

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

WRIT PETITION NO. 540 OF 2017

1. Ramchandra s/o Chunnilal Asawa,
Age: 80 years, Occu: Business,
R/o. Near Police Station, Bhokar,
Tq. Bhokar, Dist. Nanded
2. Satyanarayana s/o Parasram Asawa,
Age: 70 years, Occu: Business,
R/o. Near Police Station, Bhokar,
Tq. Bhokar, Dist. Nanded

... PETITIONERS

VERSUS

1. The State of Maharashtra
Through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai
2. The Collector, Nanded,
Tq. And Dist. Nanded
3. The Land Acquisition Officer,
(Deputy Collector) Land Acquisition
Minor Irrigation -2,
Tq. and Dist. Nanded
4. The Bhokar Municipal Council,
Through its Chief Officer,
Bhokar, Tq and Dist. Nanded

...RESPONDENTS

....

Mr. R. N. Dhorde, Senior Advocate i/b Mr. V. R. Dhorde, Advocate
for Petitioners

Mr. S. W. Munde, AGP for respondent Nos. 1 to 3

Mr. Ram S. Shinde, Advocate for respondent No.4

Mr. P. S. Dighe, Advocate for intervenor.

....

**WITH
CIVIL APPLICATION NO. 4349 OF 2020
IN
WRIT PETITION NO. 540 OF 2017**

The Municipal Council, Bhokar,
Through Chief Officer ... Applicant
Versus

The State of Maharashtra and others

....

Mr. Ram S. Shinde, Advocate for applicant
Mr. S. W. Munde, AGP for respondent – State
Mr. R. N. Dhorde, Senior Advocate i/b Mr. V. R. Dhorde, Advocate for
respondent Nos. 4 and 5

....

**WITH
CIVIL APPLICATION NO. 4629 OF 2020
IN
WRIT PETITION NO. 540 OF 2017**

Mr. Gangadhar S/o Laxman Sadhulwar & Anr. ... Applicants
Versus

The State of Maharashtra and others ... Respondents

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Mr. P S. Dighe, Advocate for applicants
Mr. Ram S. Shinde, Advocate for respondent No.4
Mr. S. W. Munde, AGP for respondent – State
Mr. R. N. Dhorde, Senior Advocate i/b Mr. V. R. Dhorde, Advocate for
original petitioners

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**WITH
CIVIL APPLICATION NO. 790 OF 2022
IN
WRIT PETITION NO. 540 OF 2017**

1. Ramchandra Chunnilal Asawa
(Since deceased) Through his L.Rs.

1-A. Radhesham S/o Ramchandra Asawa
Age: 60 years, Occu. Agri., & Business,

1-B. Venkatesh S/o Shrinivas Asawa
Age: 34 years, Occu. Agri., & Business,

Both R/o Bhokar, Tq. Bhokar
Dist. Nanded

2. Satyanarayana S/o Parasram Asawa ... Applicants/
Petitioners

Versus

1. The State of Maharashtra
Through its Principal Secretary
Urban Development Department,
Mantralaya, Mumbai

2. The Collector, Nanded,
Tq. & Dist. Nanded

3. The Land Acquisition Officer,
(Deputy Collector) Land Acquisition,
Minor Irrigation -2,
Tq. & Dist. Nanded

4. The Bhokar Municipal Council,
Through its Chief Officer,
Bhokar, Tq. & Dist. Nanded

... Opponents
(Orig Respondents)

....

Mr. R. N. Dhorde, Senior Advocate i/b Mr. V. R. Dhorde, Advocate for
Applicants

Mr. S. W. Munde, AGP for respondent Nos. 1 to 3

Mr. Ram S. Shinde, Advocate for respondent No.4

....

**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 12.06.2023.

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. Civil Application No. 790 of 2022 for bringing legal heirs of petitioner No.1 on record, is allowed. Amendment be carried out.

