

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

WRIT PETITION NO. 10593 OF 2023

Sudhir s/o Haribhau Babar ... **Petitioner**
Age 45 years, Occu: Agri.
R/o Mali Galli, Shevgaon,
Tq. Shevgaon, Dist. Ahmednagar

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai
2. The District Collector, ... **Respondents**
Ahmednagar, Tq. & Dist. Ahmednagar
3. The Executive Engineer,
Maharashtra Jeevan Pradhikaran
Office at Tarakpur, Ahmednagar
4. The Executive Engineer,
Water Supply Department,
Zilla Parishad, Ahmednagar.

Mr. Pankaj A. Bharat, Advocate for the Petitioner
Mr. D. R. Kale, Government Pleader, for Respondent-State

CORAM : RAVINDRA V. GHUGE, &
Y. G. KHOBRAGADE, JJ.

DATE : 27th September, 2023

ORDER (Per Y G Khobragade, J):

1. The Petitioner has put forth prayer clauses (B) and (C) as
under:

"(B) By issuing writ of mandamus or any other appropriate writ, order, or directions in like nature of writ of mandamus, it may kindly be directed to the respondents to return the unutilized 9 Acres land from Gut No. 260/B at village Shevgaon, Tq. Shevgaon Dist. Ahmednagar in favour of the Petitioner.

(C) The Writ Petition may kindly be allowed and the Respondents Authorities may kindly be directed to take necessary steps for return of unutilized 9 Acres land from Gut No. 260/B at village Shevgaon, Tq. Shevgaon Dist. Ahmednagar in favour of the Petitioner."

2. Mr. Pankaj A. Bharat, the learned Advocate for the Petitioner, with vehemence, canvassed that initially the Petitioner's father owned and possessed land Gat No.260, admeasuring 3 H 98 R, situated at village Shevgaon Tq. Shevgaon, Dist. Ahmednagar. Respondent No.2 published a Notification under Section 4 of the Land Acquisition Act, 1894 on 06.07.1989 for acquisition of said land. The land of the Petitioner was acquired in the year 1989 for construction of an overhead water tank for supplying drinking water to Shevgaon Town and 44 other villages of Shevgaon Taluka. The Special Land Acquisition Officer determined the compensation to the tune of Rs.10,000/- per Hectare.

3. The Petitioner's father had preferred Land Reference bearing NO. LAQSR No. 01/1989 for enhancement of compensation. The

learned Reference Court partly allowed the claim and enhanced the compensation to Rs. 40000/- per Hectare. Being aggrieved by the said order, the Petitioner's father filed First Appeal No. 541 of 1997 before this Court. On 10.02.2016, said First Appeal came to be decided, wherein the award of the Reference Court was modified and further enhancement in the compensation was granted, at the rate of Rs.586/- per R. The father of the Petitioner died in 2018.

4. The learned counsel for the Petitioner further canvassed that after acquisition of the land of the Petitioner, a very meager land i.e. 58 R land remained with him, which is not sufficient for livelihood of his family. Though the Petitioner applied with various Government authorities for employment, being a project affected person, he could not secure employment.

5. According to the Petitioner, the Respondent authorities acquired his 3 H 98 R land, but the overhead water tank was constructed only on 1 Acre of land and 9 Acres land has remained unutilized. Therefore, from 26.02.2018 to 09.04.2022, he submitted various representations to the Respondent authorities requesting for return of the unutilized 9 Acre land for his livelihood. The Petitioner has shown readiness and willingness to repay the amount as per the existing rate. However, the Respondent authorities did not return the unutilized land. Therefore, on 21.03.2020, the Petitioner issued a legal

notice and called upon the Respondents to return 9 Acres unutilized land out of the acquired lands.

6. The learned Advocate for the Petitioner submits that the State Government has issued a Resolution dated 10.10.1973 regarding disposal of acquired lands found surplus or not utilized by acquiring body for the purpose for which they were acquired. Since, the Respondent Authorities acquired total 3 H 98 R land and 9 acres of land has not been utilized, as per provisions of section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short Act of 2013), the Petitioner is entitled to the unutilized land out of acquired land.

7. Per contra, Mr. D. R. Kale, the learned Government Pleader submits that in pursuance of Notification dated 06.07.1989 published under Section 4(1) of the Land Acquisition Act, 1898, the Petitioner's land admeasuring 3 H 99 R has already been acquired for a public project i.e. construction of overhead water tank for Shevgaon as well as 44 other villages in Shevgaon Taluka of District Ahmednagar. The Competent Authority had determined an appropriate compensation for the acquired land and the entire amount of compensation has already been received by the Petitioner's father. Therefore, the land which is acquired cannot be returned to the owner merely because it is not used. The learned Government Pleader submits that, the Respondent

authority is intending to use the vacant land for a public purpose. Therefore, the Government Resolution dated 10th October, 1973 is not applicable to the facts of the present case. Hence, prayed for dismissal of the petition.

