumbai;

(d) That this Hon’ble Court be pleased to direct the Respondents to relinquish the land of the Petitioners bearing Survey No.555-A/1+ 2A (New Block No.263/1) admeasuring 9 Acres 29 gunthas from the acquisition proceedings initiated by State of Maharashtra in the year 1964 for Bhima Ujjani Project;”

2. The Petitioners claim to be the owners of the land under survey No.555-A/1 (New Block No. 863/1) of Village Tembhurni, Taluka Madha, District Solapur. The said land was acquired by the State of Maharashtra

for construction of irrigation colony for Bhima Ujjani Project. The notification under Section 4 of the Land Acquisition Act, 1894 was published on 26.03.1964 and Award under Section 11 was declared in June 1966. The Petitioners claim that they have not been paid any compensation and were not served with notice under Section 12(2) of the Land Acquisition Act.

3. The Petitioners contend that by letter dated 11.03.1971, the Executive Engineer, Ujjani Project had informed the Collector that the land was not required for the purpose for which it was acquired. The letter also states that the land owners had not received compensation in respect of the said land and that the office had decided to surrender the land to the land owners as the same was more than the requirement. Since the Collector did not take any action, the mother of the Petitioners filed a Special Civil Suit No.18 of 1981 before the Civil Judge, Senior Division, Solapur, for possession of the land, and in the alternative, payment of compensation of Rs.35910/- and further for issuing directions to the State of Maharashtra to return the excess land under Section 48 of the Land Acquisition Act. The said suit came to be dismissed on 21.07.1984 for want of jurisdiction. The Appeal preferred against the said judgment was dismissed on 27.03.2002.

4. Being aggrieved by the acquisition, the Petitioners filed a Writ Petition No.8036 of 2003, for setting aside the acquisition proceeding. The said Writ Petition was disposed of by order dated 26.10.2005 with liberty to the Petitioners to make a representation for relinquishment. Accordingly, the Petitioners made a representation dated 26.12.2005 for release of the land under Section 48 of the Land Acquisition Act. The said representation came to be rejected by order dated 15.02.2007, mainly on the ground that the acquired land is in possession of the Acquiring body and the same vests in the Government under Section 16 of the Land Acquisition Act.

5. Aggrieved by the said order, the Petitioners have invoked the writ jurisdiction of this Court. The Petitioners contend that they are in possession of the subject land, and this fact is confirmed by the Civil Court. It is stated that the findings recorded by the Respondent No.2 on the issue of possession are contrary to the findings of the Civil Court, which have attained finality. Referring to letter dated 11.03.1971, the Petitioners contend that the said land is not required by the Department for the purpose for which it was acquired. It is stated that since the decision was taken to surrender the land, the land ought to have been denotified under Section 48 of the Land Acquisition Act. By way of amendment the Petitioners incorporated additional pleadings and prayer that the award of Special Land

Acquisition Officer has not been approved by the Government and sought a declaration that the proceedings have lapsed under Section 11A of the Land Acquisition Act.

6. Sunil Prabhakar Madkar, Special Land Acquisition No.1, Solapur has filed his affidavit-in-reply stating that the award under Section 11 of the Land Acquisition Act was declared on 20/07/1966. The civil litigation between the owner of the land and the Petitioners was pending before the Court. Hence, the compensation was not apportioned at the time of passing of the award. He has stated that after passing of the award, notice under Section 12 (2) along with copy of the award and compensation award was sent to Tahasildar, Madha, for disbursement of compensation and taking possession of the land. He has stated that possession of the land was taken under panchanama and the same was handed over to the acquiring body under Kabje Pawti (possession letter) dated 27/07/1967. The acquired land was fenced and godowns and internal roads were constructed and the land has been fully utilized for public purpose. He has stated that the land is in possession of the Department and it cannot be released under Section 48 of the Land Acquisition Act.

7. Mrs. Mulekar, learned Counsel for the Petitioners submits that the

possession of the land was never taken, and this is evident from the entry in 7/12 extract. The finding of the Court that the Petitioners are in possession of the property has attained finality. She submits that vesting of land under Section 16 presupposes actual taking of possession and till the possession is taken, legal presumption of vesting cannot be raised. She submits that the Petitioners continue to reside in the house situated in the acquired land and are in actual possession of the acquired land. She has relied upon the decision of the Apex Court in ***Pralhad Singh & Ors. vs. Union of India (2011) 5 SCC 387, Banda Development Authority, Banda vs. Motilal Agarwal & Ors. (2011) 5 SCC 394*** and the decision of the Division Bench of this Court in ***Gram Panchayat, Burambali, Kolhapur vs. Collector, Kolhapur & Ors. (2006) Mh.L.J. 453.***

8. Ld. Counsel for the Petitioners further submitted that the Petitioners have not received either compensation or notice under Section 12(2) of the Land Acquisition Act. She contends that even if there was any dispute between the tenant and the landlord, the LAO ought to have made a reference under Section 30 of the Land Acquisition Act and deposited the compensation before the Reference Court. She submitted that the acquired land is not utilized for the purpose for which it was acquired. This is evident from the letter dated 11/03/1971, whereby the executive Engineer,

Ujjani Project had informed the Collector that the land was not required for the purpose for which it was acquired and had recommended surrender of the land. She lastly submitted that the SLAO passed a draft award and since no approval was taken from the Government and/or final Award passed within the stipulated period of two years, the acquisition stands lapsed under Section 11A of the Land Acquisition Act. She has relied upon the decision of the Apex Court in ***State of U.P. & Ors. vs. Rajiv Gupta (1994) 5 SCC 686***.