3. The petitioners have put forth prayer clauses (B), (BB) and (C), as under:-

(B) Hold and declare that, the impugned award dated 30.04.2015 issued by respondent No.3, is nullity, void ab-initio, illegal, arbitrary and violative of Article 14 and 19(1)(g) of the Constitution of India so also contrary to the provisions of MRTP Act, 1966 and therefore, the same is liable to be quashed and set aside.

(BB) Hold and declare that, the entire proceedings for acquisition of Land Gat No.605 reserved for weekly market and including Award dated 30.04.2015 has lapsed in view of the provisions of Section 11-A of the Land Acquisition Act, 1894 r/w Section 25 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and therefore, the same are liable to be quashed and set aside and for that purpose issue necessary orders.

(C) Issue writ of prohibition or any other writ or directions in the nature of writ of prohibition, thereby prohibiting the respondents their officers and subordinates from taking any further action in pursuance to the award dated 30.04.2015 issued by respondent No.3 and for that purpose issue necessary orders.

4. On 17.01.2017, this Court (Coram: V. M. Kanade and Sangitrao S. Patil, JJ.) had passed the following order:-

“1] The petitioners are challenging the award passed by the Land Acquisition Officer for acquiring land for the Municipal Council. It is submitted that the land has been acquired under the provisions of the Land Acquisition Act and not u/s 126 of the Maharashtra Regional Town Planning Act. Secondly, it is submitted that more than two years have lapsed between the notification u/w 6 and the date of the award.

2] Issue notice before admission to respondents returnable on 28.2.2017.

3] Learned AGP waives notice on behalf of respondent nos. 1 o 3.

4] Hamdast is permitted.

5] In the mean time, the Land Acquisition Officer and the State not to take possession of the petitioners' land till the next date unless possession has already been taken.”

5. On 24.04.2018, this Court [Coram: S. V. Gangapurwala (as His Lordship then was) and A. M. Dhavale, JJ], had delivered an extensive order (which has been subsequently re-called vide order dated 15.11.2019), in which, the facts of the case were recorded in paragraph Nos. 2 to 4, which read as under:-

“2. Mr Dhorde, learned Senior Counsel for the petitioners submits that the impugned award dated 30.4.2015 issued by respondent no.3 is illegal and against mandatory provisions of the Statute. Same is liable to be quashed and set aside. The learned Senior Counsel submits that the land of the petitioners is reserved under the Regional Development Plan sanctioned on 13.4.1982 for the purpose of weekly bazar. Since 1980, the land of the petitioners was reserved for weekly bazar. The village, where the land of the petitioners is situated came within the limits of the Municipal Council in the year 2009. Even, the petitioners have developed the land. Learned Senior Counsel submits that the Section 4 notification came to be issued on 31.5.2012 in the Government gazette and in the local newspaper on 10.5.2015 and 12.5.2012. The declaration under Section 6 was published in the Government gazette on 18.1.2013 and in local newspaper on 4.1.2013 and 5.1.2013. Learned Senior Counsel submits that the award has been passed on 30.4.2015. According to the learned Senior Counsel, the award is passed beyond two years of the issuance of Section 6 notification, as such, is bad in law in light of Section 11-A of the Land Acquisition Act, 1894. Learned Senior Counsel further submits that the land being reserved under the Regional Development Plan, the Maharashtra Regional Town Planning Act applies. The Maharashtra Regional Town Planning Act is self-contained Code and provisions of land Acquisition Act are not applicable. To substantiate his contention, the learned Senior Counsel relied on the judgment of Apex Court in a case of **Girnar Traders (3) Vs. State of Maharashtra and ors., reported in (2011) 3 SCC 1.**

3. The learned Senior Counsel further submits that even if the case of the respondents is accepted that there was stay for some period, same will also not be beneficial to the respondents. The stay would not extend the period for declaration of the award. According to the learned Senior Counsel, the issue is referred to the larger Bench in a case of **Yogesh Neema and Ors., Vs. State of Madhya Pradesh and ors., reported in (2016) 6 SCC 387.**