8. In support of his submission, the learned Government Pleader placed reliance on the decision in the case of Vishnu Namdeo Kumar & others Vs. State of Maharashtra, reported in 2003(2) Bom. C.R. 200, wherein it has been held that once acquisition of land is complete in all respects and the land has vested in the State Government free from all encumbrances and compensation for compulsory acquisition has been made, expropriated owner ceases to have any right, title or interests in the land. Expropriated owner cannot insist on utilization and user of acquired land and cannot claim its restoration. If the land has not at all been used, the land of the Government should be sold through public auction and not to the expropriated owner.

9. Having regard to the rival submissions canvassed on behalf of both sides we have gone through the record. In the present case, the acquisition was completed in all respects, way back in the year 1989. It is not in dispute that, the land of the Petitioner was acquired for the public project. The Petitioner, himself pleaded that the SLAO had awarded compensation @ R.10,000/- per hectare, but due to dissatisfaction, the Reference bearing No. LAQSR 01/1989 was made

and the learned Reference Court enhanced the compensation to the tune of Rs.40,000/- per Hectare. Further, in First Appeal No. 541 of 1997, this Court further granted compensation at the Rate of Rs.586/- per R i.e. Rs. 27,714.541 per acre [40.4685 R= 1 Acre]. It is not the case of the Petitioner that his father never received compensation. However, the Petitioner claimed that though the Respondent authorities acquired his land admeasuring 3 H 98 R, the Respondent authorities have not utilized 9 acre acquired land, therefore, he is entitled to receive the said unutilized land for his agricultural purpose under Section 101 of the Act of 2013.

10. It would be worthwhile to mention here that land of the petitioner was acquired under the provisions of Land Acquisition Act, 1894. The new Act, 2013 came into force w.e.f. 01.01.2014. Section 101 of the Act of 2013 provides as under:

"101. Return of unutilized land:- When any land acquired under this Act remains unutilized for a period of five years from the date of taking over possession, the same shall be returned to the original owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reservation in the manner as may be prescribed by the appropriate Government.

Explanation.- For the purpose of this section "Land Bank" means a Governmental entity that focuses on the conversion of Government owned vacant, abandoned, unutilized acquired lands and tax-delinquent properties into into productive use."

11. It is needless to say here that in the case of **Vishnu Namdeo Kumar (Supra)**, the learned Division Bench of this Court has considered various case law cited therein coupled with scope of the Government Resolution dated 10.10.1973 and in Paragraph No. 8 observed as under:

" The legal position is more than clear that once the acquisition of land is complete in all respect and land is vested in State Government free from all encumbrances and compensation for compulsory acquisition has been made, the expropriated owner ceases to have any right, title or interests in the land. The expropriated owner cannot insist on utilization and user of the acquired land for the same purpose for which it has been acquired nor for non-utilisation of the acquired land can claim its restoration."

12. In case of **Indore Development Authority Vs. Manoharlal and others, (2020) 8 Supreme Court Cases 129**, the Hon'ble Supreme Court held that once land vests in the State, it cannot be divested even if there is some irregularity in acquisition proceedings. In the case of **V. Chandrasekharan & another Vs. Administrative Officer and others, (2012) 2 Supreme Court Cases 133**, the Hon'ble Supreme Court has held as under:

"Land, once acquired, cannot be restored to the tenure-holders/persons interested, even if it is not used for the purpose for which it was so acquired, or for any other purpose either. Once the land is acquired and it vests in the State, free from all encumbrances, it is not the concern of the landowner, whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona

non grata once the land vests in the State. He has a right to only receive compensation for the same, unless the acquisition proceeding is itself challenged. The State neither has the requisite power to re-convey the land to the person interested nor can such person claim any right of restitution on any ground, whatsoever, unless there is some statutory amendment to this effect."

13. It seems that the Petitioner's land is already acquired in the year 1989 and father of the Petitioner already received compensation as per the provisions of Land Acquisition Act, 1894. The title of the acquired land already vested with the State Government long back. Therefore, merely because some portion of the acquired land remained unutilized, it does not create any right in favour of the Petitioner to seek return of the acquired land without public auction. Therefore, we do not find any merit in the present case.

14. Thus, in the above circumstances, **this Petition is dismissed.**
No order as to cost.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan