

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

WRIT PETITION NO. 4102 OF 2020

1. Gangadhar Rambhauappa Rugle,
Age : 82 years, Occu: Agriculture
2. Chandrashekhar Rambhauappa Rugle,
Age : 58 years, Occ. Agriculture
3. Shivkumar Rambhauappa Rugle,
Age : 60 years Occ: Agriculture

All R/o. Marwad Galli,
Near Balaji Temple, Selu
Tq. Selu. Dist. Parbhani - 431503

... **PETITIONERS**

VERSUS

1. The State of Maharashtra,
through Secretary,
Rehabilitation Department
Mantralaya, Mumbai -32
2. The Divisional Commissioner (Rehabilitation)
Aurangabad Division – Aurangabad
3. The Collector, Parbhani.
4. The Sub Divisional Officer,
(Land Acquisition Officer) Selu
Tq. Selu, Dist. Parbhani.
5. The Sub-Divisional Engineer,
Lower Dudhana Project, Sub-Division
No.4, Satona, Tq. Partur, Dist. Jalna.
6. The Executive Engineer,
Jalna Irrigation Division Jalna
7. Deepak Shankarlal Jaiswal
Age : Major Occu: Business.
R/o. Vivekanand Nagar , Near Vivkeanand
School. Selu Tq. Selu Dist. Parbhani – 431503
through the Collector Parbhani.

... **RESPONDENTS**

...
 Mr. Kedar Warad h/f. Mr. Sunil Warad advocate for Petitioners
 Mr. P.K. Lakhotiya AGP for respondent State.
 Mr. B.R. Surwase advocate for Respondent No.6.
 Mr. U.R. Aute h/f. M/s. Talekar and Associates for respondent No.7
 ...

**CORAM : MANGESH S. PATIL AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 16.01.2023

ORDER :

Heard. Rule. Rule is made returnable forthwith. Learned AGP Mr. Lakhotiya waives service for the respondents Nos.1 to 5. Learned advocate Mr. Surwase waives service for respondent No.6. Learned advocate Mr. Aute waives service for respondent No.7. At the joint request of the parties, the matter is being disposed of finally at the stage of admission.

2. The respondents were intending to acquire petitioners' land Survey No.236/2 for crematorium/burial ground. A meeting was convened by the Collector on 24.07.2017 and 80 Are portion of the petitioners land was decided to be purchased. The petitioners also gave a consent in writing. The petitioners' land was measured on 07.08.2017. A spot inspection was carried out on 10.08.2017 and public notice inviting objection in respect of such acquisition of petitioners' property by way of private negotiation was issued on 02.11.2017. A proclamation was also issued. Its market value was determined on 27.11.2017. The petitioners were informed by a notice dated 12.12.2017 to remain present for execution of sale deed and for payment of compensation. It is their grievance that in spite of they having

attended the office no further steps were taken. However, under the influence of the Minister, instead of petitioners' land an adjoining land is now being sought to be acquired for the same purpose.

3. This Court had specifically indicated in the order dated 08.09.2020 that though the petitioners have no right to insist for acquisition of their land, this Court was intending to examine the aspect regarding such decision of acquiring the adjacent land which is lesser in extent that is 66 Are for Rs.1.25 Crores when the petitioners had agreed to part with the land for Rs.70,20,000/-. The respondents were called upon to explain.

4. Accordingly, the respondents have filed the replies *inter alia* mentioning that the decision not to go for the acquisition of petitioners' land and to acquire the adjoining land was taken for the reason that there was no road to reach the petitioners' land and the sentiment being expressed by the villagers for acquisition from land Survey No.235 were such factors. However, they have admitted that it is due to the intervention of the Minister that the decision was taken by stopping the process regarding acquisition of petitioners' land.

5. Learned advocate Mr. Kedar Warad would vehemently submit that admittedly, after due deliberations, the petitioners' land was agreed to be acquired by way of private negotiations. The amount of compensation was also determined and without there being any reason, the respondents were expected to complete the process but it was abruptly stalled due to intervention of the Minister at the cost of public exchequer.

6. He would submit that since it is a matter in the realm of the Indian Contract Act, offer of the State to acquire petitioners' land having been accepted by the latter, nothing more was required to reach a conclusion that there was a concluded contract. The respondents were under such contractual obligation to complete the process by paying the compensation and getting the sale deed executed. Even otherwise, it is expected of the respondents who are public authorities to have acted fairly. More so when admittedly, the proposed acquisition of the portion of land Survey No.235 is certain to burden the public exchequer. No plausible explanation is coming forth from the respondents. The petitioners have been left in lurch. They can neither file a suit seeking specific performance in view of the provisions of Section 63 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (herein after the Act) nor would even the remedy to claim damages under Section 93 of the Act be available since the acquisition proceeding is not being dropped but some other property is now being sought to be acquired for the same purpose.

