

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

WRIT PETITION NO. 417 OF 2021

1. Nandkishor Babulal Agrawal,
Age 69 years, Occ. Business.
2. Vijaykumar Babulal Agrawal
Age 76 years, Occ. Business.
3. Kishor Kaluram Agrawal
Age 65 years, Occ. Business.
4. Meena Kishor Agrawal,
Age 65 years, Occ. Business.
5. Rohit Kishor Agrawal
Age 43 years, Occ. Business.
6. Pusalal Papalal Agrawal
since deceased through LRs.
6A to 6K
7. Shrikisan Papalal Agrawal
Since deceased through LRs.
7A to 7D

All R/o. Agra Road, Dhule,
Taluka and District Dhule.

.. Petitioners.

Versus

1. The State of Maharashtra
through the Special Land Acquisition Officer,
Dhule, Taluka Dhule,
Dist. Dhule.
2. The Dhule Municipal Corporation,
Dhule, District Dhule.

.. Respondents.

...

Mr. Amit S. Savale, Advocate for petitioner.
Mr. A.R. Kale, AgP for respondent No.1
Mr. Ashwin V. Hon, Advocate for respondent No.2.

**CORAM : NITIN W. SAMBRE AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 12th APRIL, 2023

P.C.:-

The petitioners have approached this Court under Article 226 of the Constitution of India, seeking declaration that the acquisition proceedings in respect of Plot Nos. 3,4,5 and 7 out of final plot No. 153 admeasuring 1 Hectare 63 R situated at Taluka and District Dhule is deemed to have been lapsed. In the alternative, the petitioners are seeking issuance of a writ of mandamus and/or any other appropriate writ against the respondents directing them to pay the amount of compensation in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. Mr. Amit Savale, learned advocate for petitioners would submit that the petitioners are joint owners of Plot No. 153 situated at Dhule. The plot was reserved in the sanctioned development plan published by Dhule Municipal Council under Resolution No. 208 dated 10.02.1974. The Dhule Municipal Corporation requested the Special Land Acquisition Officer to proceed with the acquisition of the land. In pursuance of the said proceeding, the final award came to be passed on

19.9.1986 The possession is shown to be taken by the Municipal Corporation Under Receipt dated 24.9.1996. The compensation amount of Rs. 3,15,492/- has been released in favour of the petitioners against acquisition of plot Nos. 3,4,5 and 7 from final plot No. 165. The petitioners, aggrieved by inadequacy of compensation, preferred LAR No. 20 of 1989 before the Civil Judge, S.D. Dhule seeking enhancement of compensation. The Reference Court pleased to partly allow the claim and awarded enhanced compensation to the tune of Rs. 6,07,060/- alongwith statutory interest and solatium.

3. Mr. Amit Savale, would further submit that the respondent Dhule Municipal Corporation preferred Misc. Civil Application No. 71 of 2011 before the Reference court at Dhule, thereby seeking review of the award passed under Section 18 of the Land Acquisition Act. They relied upon the copy of the Development Plan showing that the reservation of the entire Plot No. 153 has been released. Mr. Savle would further urge that vide notification dated 3.7.2015 the Government has approved the modification in the development plan in exercise of the powers under Section 31 of the MRTP Act, showing deletion of the reservation of Plot No., 153.

4. Mr. Amit Savale would further urge that the respondent Corporation has not released any amount towards enhanced compensation in terms of the award passed reference court. They do not require the land which is now deleted from the reservation vide notification dated 3.7.2015. Therefore, vide notice dated 26.3.2018, petitioners offered refund of the compensation amount received by them and also submitted the cheques.

5. Mr. Amit Salve would further submit that the Supreme Court of India, in the matter of *Bhusawal Municipal Council vs. Nivrutti Ramchandra Phalak reported in (2015)14 SCC 327*, dealt with the similar situation and issued directions against the Bhusawal Municipal Council to deposit the enhanced compensation within a period of ten weeks from the date of the order, failing which to restore possession of the land to the land holders, who, in turn, would refund the entire amount received as compensation. He would further rely upon the judgment of this Court in *WP No. 11728 of 2017 between Suhas Dattatray Modgi Vs. State of Maharashtra and others*, wherein the MMRDA was directed to cancel the acquisition and release the land from reservation.

6. Mr. A.R. Kale, learned AGP for respondent No.1 and Mr. Ashwin V. Hon, the learned counsel for respondent No.2 would submit that the land acquisition proceeding has been concluded in the year 1986. The compensation amount as determined by Land Acquisition Officer has been received by the petitioner. The possession of the land is handed over to the Municipal Corporation. In that view of the matter, the provisions of the Right to Fair Compensation in land acquisition, Rehabilitation and Resettlement Act, 2013 has no application in the facts of the case. They would submit that the subsequent deletion of the land from reservation under Govt. Notification dated 3.7.2015 would be of no consequence for the acquisition concluded in the year 1986.