9. Per contra, Mr. Patel, learned Counsel for the Respondent submitted that the Award was declared in the year 1966 and possession of the land was taken under panchanama and kabje pavati dated 27.07.1967. Upon taking possession, the Irrigation Department fenced the acquired land and constructed godowns and fully utilized the land for public purpose. The Department, having taken possession of the land, in terms of Section 16 of the Land Acquisition Act, the land vests in the Government. The acquisition proceedings having been completed, the Petitioners do not have any right to invoke Section 48 of the Land Acquisition Act.

10. We have perused the records and considered the submissions advanced by learned Counsel for the respective parties.

11. Section 48 of the Land Acquisition Act, 1984, which is relevant to decide the issue in hand reads thus-

“48. Completion of acquisition not compulsory, but compensation to be awarded when not completed-

(1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or or any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply,

so far as may be to the determination of the compensation payable under this Section”.

12. A plain reading of the provision would indicate that Section 48 confers powers on the Government to withdraw from acquisition of any land at any time before taking possession of the land, and the person affected by such withdrawal would be entitled to compensation for the damages suffered in consequence of acquisition proceeding and cost of proceeding as incurred by him. It therefore follows that Section 48 will have no application once possession of land is taken and the land vests in the Government under Section 16 of the Land Acquisition Act.

13. In *Indore Development Authority vs. Manoharlal and Ors. (2020) 8 SCC 129*, while interpreting Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Settlement Act, 2013, (2013 Act), the Constitution Bench of the Hon’ble Supreme Court has considered the scope of Sections 16 and 48 of the Land Acquisition Act, 1894, as well as the mode of taking possession of the acquired land. The Hon’ble Supreme Court has observed that once an Award is made under Section 11 and possession is taken, by virtue of Section 16, land vests in the

State, free from all encumbrances. Vesting of land is automatic on the happening of the two exigencies of passing Award and taking possession, as provided in Section 16. Once possession is taken under Section 16 of the 1894 Act, the Government becomes the absolute owner of the land and the land owner has no control over the land. He cannot have any animus to take the property and to control it. Even if, he has retained the possession or trespassed upon it after the possession has been taken, he is only a trespasser. It is held that once the Award is passed and the possession of the land is taken, the land cannot be denotified under Section 48(1) of the Land Acquisition Act.

14. It is further held that vesting under Section 16 does not depend upon payment of compensation. Only result that may follow from non-payment or short payment of compensation would be payment of interest as contemplated under **Section 34** or otherwise with respect to majority of the land holdings, in that exigency, all the beneficiaries as on the date of the notification under Section 4 shall be entitled to higher compensation under the 2013 Act. It is further held that once land has been acquired it cannot be restored to tenure holders *persons interested even* if it is not used for the purpose for which it is acquired. Under Sections 16 and 17, the acquired property becomes the property of the Government without any limitation or

condition either as to title or to possession.

15. As regards mode of taking possession, the Hon'ble Supreme Court has held that drawing of inquest report / panchanama by the LAO in the presence of witnesses is accepted mode of taking possession of the land. Once possession has been taken by drawing panchanama, the State is deemed to be in possession of the entire area and not for a part. It is held that on the large chunk of property or otherwise, which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or start residing in the outhouse, etc, is deemed to be the trespasser on land, which is in possession of the State. The possession of the trespasser always enures for the benefit of the real owner i.e. the State Government in the case.

16. In the instant case, it is not in dispute that the Government had proposed to acquire the land for construction of irrigation colony for Bhima Ujjani Project. Section 4 notification was issued on 26.03.1964 and the

Award under Section 11 of the Land Acquisition Act was declared in June 1966. This fact had been admitted by the Petitioner in the previous Writ Petition No.8036 of 2003 wherein the Petitioner had averred that after Section 6 notification published in official gazette dated 06/05/1965 the Special Land Acquisition Officer had passed the Award bearing No.SLAO/165/Solapur under Section 11 of the Land Acquisition Act in the month of June 1966. Hence, the contention that the Award was only a draft award is devoid of merits. It is further to be noted that the proviso to Section 11 which mandates approval of the Government as well as Section 11A which mandates passing of an award within the stipulated period of two years from the date of publication of declaration, has been inserted in the year 1984. In the instant case the Award was passed in the year 1966 i.e. before the proviso to Section 11 and Section 11A had been brought on the statute book. Hence, the said provisions are not applicable and the contention of the learned Counsel for the Petitioner in this regard cannot be accepted and must fail.