4. Mr Shinde and learned Additional Government Pleader for the respondents submit that the award is passed well within

the prescribed period of limitation, as enumerated under Section 6 read with Section 11 of the Land Acquisition Act. The stay was operating to the notification issued by the State since 26.5.2014 till 23.9.2014 excluding the said period, the award is passed within the period of two years from the declaration of notification under Section 6 of the Land Acquisition Act. Learned Advocate further submits that the acquisition has been commenced and completed under the provisions of Land Acquisition Act and not under the Maharashtra Regional Town Planning Act and it was not necessary to conclude the proceedings under the Maharashtra Regional Town Planning Act. It is accepted by the learned Counsel for respondent no.4 that the writ land was reserved for weekly market under the Development Plan published by the Municipal Council.”

6. Having recorded the facts as above and which are not disputed before us, this Court noted the conspectus of the matter in the following terms:-

(a) whether the award is passed within the period of two years from the date of declaration under Section 6 of the Land Acquisition Act?;

(b) Whether the acquisition by invoking provisions of Land Acquisition Act, (1894) was maintainable though the land was reserved under the development plan of the Municipal Council.

7. It was thus noted that the last date of publication of the declaration under Section 6 of the 1894 Act in the local newspaper, was 05.01.2013. Undisputedly, the Section 7 declaration at the local level was made on 11.02.2013 at the Chawdi, which is termed as giving publicity to the declaration. There is no dispute that the award is dated 30.04.2015.

8. The issue that was considered when the order dated 24.04.2018 was passed was that a notification dated 19.03.2014 was issued by the Government with regard to the multiplier in relation to the rural areas, and the same was stayed by the Aurangabad Bench vide order dated 26.05.2014 in Writ Petition No.4274/2014. The said interim order was vacated by this Court on 23.09.2014. This Court, therefore, concluded in paragraph 13 as under:-

“13. The issue with regard to the period of stay not being available to the respondents would not be germane to the present case. The award has been passed under Section 11 of the Land Acquisition Act. Explanation to Section 11-A of the Land Acquisition Act, 1894 would be relevant and the period, the stay was in operation shall have to be excluded. The issue of Section 24 of the Right to Fair Compensation Act would not be relevant in the present matter. The said provision would not be applicable to the acquisition in question.”

9. The said order dated 24.04.2018, therefore, concluded that the award was passed within the prescribed period of limitation of twelve (12) months in the light of Sections 24 and 25 of the 2013 Act, which read as under:-

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.—

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

25. Period within which an award shall be made.—The Collector shall make an award within a period of twelve months from the date of publication of the declaration under section 19 and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that the appropriate Government shall have the power to extend the period of twelvemonths if in its opinion, circumstances exist justifying the same:

Provided further that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.”

10. The Petitioner carried the above order in Special Leave to Appeal (Civil) No.13893/2018 before the Hon'ble Supreme Court. On 23.05.2018, the following order was passed:-

“Learned counsel for the petitioner prays to withdraw the special leave petition with liberty.

We permit him to withdraw the petition with liberty to file a review petition before the High Court, as we find that some factual aspects, which were urged before us, may have to be considered by the High Court in the first instance.

The petitioner is granted liberty to challenge the impugned judgment, as also, the order passed in the review petition, if adverse to the petitioner.

The interim protection given by the High Court shall continue for six weeks from today.”

11. In view of the above, the Petitioner preferred Review Application No.182/2018. This Court [Coram: S. V. Gangapurwala (as His Lordship then was) and Avinash G. Gharote, JJ.] delivered an extensive order on 15.11.2019 and it was specifically recorded in paragraphs 6 and 7 as under:-

“6. We had, in the judgment under review observed that the land is acquired for public purposes. Applying the explanation to Section 11A of the Act of 1894, we had observed that the period during which the action is taken, and the said declaration is stayed by the order of the Court, shall be excluded. We had observed that the orders of stay were in force in Writ Petition No 4274 of 2014 restraining the State from declaring the award since 26.05.2014 till 23.09.2014. The notification issued pursuant to the schedule under the Act of 2013 was stayed. The same was considered assuming the land to be in rural area covered by the notification. It is now undisputed by all the parties that the land of the petitioners, acquired pursuant to the impugned award, is situated in urban area and would not be covered by the notification that was subject matter of Writ Petition no. 4274 of 2014.

