

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

WRIT PETITION NO. 9597 OF 2017

Murlidhar Daulatram Milani
and another .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri V. J. Dixit, Senior Advocate i/by Shri Ankush N. Nagargoje,
Advocate for the Petitioners.

Shri S. B. Yawalkar, Addl.G.P. for the Respondent Nos. 1 to 4.

Shri S. T. Shelke, Advocate for the Respondent No. 5.

**CORAM : NITIN W. SAMBRE AND
S. G. CHAPALGAONKAR, JJ.
DATE : 31ST MARCH, 2023.**

FINAL ORDER :

. The challenge is to the order dated April 29, 2017 passed by the respondent No. 2, wherein prayer made by the petitioners under Section 48 of the Land Acquisition Act, 1894 (for short "L. A. Act") for releasing the same from acquisition came to be rejected.

2. Facts necessary for deciding petition are as under :

Petitioners claim to be owning land Sy. No. 67/5 admeasuring 962 square meters. The petitioner No. 2 claims to be owner of land Sy. No. 67/4 adm. 10.5R, which are situated at village Ghulewadi, Tq. Sangamner, Dist. Ahmednagar.

4. Both these lands were subjected to acquisition under the aforesaid acquisition act and award came to be passed on November 22, 2002, the possession of the land claimed to have been taken on 16th January, 2018.

5. It is the contention of the learned counsel for the petitioners that the lands in question which were acquired for a particular public purpose was not used for the said cause. At present lands are subjected for widening of National Highway. In this background, the contention of the learned counsel for the petitioners is, the petitioners since beginning are not in agreement with the land acquisition proceedings as they have already approached this Court through Writ Petition No. 5126 of 2003 demonstrating non compliance of Section 5(A)(2) of the L. A. Act, whereby after section 4 notification, the opportunity of hearing inspite of there being objection was not afforded. According to Mr. Dixit, learned senior counsel, the lands now are intended to be diverted to be used by National Highway authority. Hence the respondents must put the land back in possession of the petitioners thereby releasing the same from acquisition as the respondent/National Highway Authority is required to take recourse to the land acquisition under the National Highway Authorities Act. His further contentions are a meager compensation when the earlier award passed in the year 2002 was paid and the compensation till date is not received by the petitioners. As such according to him, not only the

acquisition lapses, but even if it is presumed that there was such acquisition since the lands are not put to public use for which same was acquired, they are entitled for release of the same under Section 48 of the L. A. Act.

6. Mr. Shelke, learned counsel for the respondent No. 5, so also learned Additional Government Pleader Mr. Yawalkar would oppose the claim of the petitioners. According to Mr. Shelke, after the possession of the lands was taken same stood vested in the respondent No. 5. He would further urge that after the award was delivered on 02.11.2002, the petitioners were served with notice under sub section 2 of Section 12 of the L. A. Act and it was for the petitioners to make a reference under Section 18 of the L. A. Act, if they were not in agreement with the compensation awarded by the Land Acquisition Officer. He would further urge that since the acquisition was concluded under the Act of 1984, there is no question of applying provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013.

7. The learned Additional Government Pleader would adopt the said argument and submits that the possession was already taken from the petitioners and handed over to the respondent No. 5. Even though notice under Sub Section 2 of Section 12 of the L. A. Act was served on the petitioners, it was choice of the petitioners who have not withdrawn the amount of compensation and as such necessary consequences will follow.

8. We have appreciated the aforesaid submissions.

9. The fact remains that after award was passed on November 22, 2002, the amount of compensation was duly deposited and the petitioners were served with notice under section 12(2) of the L. A. Act.

10. In this background, the petitioners having formed an opinion that their lands were already under acquisition have moved before the respondent authorities thereby invoking provisions of Section 48 of the L. A. Act seeking release of the lands from the acquisition. As such prayer for release of the lands has a basis of lawful acquisition under the old land acquisition Act. This observation can be drawn support from the pleadings of the petitioners that cause for which lands were acquired have not been put to said use.

11. Aforesaid issue is well settled in law. Once the lands are acquired for public purpose and even if such purpose has been extinguished, it is always open for the acquiring body or the authority to divert use of said land for any other public purpose and it cannot be in such an eventuality necessary to allow the prayer under Section 48 of the L. A. Act.

12. The acquiring body has already deposited the compensation well within time with the land acquisition officer

and it was for the petitioners to collect the said compensation from the land acquisition officer. If not in agreement with the amount of compensation offered, it was open for them to make a reference under Section 18 of the L. A. Act, which till date the petitioners have failed to.

13. The cause for which the National Highways Authority intends to use the land which was acquired by the respondent No. 5 and other respondents is certainly a public cause. In such an eventuality, it is not necessary that the land acquired for (a) public purpose cannot be used for (b) public purpose as long as land acquired for public purpose, same in our opinion will vitiate the acquisition.

14. In this background, we do not see any convincing reason to cause interference thereby allowing the prayer of the petitioners under Section 48 of the L. A. Act. Petition sans merit and stands dismissed.

[S. G. CHAPALGAONKAR, J.]

[NITIN W. SAMBRE , J.]

bsb/March 23