17. A perusal of the Award reveals that possession of the acquired land was taken under panchanama dated 27.07.1967, drawn in presence of the witnesses. The possession receipt (kabje pavti) dated 27.07.1967 also reveals that possession of the land is with the Irrigation department. It is

also pertinent to note that in the previous writ petition the Petitioner has admitted that the Executive Engineer, Ujjani Dam Division, had taken symbolic possession of the land on 27.7.1967. As it has been held by the Hon'ble Supreme Court in Indore Development Authority (supra), symbolic possession taken by preparing panchanama is a valid mode of possession.

18. It may be mentioned that the Petitioner had earlier filed a suit for recovery of possession as well as return of excess land under Section 48 of the Land Acquisition Act. The Petitioners have placed on record judgment dated 27.3.2002 in Appeal No. 561 of 2000 arising from the judgment passed in Civil Suit No. 18 of 1981. A perusal of the said judgment reveals that the Petitioners had approached the civil court, with an assertion that the possession of the land was taken without the consent of the Petitioners. The Petitioners had also admitted that the Respondent had constructed godowns on 1 Acre 20 guntha of the land and had allotted some portion of the land to some other persons. The fact that the Respondent had constructed godowns in the acquired land has also been admitted by the Petitioner in para 16 of this petition, though it is contended that the said godowns have been constructed without taking possession of the land. These averments indicate that the Respondent had not only taken symbolic possession, but had taken actual possession of the acquired land.

19. A perusal of the judgment dated 27.03.2002, in Regular Civil Appeal No.561 of 2000 reveals that the First Appellate Court had set aside the findings of the trial court that symbolic possession having been taken, the land vested in the Government under Section 16 of the Land Acquisition Act, mainly on the premise that the Government had not taken actual possession of the land, and that concept of symbolic possession was not a valid mode of taking possession under the Land Acquisition Act. These findings are contrary to the law laid down by the Apex Court. Furthermore, both the Courts below had dismissed the suit for want of jurisdiction. The findings recorded by a Court which was not competent to decide the issue cannot operate as res-judicata. The Commissioner's report, relied upon by the Petitioner is also not relevant in view of the decision of the Apex Court *Indore Development Authority (supra)*, wherein it is held that the drawing of panchanama contemporaneously is sufficient and it is not open to a Court Commissioner to determine the factum of possession within the purview of Order 27 Rule 9 CPC.

20. The Petitioners have alleged that major portion of the acquired land was lying vacant and that the Petitioners were in possession of the same. Learned Counsel for the Petitioners have relied upon letter dated 11.3.1971

whereby the Executive Engineer, Ujjani Project had informed the Collector that the acquired land was no more required for the purpose for which it was acquired. She contends that the decision was already taken to surrender the land to the land owners since the same was more than the required land. Suffice to say, that the internal correspondence between the Executive Engineer & the Collector cannot be construed as the decision of the Government to surrender the land. The said letter at the most can be considered as an expression of opinion or his view point on the subject, and nothing more. Reliance is placed on the decision of the Apex Court in *Sethi Auto Service Station vs. DDA*, (2009) 1 SCC 180.

21. The Petitioners have sought withdrawal from acquisition on the ground that they are in possession of major part of the land and further for non payment of compensation. As noted above, the possession of land having been taken by drawing panchanama, the State is deemed to be in possession of the entire land, and there cannot be withdrawal from the possession of the land even if part of the land is unutilised or is in possession of the Petitioners as retaining the possession by the Petitioners is wholly illegal and is that of a trespasser. Similarly, acquisition cannot be withdrawn under Section 48 for non payment of compensation.

22. Though it is not pleaded in the petition, learned Counsel for the Petitioners contends that in terms of Section 101 of 2013 Act, the Petitioners are entitled for return of land, which according to them has not been utilized after acquisition. The acquisition in the instant case was not under 2013 Act. The acquisition process was completed under the provision of 1894 Act, and hence Section 101 of 2013 Act will have no application. This issue was also considered by the Constitution Bench of the Hon'ble Supreme Court in Indore Development Authority (supra) wherein it has been specifically held that Section 24 of 2013 Act deals with lapse of acquisition, whereas Section 101 deals with the return of unutilised land. It is held that Section 101 cannot be said to be applicable to an acquisition made under the Act of 1894. In view of above, the arguments raised for release of the land by invoking Section 101 of 2013 Act also deserves to be rejected.

23. The acquisition proceedings having been completed, the Government has no power under Section 48 of Land Acquisition Act to denotify the acquired land vested in it by virtue of Section 16 of the Act. Since it is admitted that the Petitioners have not been paid compensation, they would be at the most entitled for statutory benefit, interest as envisaged under Section 34 of the Land Acquisition Act.

24. Under the circumstances, and in view of discussion supra, the Petition is dismissed. The Petitioners would be at liberty to file an Application for payment of compensation, which shall be decided and paid by the Appropriate Authority as expeditiously as possible, and in any event, within a period of three months from the date of filing of the Application.

25. Civil Application to stand disposed of.

(ANUJA PRABHUDESSAI, J.)

(A.A.SAYED, J.)