7. In the light of the above, the matter will be required to be re-considered considering the land to be in urban area and applicability of the provisions, as is contended by the learned Senior Counsel for the applicant as well as learned counsel for Respondent No.4-Municipal Council.”

12. In the extensive hearing held before us, it is undisputed that there were two notifications carrying the same date 19.03.2014 and issued by the same Department of Revenue and Forest. One notification of the even date pertains to establishment charges, which has no concern with the proceedings before us. The other notification dated 19.03.2014, which actually does not apply to this case, is admitted by all the parties to be in relation to the manner of determination of value of land situated in rural areas. The notification also indicates that the decision of the Government of Maharashtra that when the land to be acquired is situated in rural areas, the market value as calculated by the Collector, as per Sub Section (1) of Section 26 of the Act, shall be multiplied by the factor specified in the first schedule of the Act. It is undisputed before us by the State that this notification is purely in relation to the acquisition of lands situated in the rural areas and the manner of determination of their value. There is no dispute that this notification does not apply to the urban lands.

13. Considering the above aspect, when this Court reviewed its earlier order dated 24.04.2018 by the order dated 15.11.2019, it was clearly held in paragraph 6 reproduced above that the impugned award pertains to land situated in an urban area and is not covered by the notification dated 19.03.2014 which was a subject matter of Writ Petition No.4274/2014.

14. In view of the above, the only question that begs for an answer is as to whether the award delivered by the Government on 30.04.2015, was delivered within limitation, in the light of the applicability of Sections 24 and 25 of the 2013 Act, by which the date of commencement is held to be 01.01.2014 and the award has to be delivered within twelve (12) months upto 31.12.2014.

15. While dealing with the above aspect, in order to be doubly sure that the notification dated 19.03.2014 pertains to purely the rural lands situated in rural areas, we have perused the judgment delivered by this Court (Coram: B. P. Dharmadhikari and A. M. Badar, JJ.) dated 09.03.2015 in the said Writ Petition No.4274/2014. Paragraph 7 of the said judgment leaves no room of doubt that the said notification was only in relation to lands to be acquired which

are situated in the rural area. The further conclusion in paragraph 24 puts this issue to rest.

16. It is equally undisputed that the said notification was not with regard to the lands situated in the urban areas. It is also undisputed before us that with the introduction of the 2013 Act, land acquisition proceedings for determination of compensation which were underway under the Land Acquisition Act of 1894, would be covered by the timeline of twelve (12) months prescribed under the 2013 Act for delivering an award. The date for reference was declared to be 01.01.2014 and the twelve (12) months would end on 31.12.2014. The contention of the State Government is that because this Court granted a stay to the notification dated 19.03.2014, on 26.5.2014, the Desk Officer of the Revenue and Forest Department issued a directive on 07.07.2014 to all the Divisional Commissioners and the District Collectors in the State of Maharashtra that they would not deliver their awards in any land acquisition matter. Apparently, this act was 'over indulgence' on the part of the Desk Officer who did not even take the pains to read the notification dated 19.03.2014 which pertains to the manner of determination of valuation of the lands situated in the rural areas alone.

17. When this was a subject matter of adjudication before this Court in Writ Petition No.4274/2014, the communication by the said Desk Officer dated 07.07.2014 would have to be interpreted as being restricted and limited only to the acquisition proceedings pertaining to the lands situated in the rural areas. One cannot read something more than what meets the eye. When there was no issue of urban lands in the notification dated 19.03.2014 and when Writ Petition No.4274/2014 was also unconcerned with the lands situated in the urban areas, it could either be said that the Desk Officer erroneously and under a misconception, passed on an impression to the Divisional Commissioners and District Collectors to keep all acquisition proceedings in abeyance or it could be the Divisional Commissioner's or the District Collector's who interpreted the communication to mean that all acquisition proceedings should be stayed.