7. Mr. Warad would submit that such acquisition by way of private negotiations happens under Section 23A of the Act which refers to the acquisition by way of agreement. Section 103 of the Act specifically declares that the provisions of the Act would be in addition to and not in derogation of any other law. Since the respondent offered to purchase petitioners' land for certain amount of consideration and it was accepted by the latter the

contract had concluded.

8. The learned AGP and the learned advocate for the respondents would vehemently submit that the respondents have specifically disclosed the reasons which had prompted the decision to drop the proposal regarding acquisition of petitioners land and to go for adjoining land. Even the Collector himself has filed an affidavit. Apart from the public sentiment in the form of representation by the Villagers, even it was found that apart from the amount that was agreed to be paid to the petitioners, acquisition of their land would have led to further expenditure to be incurred for laying approach road. Even it has been mentioned that the villagers were seeking acquisition from land Survey No.235 as it was nearer to the village than the petitioners' land Survey No.236. They were also complaining regarding absence of the approachable road and in view of the directions of the Divisional Commissioner, instead of acquiring petitioners' land a fresh proposal for acquiring a portion of the land Survey No.235 has been undertaken.

9. There is no dispute about the fact that the petitioners' land was sought to be acquired by way of private negotiations by resorting to Section 23A of the Act. Negotiations were held. Even the committee determined the amount of compensation to be offered to the petitioners but the process was dropped thereafter. Therefore to begin with it will have to first ascertain as to if the petitioners would have any right under some statute to insist for the process of acquisition of their land to be concluded.

10. The provision for acquisition of land under the Act by resorting to private negotiation can happen pursuant to Section 23A which reads thus :

"23-A. Award of Collector without enquiry in case of agreement of interested persons.–

(1) Notwithstanding anything contained in section 23, if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the State Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(2) The determination of compensation for any land under sub-section (1) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(3) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (1) shall be liable to registration under that Act."

Pertinently, this provision was added by way of a State amendment with effect from 26.04.2018. Deliberations with petitioners were held even before coming into force of this provision in the year 2017. Therefore, apparently, the petitioners had no such statutory right to compel the respondents to acquire the properties even if it is held that there were private negotiations and the amount of compensation was also determined.

11. Assuming for the sake of arguments that even the provision of Section 23A applies, the provision is clearly indicative that the legislature expected that such agreement with the land owners to be in writing. The very clause 3 would substantiate such an inference which specifically excludes the provision of Registration Act, 1908 to such agreement. In the

absence of any such agreement in writing, in our considered view, the petitioners do not have any right of insisting for acquisition of their lands.

12. In the normal course, in view of the provisions of Indian Contract Act, mere offer and acceptance either express or implied is sufficient to bring about a contract and there is no requirement of that Act that of the agreements should be in writing, as is submitted by Mr. Warad. However, the Contract Act is a general statute and the Act in question is a special statute. If by virtue of Section 23A, there has to be an agreement in writing, the general provisions of the Indian Contract Act would not govern the fact situation. There are several such statutes like Transfer of Property Act, the Maharashtra Ownership Flats, (Regulations of the promotion of Construction, Sale, Management and Transfer) Act, 1963 etc. which require the agreements/deeds to be in writing and even registered. When the statute requires a particular thing to be in a specific manner, it has to be done in that manner only. When Section 23A makes it abundantly clear that the agreement has to be in writing and also provides that it need not be registered, in the absence of any agreement in writing with the petitioners, they cannot be said to have any right. For this reason alone, the petition is liable to be dismissed.

13. Even if we intend to examine the propriety and the decision making process whereby the respondents have decided to go for acquisition of some other land instead of the petitioners' land, the reasons being mentioned in the affidavit-in-replies have gone without any demur. Apart

from the documents filed along with the replies demonstrating that the villagers were against the acquisition of the petitioners' land which was farther than the portion of the land from Survey No.235 and their stand that there was no approachable road to the petitioners land which would have, if acquired, resulted in some additional expenditure for making appropriate provision to approach the land, these are the plausible explanation which factually have gone without demur and this Court in exercise of power under Article 226 of the Constitution would not be able to indulge into.

14. Though it does appear that the respondents have challenged the decision due to the intervention of the Minister, however, in our considered view, that fact by itself would not be sufficient to question the process of taking decision. Coupled with that it was imperative for the petitioners to demonstrate that the decision taken by the respondents was prompted by some *mala fide* or was taken for some extraneous reasons. Once it is found that even the villagers were not agreeable to the use of the petitioners' land for the reasons of inconvenience, it cannot be said that the decision suffers from any vice.

15. The writ petition is dismissed. However, it would always be open for the petitioners, if they so intend, to claim damages under Section 93 of the Act. We are not indicating that they are entitled to claim such damages under that provision. The Rule is discharge

16. At this juncture, learned advocate for the petitioners submits that the operation of this order be stayed for a period of two weeks to

enable the petitioners to approach the Supreme Court.

17. In view of the reasoning which we have resorted to, coupled with the fact that no interim relief is in operation in favour of the petitioners till date, the request is rejected.

(S.G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)