

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

WRIT PETITION NO. 7455 OF 2014

Manisha Sunil Gunjal .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 2064 OF 2014**

Babita Sharad Gunjal .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 7450 OF 2014**

Usha Baban Gunjal and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 7456 OF 2014**

Sarangdhar Bhika Gunjal and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri Abhijit B. Kale, Advocate for the Petitioner in all matters.

Shri S. B. Yawalkar, Addl. G.P. for Respondent Nos. 1 to 3 all matters.

Shri S. T. Shelke, Advocate for the Respondent No. 4 all matters.

**CORAM : NITIN W. SAMBRE AND
S. G. CHAPALGAONKAR, JJ.
DATE : 25TH APRIL, 2023.**

FINAL ORDER (Per Nitin W. Sambre, J.) :-

. By consent all these four petitions are tagged and heard together.

2. The petitioners who are agriculturists are questioning the consent award passed by the respondent No. 3 i. e. Special Land Acquisition Officer in relation to the acquisition of the lands of the petitioners for the purpose of development of Shirdi Airport by the respondent No. 4/Maharashtra Airport Development Company. The award came to be passed on November 30, 2013.

3. The facts necessary for deciding petitions are as under :

The case of the petitioners is that they are owners of respective agricultural lands in relation to which notice under Section 4 of the Land Acquisition Act 1894 (for short "L. A. Act") came to be issued on November 20, 2012.

4. It appears that the petitioners entered into an agreement pursuant to the provisions of Sub Section 2 of Section 11 of the L. A. Act thereby agreeing to accept the compensation at the rate of Rs. 18,00,000/-, Rs. 13,50,000/- and Rs. 9,00,000/- per acre respectively irrigated, seasonal irrigated and dry crop lands respectively. Based on the aforesaid agreement entered into between the parties, the impugned award came to be passed on

30th November, 2013.

5. The petitioners claim that before the award came to be passed, they have already communicated to respondent No. 3/Land Acquisition Officer as to their decision of withdrawing their consent from the acquisition in view of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for the sake of brevity hereinafter referred as to the “Act of 2013”). As such, present petitions questioning the award in question.

6. The contentions of the learned counsel for petitioners while questioning award under the Land Acquisition Act of 1894 is the petitioners extended consent having regard to the circumstances as were existing on the date when the consent agreement was entered into. According to him, though the terms of the agreement were agreed, but the signatures of the petitioners were obtained on two forms (I) an agreement under Sub Section 2 of Section 11 of the L. A. Act and (II) another for grant of rehabilitation grants. According to petitioners, the agreement was purely in respect of market value of the acquired land.

7. According to the petitioners, after the aforesaid agreement came to be entered into between the petitioners and the respondents on 26.06.2013, they have issued communication dated September 10, 2013 withdrawing their consent for acquisition and cancellation of the agreement. In this background the contentions are before passing of the final award

under Sub Section 2 of Section 12 of the L. A. Act i. e. on November 30, 2013, since the consent was already withdrawn, the award is not sustainable. It is further claimed that the Act of 2013 came into effect on 01st January, 2014. Since the award in question is passed subsequent to the Act of 2013 coming into force, the award itself becomes bad in law. According to the learned counsel for petitioners in view of aforesaid factual matrix, the authority ought to have been sensitive to the law laid down by the Apex Court in the matter of **Nutakki Sesharatanam Vs. Sub Collector, Land Acquisition, Vijayawada and others** reported in ***AIR 1992 SC 131*** particularly paragraph Nos. 3, 4 and 5.

8. While countering aforesaid submissions, learned Additional Government Pleader and Mr. S. T. Shelke, learned counsel for the respondent No. 4 would urge that once the agreement is entered into and executed, the respondents have already taken steps for passing of the award within the statutory period. After the final award was passed, the amount of compensation is already received in the accounts of the petitioners. The amount is received by the petitioners in their accounts as per agreement entered into. In such an eventuality it is claimed that the petitioners cannot be permitted to walk out from the agreement in the writ jurisdiction thereby forming a basis for questioning the award. It is claimed that the law laid down by the Apex Court in the matter of **Nutakki Sesharatanam Vs. Sub Collector, Land Acquisition, Vijayawada and others** cited supra will have hardly any application over the facts of the

case in hand. As such a dismissal is sought.

9. We have appreciated the aforesaid submissions.

10. Issuance of Section 4 notification qua acquisition of the lands of the petitioners under the L. A. Act is not disputed question of fact. The petitioners have also not disputed about execution of the agreement for acquisition of the lands by consent pursuant to the provisions of Sub Section 2 of Section 11 of the Act. The fact remains that the petitioners have agreed to accept compensation at the rate of Rs. 18,00,000/-, Rs. 13,50,000/- and Rs. 9,00,000/- for irrigated, seasonal irrigated and dry crop lands respectively. The terms of the agreement appear to be in vernacular, the language known to the petitioners. The agreements are duly executed by the petitioners as could be inferred from the perusal of the said document. Apart from above, in the communication dated September 10, 2013, whereby the petitioners have sought cancellation of the agreement, the fact of execution of agreement is also admitted. The petitioners have come out with a case for withdrawal of consent agreement based on coming into effect of new Land Acquisition Act i. e. Act of 2013.

11. As such it was never a case of the petitioners in the communication dated September 10, 2013 that facts were misrepresented to the petitioners while entering into an agreement or their signatures were obtained by fraud on the agreement extending consent for acquisition of the lands.

12. The petitioners in the petitions have stated that the respondents have obtained signatures of the petitioners on two forms one of agreement under Section 11(2) of the L. A. Act and another on grant of rehabilitation grants. The petitioners have further pleaded that they cannot be compelled to extend the consent and as such, the consent award has rendered illegal as same is obtained in violation of the legal provisions. What can be noticed is, petitioners' case in the petition before this court is exactly contrary to what has been stated by the petitioners in communication addressed to the respondents on September 10, 2013 thereby withdrawing the consent from passing award under Sub Section 2 of Section 11 of the L. A. Act i. e. enactment of Right to Fair Compensation Act. Whereas, pleadings in the petitions claim that the contract was executed by practicing fraud, grave misrepresentation, etc. As such petitions not only involve disputed questions of facts, but petitioners on one hand have admitted execution of agreement thereby extending consent for award and on other hand are claiming fraud being practiced on them.

13. The aforesaid factual matrix prompt this Court not to exercise the discretionary jurisdiction particularly when on one hand petitioners are admitting execution of consent agreement and on the other hand claim that the agreement was entered into by practicing fraud, etc.

14. Apart from above, the fact remains that the law laid down

by the Apex Court in the matter of **Nutakki Sesharatanam Vs. Sub Collector, Land Acquisition, Vijayawada and others** in our opinion will have hardly any application particularly observations made in para Nos. 3, 4 and 5 as in the case in hand an agreement entered into not only extend consent, but there exist a concluded agreement between the parties, as the petitioners have in fact admitted execution of such agreement in its communication addressed to the Land Acquisition Officer on September 10, 2013.

15. In such an eventuality in the aforesaid factual matrix, the petitioners' reliance on the judgment in the matter of **Nutakki Sesharatanam Vs. Sub Collector, Land Acquisition, Vijayawada and others** (supra) of the Apex Court will be of hardly any support.

16. In our opinion, all these petitions lack merit and are accordingly liable to be dismissed and are dismissed as such.

[S. G. CHAPALGAONKAR, J.]

[NITIN W. SAMBRE , J.]

bsb/May 23