18. The issue raised before us is of critical importance. If an order of stay by way of an interim measure, does not cover the land acquisition proceedings pertaining to the urban lands, interpreting the Desk Officer's communication differently would not only cause travesty of justice, but would also result in miscarriage of justice since it would be the petitioner who would have to suffer the burnt of

the said communication. The Hon'ble Supreme Court has held in *Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation Vs. Mahesh and others - (2022) 2 SCC 772* in paragraphs 41 and 44 that the stay granted by the High Court on 26.05.2014 to the notification dated 19.03.2014 and its subsequent order vacating the stay on 23.9.2014, should be considered while computing the period within which the award is delivered.

19. The award is delayed by four months. The submissions of the State and the Municipal Council, is that these four months were lost in view of the order of the Desk Officer directing all the parties not to proceed with the land acquisition proceedings, which is dated 07.07.2014. We, however, find that the land acquisition proceedings with regard to the petitioner's urban land, notwithstanding that it had no concern with the notification dated 19.03.2014, was halted on the order of the Desk Officer, dated 07.07.2014. However, it is undisputed that the stay granted by the Court was vacated on 23.09.2014. The said notification was eventually quashed and set aside by the judgment dated 09.03.2015. As such, the proceedings of the petitioner were actually halted for only 78 days from 07.07.2014

till 23.09.2014. Even if, this period is reckoned with to the advantage of the Government which delivered the award on 30.04.2015, the award is delayed by 42 days.

20. In *Executive Engineer, Gosikhurd* (supra), the Hon'ble Supreme Court has observed in paragraph 42 as under:-

“42. It was further concluded, based on the maxim “*commondum ex injuria sua nemo habere debet*” (meaning: convenience cannot accrue to a party from his own wrong), that the legislation did not intend for relentless litigants to derive the benefit of enhanced compensation under the 2013 Act, but rather to deliver advantage to those who accepted the compensation and handed over possession.”

21. It is, therefore, undisputed that the land acquisition proceedings of the petitioner were kept in abeyance from 07.07.2014, though under fortuitous circumstance. However, there was no impediment after these 78 days for the Special Land Acquisition Officer to proceed. As such, the maxim set out in paragraph 42 reproduced above by the Hon'ble Supreme Court, would squarely apply to the petitioner. The contention of the State Government of staying the acquisition proceeding out of misconception, cannot stand to its advantage for a wrong committed by it.

22. In view of the above, even on this count, the award is delayed by 42 days, though we have concluded as above that neither the notification dated 19.03.2014 was applicable to the petitioner, nor was the interim order passed by this Court applicable to the lands from the urban areas which were under acquisition.

23. This **petition** is, therefore, **allowed** in terms of prayer clauses "B" and "BB". **Rule is made absolute, accordingly.**

24. The learned Advocate representing the Municipal Council submits on instructions that an amount of Rs.01,69,33,653/-, which has already been deposited with the Special Land Acquisition Officer in September 2016, be returned to the Municipal Council along with accrued interest, if any. He further submits that an application in this regard would be moved to the Special Land Acquisition Officer or the appropriate authorities, who may thereafter release the said amount.

25. Considering this request, we leave it to the Municipal Council to make an application and we leave it to the authorities to return the amount at the earliest, if there is no other legal impediment.

26. Needless to state, in the event the acquiring authority desires to initiate steps for acquisition of the same land for the same purpose for which it was included in the development plan, they would follow the provisions of the 2013 Act.

27. **Civil Application No.4349/2020 and Civil Application No.4629/2020, do not survive and stand disposed off.**

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]

SMS