7. We have heard the learned advocates for the respective parties and perused record with their assistance. We observe that land from Plot No. 153, admeasuring 1 Hectare 63R, situated at Dhule was subject matter of reservation as per the sanctioned Development Plan under the MRTP Act. In the year 1974, the Dhule Municipal Corporation passed a resolution No. 208 to acquire the land and requested the Special

Land Acquisition Officer to commence the proceeding. In deference to such request, the Government Notification under Section 6 of the Land Acquisition Act, 1894 r/w. Section 127 of the MRTP Act was published. The proceeding culminated into final award dated 19.9.1986. The possession of the land is also taken over from the land holder under Possession Receipt dated 24.9.1986. The compensation amount of Rs. 3,15,492.65 ps was released in favour of the petitioners towards Plot Nos. 3,4, 6 and 7 out of final plot No. 153. It is, therefore, evident that the Municipal Council Dhule is bestowed with title in respect of the land in question and the petitioners lost their right except seeking enhanced compensation in terms of Section 18 of the Land Acquisition Act. It appears that the petitioners had preferred Land Acquisition Reference No. 20 of 1989 before the Civil Judge Senior Division at Dhule. After recording evidence of the parties, the Reference Court passed final award dated 31.12.2010 accepting prayer of the petitioners for enhancement of compensation. Accordingly, award for enhanced amount of Rs. 6,07,068/- alongwith interest and statutory emoluments has been passed.

8. Although the respondent Municipal Corporation had filed application seeking review of reference courts order, same has been rejected vide order dated 1.9.2014. The petitioners are, therefore, at liberty to execute the award and recover the enhanced amount of compensation. It is trite that Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, would not apply in the facts of the present case since the Acquisition under the Act of 1894 has been concluded. The petitioner has received compensation amount as per the award passed by the Land Acquisition Officer. The limited remedy that petitioners can exhaust is, to seek enhanced compensation in terms of Section 18 of the Land Acquisition Act, which they have already exhausted and successfully

established their claim for enhanced compensation amount before the Reference Court.

9. The petitioners contend that Dhule Municipal Corporation is not in a position to pay the enhanced compensation amount and even they are not using the acquired land, as such, the petitioners are entitled to re-possess the land. However, in our considered view, claim is fallacious. The petitioners have every right to recover the enhanced compensation by executing the award passed by the Reference court. However, non-deposit of compensation amount would not create right in favour of the petitioners to re-possess the acquired land. It is trite that once land is acquired under concluded award in accordance of the L.A. Act, land vests with acquiring body and land holder has no right except to be compensated. Although, it has been contended on behalf of the petitioners that the entire plot No. 153 which was part of the erstwhile reservation has been subsequently deleted under the modified development plan dated 3.7.2015, that would not create new right in favour of the petitioners, who have already parted the possession and received compensation amount determined by land acquisition officer as per award. Subsequent changes in development plan which is already acted upon by planning authority would have no consequence that can be capitalized by petitioners.

10. The petitioners have relied upon the judgment of the Supreme Court of India in the matter of Bhusawal Municipal Council (supra). In that case, an award passed by the reference court was put to execution. Meanwhile, the first appeal challenging the award was filed. On request of the appellant Municipal Council, stay to execution of award was granted subject to condition of deposit of 50% of the enhanced compensation. However, such condition was not complied resulting in to vacating of interim protection. Thereafter, during

execution of award, the accounts of the Municipal Council were feezed and that order was challenged before the High Court, by filing a writ petition. The writ petition was rejected. The order of rejection of the writ petition was subjected to Special Leave Petition. In this background, The Supreme Court issued directions against Muncipal council to deposit enhanced compensation amount, else, restore possession of the suit land to the petitioners aggrieved.

. In the present case, the petitioners have not initiated or pressed execution proceedings. They are free to take up appropriate steps for recovery of the enhanced amount of compensation in terms of the award passed by the reference court.

10. Another judgment relied upon by the petitioner in the matter of Suhas Dattatray Modgi (supra) would not be of any assistance to the petitioner, inasmuch as, in that case, the Acquiring Body itself made proposal for cancellation of the requisition made to the Government for acquisition of the land. In the present case, after completion of acquisition, the final award has been passed long back and the petitioners have also accepted the compensation amount. In that view of the mater, we have no hesitation to hold that petitioners have raised frivolous claim with intention to repossess the property which by passage of time has gained commercial potential and valuation. In that view of the matter, writ petition is dismissed, with cost of Rs. 25,000/-to be paid to legal services Authority, High court at Aurangabad within four weeks. Failure to deposit cost would entail recovery from the petitioners as arrears of land revenue.

[S.G. CHAPALGAONKAR]
JUDGE

[NITIN W. SAMBRE]
JUDGE

grt/-